

ADVERTISING ASSOCIATES, INC., PETITIONER, VS. COURT OF APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

G.R. No. 59758. December 26, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the liability of Advertising Associates, Inc. for P382,700.16 as 3% contractor's percentage tax on its rental income from the lease of neon signs and billboards imposed by section 191 of the Tax Code (as amended by Republic Acts Nos. 1612 and 6110) on business agents and independent contractors. Parenthetically, it may be noted that Presidential Decree No. 69, effective November 24, 1972, added paragraph 17 to section 191 by taxing lessors of personal property.

Section 191 defines an independent contractor as including all persons whose activity consists essentially of the sale of all kinds of services for a fee. Section 194(v) of the Tax Code defines a business agent as including persons who conduct advertising agencies.

It should be noted that in *Advertising Associates, Inc. vs. Collector of Internal Revenue*, 97 Phil. 636, the taxpayer was held liable as a manufacturer for the 30% sales tax on its sales of neon-tube signs under section 185(k) of the Tax Code as amended. It paid P11,986.18 as sales tax for the 4th quarter of 1948 to 1951.

This Court rejected the taxpayer's contention that it was only a contractor of neon-tube signs and that it should pay only the 3% contractor's tax under section 191 of the Tax Code.

In the instant case, Advertising Associates alleged that it sold in 1949 its advertising agency business to Philippine Advertising Counsellors, that its business is limited to the making, construction and installation of billboards and electric signs and making and printing of posters, signs, handbills, etc. (101 tsn). It contends that it is a media company, not an advertising company.

It paid sales taxes for selling billboards, electric signs, calendars, posters, etc., realty dealer's tax for leasing billboards and electric signs and 3% contractor's tax for repairing electric signs.

The billboards and electric signs manufactured by it are either sold or leased. As already stated, the Commissioner of Internal Revenue subjected to 3% contractor's tax its rental income from billboards and electric signs (p. 10, Appellant's brief).

The Commissioner required Advertising Associates to pay P297,927.06 and P84,773.10 as contractor's tax for 1967-1971 and 1972, respectively, including 25% surcharge (the latter amount includes interest) on its income from billboards and neon signs.

The basis of the assessment is the fact that the taxpayer's articles of incorporation provide that its primary purpose is to engage in general advertising business. Its income tax returns indicate that its business was advertising (Exh.

14 and 15, etc.).

It is supposed "to conduct a general advertising business, both as principal and agent, including the preparation and arrangements of advertising devices and novelties; to erect, construct, purchase, lease or otherwise acquire fences, billboards, signboards, buildings and other structures suitable for advertising purposes; to carry on the business of printers, publishers, binders, and decorators in connection with advertising business and to make and carry out contracts of every kind and character that may be necessary or conducive to the accomplishment of any of the purposes of the company; to engage in and carry on a general advertising business by the circulation and distribution and the display of cards, signs, posters, dodgers, handbills, programs, banners and flags to be placed in and on railroad cars, street cars, steam boats, cabs, hacks, omnibuses, stages and any and all kinds of conveyances used for passengers or for any other purposes; to display moveable or changeable signs, cards, pictures, designs, mottoes, etc., operated by clockwork, electricity or any other power; to use, place and display the same in depots, hotels, halls, and other public places, to advertise in the air by airplanes, steamers, skywriting and other similar or dissimilar operation." (Exh. 14-A, pp. 48-49, BIR Records, Vol. I).

Advertising Associates contested the assessments in its letters of June 25, 1973 (for the 1967-71 deficiency taxes) and March 7, 1974 (for the 1972 deficiency). The Commissioner reiterated the assessments in his letters of July 12 and September 16, 1974 (p. 3, Rollo).

The taxpayer requested the cancellation of the assessments in its letters of September 13 and November 21, 1974 (p. 3, Rollo). Inexplicably, for about four years there was no movement in the case. Then, on March 31, 1978, the Commissioner resorted to the summary remedy of issuing two warrants of distraint, directing the collection enforcement division to levy on the taxpayer's personal properties as would be sufficient to satisfy the deficiency taxes (pp. 4, 29 and 30, Rollo). The warrants were served upon the taxpayer on April 18 and May 25, 1978.

More than a year later, Acting Commissioner Efren I. Plana wrote a letter dated May 23, 1979 in answer to the requests of the taxpayer for the cancellation of the assessments and the withdrawal of the warrants of distraint (Annex C of Petition, pp. 31-32, Rollo).

He justified the assessments by stating that the rental income of Advertising Associates from billboards and neon signs constituted fees or compensation for its advertising services. He requested the taxpayer to pay the deficiency taxes within ten days from receipt of the demand; otherwise, the Bureau would enforce the warrants of distraint. He closed his demand letter with this para-graph:

"This constitutes our final decision on the matter. If you are not agreeable, you may appeal to the Court of Tax Appeals within 30 days from receipt of this letter."

Advertising Associates received that letter on June 18, 1979. Nineteen days later or on July 7, it filed its petition for review. In its resolution of August 28, 1979, the Tax Court enjoined the enforcement of the warrants of distraint.

The Tax Court did not resolve the case on the merits. It ruled that the warrants of distraint were the Commissioner's appealable decisions. Since Advertising Associates appealed from the decision of May 23, 1979, the petition for review was filed out of time. It was dismissed. The taxpayer appealed to this Court.

We hold that the petition for review was filed on time. The reviewable decision is that contained in Commissioner Plana's letter of May 23, 1979 and not the warrants of distraint.

No amount of quibbling or sophistry can blink the fact that said letter, as its tenor shows, embodies the Commissioner's final decision within the meaning of section 7 of Republic Act No. 1125. The Commissioner said so. He even directed the taxpayer to appeal it to the Tax Court. That was the same situation in *St. Stephen's*

Association and St. Stephen's Chinese Girl's School vs. Collector of Internal Revenue, 104 Phil. 314, 317-318.

The directive is in consonance with this Court's dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment. That procedure is demanded by the pressing need for fair play, regularity and orderliness in administrative action (*Surigao Electric Co., Inc. vs. Court of Tax Appeals*, L-25289, June 28, 1974, 57 SCRA 523).

On the merits of the case, the petitioner relies on the Collector's rulings dated September 12, 1960 and June 20, 1967 that it is neither an independent contractor nor a business agent (Exh. G and H).

As already stated, it considers itself a media company, like a newspaper or a radio broadcasting company, but not an advertising agency in spite of the purpose stated in its articles of incorporation. It argues that its act of leasing its neon signs and billboards does not make it a business agent or an independent contractor. It stresses that it is a mere lessor of neon signs and billboards and does not perform advertising services.

But the undeniable fact is that neon signs and billboards are primarily designed for advertising. We hold that the petitioner is a business agent and an independent contractor as contemplated in sections 191 and 194(v).

However, in view of the prior rulings that the taxpayer is not a business agent nor an independent contractor and in view of the controversial nature of the deficiency assessments, the 25% surcharge should be eliminated (*C. M. Hoskins & Co., Inc. vs. Commissioner of Internal Revenue*, L-28383, June 22, 1976, 71 SCRA 511, 519; *Imus Electric Co., Inc. vs. Commissioner of Internal Revenue*, 125 Phil. 1084).

Petitioner's last contention is that the collection of the tax had already prescribed. Section 332 of the 1939 Tax Code, now section 319 of the 1977 Tax Code, Presidential Decree No. 1158, effective on June 3, 1977, provides that the tax may be collected by distraint or levy or by a judicial proceeding begun "within five years after the assessment of the tax".

The taxpayer received on June 18, 1973 and March 5, 1974 the deficiency assessments herein. The warrants of distraint were served upon it on April 18 and May 25, 1978 or within five years after the assessment of the tax. Obviously, the warrants were issued to interrupt the five-year prescriptive period. Its enforcement was not implemented because of the pending protests of the taxpayer and its requests for withdrawal of the warrants which were eventually resolved in Commissioner Plana's letter of May 23, 1979.

It should be noted that the Commissioner did not institute any judicial proceeding to collect the tax. He relied on the warrants of distraint to interrupt the running of the statute of limitations. He gave the taxpayer ample opportunity to contest the assessments but at the same time safeguarded the Government's interest by means of the warrants of distraint.

WHEREFORE, the judgment of the Tax Court is re-verses and set aside. The Commissioner's deficiency assessments are modified by requiring the petitioner to pay the tax proper and eliminating the 25% surcharge, interest and penalty. In case of nonpayment, the warrants of distraint should be implemented. The preliminary in-junction issued by the Tax Court on August 28, 1979 restraining the enforcement of said warrants is lifted. No costs.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

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