

TAN CHAY, PETITIONER AND APPELLANT, VS. THE GOVERNMENT OF THE PHILIPPINES ISLANDS, RESPONDENT AND APPELLEE.

G.R. No. 46350. September 27, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Tan Chay was sentenced by the Court of First Instance of Manila to pay as sales tax the amount of P8,105.38 plus 25 per cent surtax for delinquency and another 100 per cent for false return, making a total of P18,237.11. He appealed from the judgment, and the Court of Appeals affirmed in toto.

He now appeals to this court on certiorari and limits the question raised therein to whether or not it was proper to impose upon him the surtax of 100 per cent to which he was sentenced by the Court of First Instance and by the Court of Appeals. He argues that such surtax is only intended for those who have filed a false or fraudulent return of their sales, a thing which he has not done.

The facts found established by the Court of Appeals do not support the petitioner's contention. Says the appealed decision:

"The defendant and appellant was partner and manager of a mercantile partnership which was doing business under the firm name 'Tan Chay & Co.,' and was engaged principally in the purchase and sale of copra. The company had operated for some years until it was dissolved on March 14, 1929. In the last year of its existence, that is in 1928, the company declare before the Bureau of Internal Revenue the sum of P129,262.65 as the total amount of the sales realized by it during that years, for purposes of the sales tax. Suspecting that the defendant and his company had been defrauding the Government and his company had been defrauding the Government in the payment of taxes, the Bureau of Internal Revenue, through its agents Carlos Im Kalaw and Viodimo D. Ponce, obtained from the Court of First Instance of Manila, on July 18, 1934, a search warrant for the search of the house No. 619 in the District of San Nicolas, City of Manila, and examination of books, paper and documents which might be or had been used in the commission of frauds upon the national treasury. The search was in fact made, the agents having first informed the defendant of their intention to search his books of account, papers and documents, as well as those of the 'Tan Chay & Co.,' for the purpose of finding and determining his true liability in connection with the payment of sales tax. The defendant thereupon agreed to the search and took from a shelf found on the first floor of the house two books marked Exhibits C and D of record, and turned them over to the agents, stating that they were the only books of the company and that they contained all the sales realized during the year 1928. The defendant also turned over to the agents other books of the company referring to transactions of former years. On the same floor of the house the agents of the Bureau of Internal Revenue found a table which, according to the defendant, belonged to the company, and when they opened a drawer of said table, they found inside some documents, papers and envelopes, among which were those marked Exhibits G to L of record. They then went up to the second floor of the house and there found, inside a shelf found in the room of the defendant, the private books marked Exhibits A and E of record. After the search of the house, the agents brought with them in the Bureau of Internal Revenue all the books, documents and papers seized by them during the search and proceeded to examine and go over them minutely and in detail. As a result of said examination, they found that the book Exhibit C was the official

mercantile book of the partnership 'Tan Chay & Co.,⁵ containing the items representing the sales declared by the company in 1928 for purposes of the payment of taxes, sales which amounted to P129,262.63, or the same amount which the company stated in its declaration filed with the Bureau of Internal Revenue in said year. The agents also verified that the sales appearing in the book Exhibit D, which had been furnished to 'Tan Chay & Co., by the Bureau of Internal Revenue so that it may note therein all the sales subject to tax, amounted to the same sum of P129,262.63, thus tallying with the items appearing in the said official book, Exhibit C of 'Tan Chay & Co.'. The agents also examined the items specified in the private book Exhibit A, and found that they referred to sales amounting to P495,853.99, made by Tan Chay, alias Tan Chayco, to M. J. Ossorio and to another commercial house in 1928; and after comparing these items with those appearing in the official books Exhibits C and D already mentioned, said agents also found that of the sales noted in the private book Exhibit A, only a portion equivalent to P126,127.37 had been entered in the books Exhibits C and D, thus failing to declare with the treasury sales amounting to P377,652.25. The agents also examined the private book marked Exhibit E of record, and found that the items of sales specified therein, which amounted to P173,766.14, refer to sales made by Tan Chay, alias Tan Chayco, to M. J. Ossorio and to other commercial firms during the year 1928; and after comparing these items with those appearing in the official books oft-mentioned, Exhibits C and D, they likewise found that, of the sales noted in the said book Exhibit E, only an insignificant portion equivalent to P3,134.66 had been entered in the said Exhibits C and D, thus leaving a balance of sales concealed from the treasury amounting to P170,631.48. In resume the agents verified, upon this minute examination of the aforesaid books, that the aggregate sales which had been concealed from the treasury to escape payment of taxes, amounted to P540,358.10. To find out whether the sales which had been concealed were those of 'Tan Chay & Co' or those of Tan Chay personally, the said agents examined the books of account and invoices of M. J. Ossorio referring to said sales, for according to the said private books, the sales had been made to M. J. Ossorio. They found that the said sales had been made by Tan Chay personally, although he used the name 'Tan Chayco'. They also found that 'Tan Chayco' is the name used by the defendant in his private transactions, as even after the dissolution of 'Tan Chay & Co.' which took place on March 14, 1929 as above-stated, the defendant continued using the said name 'Tan Chayco' in his private business and transactions, as evidenced by the papers and envelopes marked Exhibits G to L. T. U. V to CC and DD, EE and FF of record. As a result, on the basis of the sales amounting to P540,358.10 which the defendant failed to declare for purposes of the corresponding tax, the Collector of Internal Revenue assessed against the said defendant the tax which he should pay, namely, the sum of P8,105.38, plus a surtax of 125 per cent on said tax, amounting to P10,131.73, which amounts the defendant and appellant refused to pay despite demand made upon him on July 16, 1934."

In the light of the foregoing facts, it is evident that the petitioner unduly included in the return of sales realized by Tan Chay & Co., of which he was the manager, a part of his personal sales in 1928, concealing the greater part thereof. This is the false return availed of by him to defraud the Government. He carried private books wherein he entered his sales, and instead of making a return of his own sales, separately from that filed by Tan Chay & Co., he illegally included in that of the latter company his personal sales, although not all but only a part thereof, by falsely stating to the agents of the Bureau of Internal Revenue that they were sales of Tan Chay & Co.

Had the appellant included in the return of Tan Chay & Co., all his personal sales, he would have had to pay the tax corresponding to the undeclared sales. This and the surtax thereon are what he is now required to pay in this case under the provisions of section 1458 of the Revised Administrative Code.

The appealed decision is affirmed, with the costs to the appellant. So ordered.

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

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