

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER AND APPELLANT, VS. THE ADMINISTRATRIX OF THE ESTATE OF LORENZO ECHARRI, OPPOSITOR AND APPELLEE.

G.R. No. 45544. April 25, 1939

Ponente: LAUREL, J.

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LAUREL, J.:

This is an appeal by the Collector of Internal Revenue from the order of the Court of First Instance of Occidental Negros, under date of May 26, 1936, the dispositive part of which reads as follows:

"Y bajo esta computacion, se declara que el Administador de Rentas Internas solamente debe cobrar de este intestado la cantidad de P1,467.57, en lugar de la cantidad de P14,475.13, ordenandose en su consecuencia al administrador de este intestado que pague dicha suma de P1,467.59 al Gobierno de las Islas Filipinas, por conducto del Tesorero Provincial de Negros Occidental, dentro del plazo de cinco dias."

In probate proceedings in the matter of the intestate estate of Lorenzo Echarri, deceased, pending in the Court of First Instance of Occidental Negros, the provincial fiscal of said province, in behalf of the Insular Government, filed on February 18, 1931, a motion under date of February 10, of the same year, submitting therewith annex A, which is proof of debt subscribed to by the Collector of Internal Revenue on January 12, 1931, in which it is claimed, that Lorenzo Echarri, deceased, is indebted to the Government of the Philippine Islands in the sum of P14,475.13 as income tax found to be due from him for year 1927. On May 19, 1932, the Collector of Internal Revenue, represented by the provincial fiscal of said province, filed another motion in which he prayed that the administratrix of the intestate estate be ordered to pay to the Government of the Philippines the amount of the income tax above referred to. On May 28, 1932, the administratrix filed an answer to said motion in which she challenged the validity of the assessment made by the Collector of Internal Revenue and prayed that the assessment be amended and, if necessary, the claim be set for hearing for introduction of evidence. On the same date, the administratrix filed additional memorandum in which it is contended that annex B of her answer to the motion of the Collector of Internal Revenue was not a contract of sale. On January 30, 1934, the Collector of Internal Revenue, in a motion submitted to the court, raised the question of propriety of contesting the assessment or the legality of the tax without the administratrix paying first the tax under protest and bringing the corresponding action under section 1579 of the Revised Administrative Code. On June 15, 1934, the lower court upheld the contention of the Collector of Internal Revenue and ordered the administratrix to pay to the Government the sum of P14,475.13, under protest authorizing her at the same time to institute the corresponding judicial action to recover the amount paid in accordance with the aforecited section 1579 of the Revised Administrative Code. On July 7, 1934, the administratrix filed a motion for reconsideration, and on July 18, 1934, the court reconsidered its order of June 15, 1934, and set the claim of the Government for trial on the merit. Both parties presented evidence. On May 26, 1936, the lower court rendered its decision ordering the administratrix to pay to the Collector of Internal Revenue the sum of P1,467.57, instead of the P14,475.13, as additional income tax. From this order the Collector of Internal Revenue, has appealed to this court.

The appellant makes the following assignment of errors:

"I. The lower court erred in holding that it has jurisdiction to receive evidence and decide on its merit the claim of the Government filed in these proceedings.

"II. The lower court erred in not ordering the administratrix to pay the claim of the Government under protest and bring later an action for its recovery as provided for in section 1579 of the Revised Administrative Code.

"III. The lower court erred in holding that the transaction involved in the document, Exhibit A, which refers to the transfer of the properties known as 'Hacienda Urbasa' with all the improvements existing thereon, by Lorenzo Echarri to the Central Azucarera del Danao, to pay the value of 1,437 shares of stock of said central which Echarri had subscribed, does not have the nature of a sale but of an exchange or barter.

"IV. The lower court erred in holding that, considering the nature of the transaction involved in Exhibit A as exchange, the net value that should be given to the 'Hacienda Urbasa' is P143,700, and that the value of 1,437 shares, at the par value of P100 each, being P143,700, the result is that Lorenzo Echarri did not realize any gain subject to taxation.

"V. The lower court erred in not holding that the transaction involved in Exhibit A partakes of the nature of a sale whereby Lorenzo Echarri sold his 'Hacienda Urbasa' together with all the improvements thereon, with an aggregate value of P238,838.31, to the Central Azucarera del Danao, in payment of the 1,437 shares of stock subscribed by Echarri on condition that the central should assume the obligations of Echarri in the amount of P256,878.31.

"VI. The lower court erred in not holding that the profit realized by Lorenzo Echarri from the sale of his 'Hacienda Urbasa' to the Central Azucarera del Danao in payment of his 1,437 shares of stock amounts to P161,740, being the difference between the selling price of P400,578.31 and the cost price of 'Hacienda Urbasa' in the amount, of P238.838.31.

"VII. The lower court erred in ordering the administratrix to pay to the Collector of Internal Revenue the sum of P1,467.57, instead of the sum of P14,475.13 which is the amount of the income tax assessed by the Collector of Internal Revenue."

The questions raised in the first and second assignments can be fairly disposed of by taking into account the time of the discovery of the deficiency of the income-tax return, dated March 30, 1928, of Lorenzo Echarri, deceased. According to the records of this case the return was received in the office of the Collector of Internal Revenue on March 31, 1928 (Exhibit C), and that the alleged errors in said return were the subject of correspondence between the Collector of the Internal Revenue and the attorney for the administratrix of said intestate even before January 5, 1931 (Annex A). It is therefore obvious that the error or deficiency of the income-tax return was discovered within three years from the time that such erroneous declaration was made. In *Collector of Customs vs. Haygood* (G. R. No. 44038, promulgated on May 18, 1938), we said:

"1.º, que cuando el descubrimiento de declaraciones erroneas de impuestos se hace dentro de los tres anos siguientes a la fecha en que deben hacerse dichas declaraoiones y el declarante ha fallecido. la reclamacion para el cobro del pago del impuesto tasado por el Administrador de Rentas Tnternas debe hacerse en la testamenterfa o abintestato mediante mocion acompanada de una relacion jurada por dicho Administrador de los impuestos adeudados y el Tribunal competente puede sumariamente ordenar al Administrador judicial sin previa vista el pago de la reclamacion si este tuviere fondos disponibles, teniendo en cuenta las prelacones establecidas en el articulo 753 del Codigo de Procedinrento Civil, pudiendo dicho administrador hacer el paro bajo protesta para recobrar en juicio aparte lo que hubiera pagado indebidamente; y 2.º, que cuando el descubrimiento de declaraciones erroneas tiene lugar despues de los tres anos contados desde la fecha en que se han hecho dichas declaraciones, la reclamacion que presentare el Administrador de Rentas Internas debe hacerse tambien mediante mocion acompanada de una relacion jurada de impuestos no pagados, teniendo

dicha mocion cardcter de una demanda civil que debe tramitarse mediante presentacion de contestasidn escrita y practica de prueba."

The case of *Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue* (52 Phil., 803), relied upon by the petitioner-appellant is good authority on the proposition that the court having control over the administration proceedings has jurisdiction to entertain the claim presented by the government for taxes due and to order the administrator to pay the tax should it find that the assessment was proper, and that the tax was legal, due and collectible. And the rule laid down in that case must be understood in relation to the case of *Collector of Customs vs. Haygood*, supra, as to the procedure to be followed in a given case by the government to effectuate the collection of the tax. Categorically stated, where during the pendency of judicial administration over the estate of a deceased person a claim for taxes is presented by the government, the court has the authority to order payment by the administrator; but, in the same way that it has authority to order payment or satisfaction, it also has the negative authority to deny the same. While there are cases where courts are required to perform certain duties mandatory and ministerial in character, the function of the court in a case of the present character is not one of them; and here, the court cannot be an organism endowed with latitude of judgment in one direction, and converted into a mere mechanical contrivance in another direction. This principle is sound notwithstanding the unqualified application suggested by the petitioner-appellant of section 1579 of the Revised Administrative Code in the light of our pronouncements in *Sarasola vs. Trinidad* (40 Phil., 252) and *Churchill and Tait vs. Rafferty* (32 Phil., 580).

The first and second assignments of error are therefore overruled.

The other questions raised have reference to the nature of the transaction marked as Exhibit A of the government. The lower court concluded that the parties intended an exchange of properties. In reality, for the purposes of the application of the Income Tax Law whether the transaction was a sale or an exchange is immaterial. The determining factor was whether any gain or profit was derived therefrom (Act No. 2833, sec. 2, subpars. [c] and [3] ; *Atkina' Estate vs. Lucas*, 36 Fed. [2d], 611).

Whether gain was derived from the transaction is a question of fact. The determination of that question presupposes review of the computation of the assessment made by the Collector of Internal Revenue no less than of the evidence presented by the parties. The lower court reached the conclusion that in the transaction the deceased had neither realized any gain nor suffered any loss. We cannot alter this finding made presumably after consideration of the evidence presented before the lower court especially where we do not find any abuse or misapplication of the law.

The appeal is dismissed without pronouncement regarding costs. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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