

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. UNION SHIPPING CORPORATION AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 66160, May 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the December 9, 1983 decision* of the Court of Tax Appeals in CTA Case No. 2989 reversing the Commissioner of Internal Revenue.

In a letter dated December 27, 1974 (Exhibit "A"), herein petitioner Commissioner of Internal Revenue assessed against Yee Fong Hong, Ltd. and/or herein private respondent Union Shipping Corporation, the total sum of P583,155.22 as deficiency income taxes due for the years 1971 and 1972. Said letter was received on January 4, 1975, and in a letter dated January 10, 1975 (Exhibit "B"), received by petitioner on January 13, 1975, private respondent protested the assessment.

Petitioner, without ruling on the protest, issued a Warrant of Dstraint and Levy (Exhibit "C"), which was served on private respondent's, counsel, Clemente Celso, on November 25, 1976.

In a letter dated November 27, 1976 (Exhibit "D"), received by petitioner on November 29, 1976 (Exhibit "D-1"), private respondent reiterated its request for reinvestigation of the assessment and for the reconsideration of the summary collection thru the Warrant of Dstraint and Levy.

Petitioner, again, without acting on the request for reinvestigation and reconsideration of the Warrant of Dstraint and Levy, filed a collection suit before Branch XXI of the then Court of First Instance of Manila and docketed as Civil Case No. 120459 against private respondent. Summons (Exhibit "E") in the said collection case was issued to private respondent on December 28, 1978.

On January 10, 1979, private respondent filed with respondent court its Petition for Review of the petitioner's assessment of its deficiency income taxes in a letter dated December 27, 1974, docketed therein as CTA Case No. 2989 (Rollo, pp. 44-49), wherein it prays that after hearing, judgment be rendered holding that it is not liable for the payment of the income tax herein involved, or which may be due from foreign shipowner Yee Fong Hong, Ltd.; to which petitioner filed his answer on March 29, 1979 (Rollo, pp. 50-53).

Respondent Tax Court, in a decision dated December 9, 1983, ruled in favor of private respondent -

"WHEREFORE, the decision of the Commissioner of Internal Revenue appealed from, assessing against and demanding from petitioner the payment of deficiency income tax, inclusive of 50% surcharge, interest and compromise penalties, in the amounts of P73,958.76 and P583,155.22 for the years 1971 and 1972, respectively, is reversed."

Hence, the instant petition.

The Second Division of this Court, after the filing of the required pleadings, in a resolution dated January 28, 1985, resolved to give due course to the petition, and directed petitioner therein, to file his brief (Rollo, p. 145). In compliance, petitioner filed his brief on May 10, 1985 (Rollo, p. 151). Respondents, on the other hand, filed their brief on June 6, 1985 (Rollo, p. 156).

The main issues in this case are: (a) on the procedural aspect, whether or not the Court of Tax Appeals has jurisdiction over this case and (b) on the merits, whether or not Union Shipping Corporation acting as a mere "husbanding agent" of Yee Fong Hong Ltd. is liable for payment of taxes on the gross receipts or earnings of the latter.

The main thrust of this petition is that the issuance of a warrant or distraint and levy is proof of the finality of an assessment because it is the most drastic action of all media of enforcing the collection of tax, and is tantamount to an outright denial of a motion for reconsideration of an assessment. Among others, petitioner contends that the warrant of distraint and levy was issued after respondent corporation filed a request for reconsideration of subject assessment, thus constituting petitioner's final decision in the disputed assessments (Brief for Petitioner, pp. 9 and 12).

Petitioner argues therefore that the period to appeal to the Court of Tax Appeals commenced to run from receipt of said warrant on November 25, 1976, so that on January 10, 1979 when respondent corporation sought redress from the Tax Court, petitioner's decision has long become final and executory.

On this issue, this Court had already laid down the dictum that the Commissioner should always indicate to the taxpayer in clear and unequivocal language what constitutes his final determination of the disputed assessment.

Specifically, this Court ruled:

"x x x we deem it appropriate to state that the Commissioner of Internal Revenue should always indicate to the taxpayer in clear and unequivocal language whenever his action on an assessment questioned by a taxpayer constitutes his final determination on the disputed assessment, as contemplated by sections 7 and 11 of Republic Act 1125, as amended. On the basis of this statement indubitably showing that the Commissioner's communicated action is his final decision on the contested assessment, the aggrieved taxpayer would then be able to take recourse to the tax court at the opportune time. Without needless difficulty, the taxpayer would be able to determine when his right to appeal to the tax court accrues. This rule of conduct would also obviate all desire and opportunity on the part of the taxpayer to continually delay the finality of the assessment – and, consequently, the collection of the amount demanded as taxes -- by repeated requests for recomputation and reconsideration. On the part of the Commissioner, this would encourage his office to conduct a careful and thorough study of every questioned assessment and render a correct and definite decision thereon in the first instance. This would also deter the Commissioner from unfairly making the taxpayer grope in the dark and speculate as to which action constitutes the decision appealable to the tax court. Of greater import, this rule of conduct would meet a pressing need for fair play, regularity, and orderliness in administrative action." (*Surigao Electric Co., Inc. v. C.T.A.*, 57 SCRA 523, 528, [1974]).

There appears to be no dispute that petitioner did not rule on private respondent's motion for reconsideration but contrary to the above ruling of this Court, left private respondent in the dark as to which action of the Commissioner is the decision appealable to the Court of Tax Appeals. Had he categorically stated that he denies private respondent's motion for reconsideration and that his action constitutes his final determination on the disputed assessment, private respondent without needless difficulty would have been able to determine when his right to appeal accrues and the resulting confusion would have been avoided.

Much later, this Court reiterated the above-mentioned dictum in a ruling applicable on all fours to the issue in the case at bar, that the reviewable decision of the Bureau of Internal Revenue is that contained in the letter of its Commissioner, that such constitutes the final decision on the matter which may be appealed to the Court of Tax Appeals and not the warrants of distraint (*Advertising Associates, Inc. v. Court of Appeals*, 133 SCRA 769 [1984] underscoring supplied). It was likewise stressed that the procedure enunciated is demanded by the pressing need for fair play, regularity and orderliness in administrative action.

Under the circumstances, the Commissioner of Internal Revenue, not having clearly signified his final action on the disputed assessment, legally the period to appeal has not commenced to run. Thus, it was only when private respondent received the summons on the civil suit for collection of deficiency income on December 28, 1978 that the period to appeal commenced to run.

The request for reinvestigation and reconsideration was in effect considered denied by petitioner when the latter filed a civil suit for collection of deficiency income. So that on January 10, 1979 when private respondent filed the appeal with the Court of Tax Appeals, it consumed a total of only thirteen (13) days well within the thirty day period to appeal pursuant to Section 11 of R.A. 1125.

On the merits, it was found fully substantiated by the Court of Tax Appeals that, respondent corporation is the husbanding agent of the vessel Yee Fong Hong, Ltd. as follows:

"Coming to the second issue, petitioner contended and was substantiated by satisfactory uncontradicted testimonies of Clemente Celso, Certified Public Accountant, and Rodolfo C. Cabalquinto, President and General Manager, of petitioner that it is actually and legally the husbanding agent of the vessel of Yee Fong Hong, Ltd. as (1) it neither performed nor transacted any shipping business, for and in representation, of Yee Fong Hong, Ltd. or its vessels or otherwise negotiated or procured cargo to be loaded in the vessels of Yee Fong Hong, Ltd. (p. 21, t.s.n., July 16, 1980); (2) it never solicited or procured cargo or freight in the Philippines or elsewhere for loading in said vessels of Yee Fong Hong, Ltd. (pp. 21 & 38, *ibid.*); (3) it had not collected any freight income or receipts for the said Yee Fong Hong, Ltd. (pp. 22 & 38, *ibid.*; pp. 46 & 48, t.s.n., Nov. 14, 1980.); (4) it never had possession or control, actual or constructive, over the funds representing payment by Philippine shippers for cargo loaded on said vessels (pp. 21 & 38, *ibid.*; p. 48, *ibid.*); petitioner never remitted to Yee Fong Hong, Ltd. any sum of money representing freight incomes of Yee Fong Hong, Ltd. (p. 21, *ibid.*; p. 48, *ibid.*); and (5) that the freight payments made for cargo loaded in the Philippines for foreign destination were actually paid directly by the shippers to the said Yee Fong Hong, Ltd. upon arrival of the goods in the foreign ports." (Rollo, pp. 58-59).

On the same issue, the Commissioner of Internal Revenue Misael P. Vera, on query of respondent's counsel, opined that respondent corporation being merely a husbanding agent is not liable for the payment of the income taxes due from the foreign ship owners loading cargoes in the Philippines (Rollo, p. 63; Exhibit "I", Rollo, pp. 64-66).

Neither can private respondent be liable for withholding tax under Section 53 of the Internal Revenue Code since it is not in possession, custody or control of the funds received by and remitted to Yee Fong Hong, Ltd., a non-resident taxpayer. As correctly ruled by the Court of Tax Appeals, "if an individual or corporation like the petitioner in this case, is not in the actual possession, custody, or control of the funds, it can neither be physically nor legally liable or obligated to pay the so-called withholding tax on income claimed by Yee Fong Hong, Ltd." (Rollo, p. 67).

Finally, it must be stated that factual findings of the Court of Tax Appeals are binding on this Court (*Industrial Textiles Manufacturing Company of the Phil., Inc. (ITEMCOP) v. Commissioner of Internal Revenue, et al.* (136 SCRA 549 [1985])). It is well-settled that in passing upon petitions for review of the decisions of the Court of Tax

Appeals, this Court is generally confined to questions of law. The findings of fact of said Court are not to be disturbed unless clearly shown to be unsupported by substantial evidence (Commissioner of Internal Revenue v. Manila Machinery & Supply Company, 135 SCRA 8 [1985]).

A careful scrutiny of the records reveals no cogent reason to disturb the findings of the Court of Tax Appeals.

PREMISES CONSIDERED, the instant petition is hereby DISMISSED and the assailed decision of the Court of Tax Appeals is hereby AFFIRMED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

* Penned by Associate Judge Constante C. Roaquin and concurred in by Presiding Judge Amante Filler. Associate Judge Alex Z. Reyes dissented in a separate opinion.

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