

COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. ILAGAN AND ALEJANDRINO, RESPONDENT. ILAGAN AND ALEJANDRINO, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. Nos. 11113 and 11134. September 30, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Ilagan and Alejandrino is a registered partnership engaged in business as building contractor and road contractor. It paid the fixed tax as building contractor from 1947 to 1952, and the fixed tax as road contractor from 1947-1948. On April 27, 1955 the Collector of Internal Revenue assessed the total sum of P22,882.04 against the partnership for the fixed tax as road contractor, for percentage taxes and for surcharges as follows:

C-4 (7) Fixed Tax (Road contractor)
1949-1952

P40.00

25% surcharge on P1,628.35 (2% tax on
P81417.39)

P409.09

2% tax on P76,945.24

P1,538.90

P11,281.97

3% tax on P376,035.68

P11,281.07

75% surcharge on P12,819.97

P9,614.98

Total amount Due and Collectible

P22,882.04

A total sum of P81,417.39 was received by the partnership on various contracts but the 2 per cent tax thereon was not paid on time; hence the surcharge of 25 per cent thereof. Total amounts of P76,945.24 and P376,035.68 also appeared in the books of the partnership as gross receipts for contracts, but the same was not declared for taxation— hence the 2 per cent and 3 per cent contractor's percentage taxes assessed thereon, and an additional 25 per cent surcharge on said percentage taxes. The Court of Tax Appeals sustained the validity of the above assessments made by the Collector, so the partnership appealed from the decision. The Collector of Internal Revenue alleged that the partnership is guilty of having filed a false or fraudulent return, but the Court of Tax Appeals declared that no sufficient evidence was submitted to support said charge, hence it found that the 25 percent taxes on surcharges are not collectible as having prescribed and the only collectible surcharge is that on P2,800.04 for the second quarter of 1949 for which return should have been filed on July 20, 1949.

Hence the Court of Tax Appeals confirmed the following assessments:

- (a) P1,538.90 representing 2 per cent tax on gross receipts of P76,945.24;
- (b) P11,281.07 representing 3 per cent tax on gross receipts of P376,035.68;
- (c) P3,205.00 representing 25 per cent surcharge on P12,819.97 for late payment;
- (d) P14.00 representing 25 per cent surcharge on P56.00 (2 per cent tax on P2,800.00);
- (e) P40.00 representing road contractor's fixed tax (C-4/7) for the years 1949-1952 inclusive; or a grand total of P16,078.97.

Both the partnership and the Collector of Internal Revenue have appealed from the decision confirming the above assessments.

The first assignment of error raised by the appellant- partnership is that the percentage taxes on P76,736.31 and P376,035.68 are not collectible from it because the said sums were received by the appellant-partnership from contracts for the construction of rehabilitation projects, and said receipts came from funds owned by the U.S. Public Roads Administration by virtue of the Agreement between the Republic of the Philippines and the United States of America regarding a road, street and bridge program/dated February 14, 1947. The Agreement reads in part as follows:

"Whereas, the Government of the United States of America has enacted Public Act No. 370, 79th Congress, approved April 30, 1946, providing, among other things, that its Public Roads Administration is authorized to plan, design, restore and build in accordance with its usual contract procedures, in cooperation with the Philippine Government, certain roads, street: and bridges as may be determined necessary from the standpoint of the national defense and economic rehabilitation of the Republic of the Philippines and to the extent that the President of the United States approves the findings in a report on Philippine Highway Requirements as prepared by the Public Roads Administration; and, in accordance with such regulations as may be adopted by the Commissioner of the said Public Roads Administration, * * *

* * * * *

"The Government of the Republic of the Philippines and the United States of America agree that the road, street and bridge program in the Republic of the Philippines be advanced progressively as may be determined by the duly authorized representative of the Philippine Department of Public Works and Communications and the authorized representative of the United States Public Roads Administration subject to such regulations as may be issued by the Commissioner of the United States Public Roads Administration and subject to the availability of such funds as may be allotted by the administrative agency of the Government of the United States of America which is or may be authorized and empowered to administer the provisions of the Act of the Congress of the United States of America approved April 30, 1946, referred to above.

"The United States Public Roads Administration will reimburse the Philippine Department of Public Works and Communications monthly (or as otherwise agreed between these two governmental agencies) in the United States dollars for the United States Government's share of the value of the work found to have been satisfactorily performed under any or all active Project Agreements, in accordance with the pro rata and other conditions provided in said Project Agreements."

The exemption is claimed by the partnership under the following provision:

"Pending the conclusion of negotiation now being considered by the Republic of the Philippines and the United States of America, no import, excise, consumption, or other tax, duty or import shall be levied on funds or property in the Republic of the Philippines which is owned by the Public Roads Administration and used for purposes under the present Agreement or on funds, materials, supplies and equipment imported into the Republic of the Philippines for use in connection with such purposes; neither shall any such tax, duty or impost be levied on personal funds or property, not intended for resale, imported into the Republic of the Philippines for the use or consumption of the Public Roads Administration personnel who are United States citizens; nor shall export or other tax be placed on any such property in the event of its removal from the Philippines."

We find no merit in the argument that the above-quoted provision or any other provision of the Agreement, exempts the gross receipts of the partnership-appellant for road constructions from taxes imposed by the Government of the Philippines. Such gross receipts are not funds or property, or funds, materials, supplies and equipments within the meaning of the Agreement. While still in the possession of the officers of the U.S. Government, they fall under the exemption, once they are paid to a private citizen, a contractor as partnership-appellant is, they cease to be fund and property of the United States. They become receipts of partnership-appellant subject to tax.

The authorities cited by appellant partnership, interpreting a provision in the Atomic Energy Act of 1946 [60 Sta. 765, 42, USC, sec. 1809 (&)], are not applicable to the case at bar, for the reason that said provision refers to activities of the Atomic Energy Commission.

The act of building roads by the U. S. Public Roads Administration may be an activity and may perhaps, by a stretched construction, include a receipt of funds by a contractor. But Article XIV of the Agreement refers to funds and property and materials, not activities; hence the receipts of a contractor of public works could not have been intended to be included in the exemption.

Neither are the gross receipts of contractors, sales of importations to agencies of the U.S. in the Philippines for the use of the Philippine Government exempt under Commonwealth Act No. 733. Payment of contractors is made by the Philippine Government in pesos, and the Philippine Government is reimbursed in dollars for such payment as expressly declared in Article V of the Agreement (supra). So, the U.S. Government never paid the contractor-appellant in these cases. In actual practice, the Philippine Government paid the contractor and the U.S. reimbursed the Philippine Government for said payments by depositing dollars with the Philippine dollar reserve in the United States. So that the claim that contractor-appellant was paid out of the U.S. funds by the U.S. is not true to fact or theory.

The second assignment of error refers to the assessment of the percentage tax on P43,750.00 representing amounts deducted from payments due partnership-appellant on its contracts. It is true that the latter did not actually receive said amount. Said amount, however, is part of the price agreed to be paid for the services. The contractor was entitled to receive the amount and it actually was credited with it, and had the partnership fulfilled its contract, the said sum would have been received by it. The amount was retained under the contract as damages. Gross receipts are not only those actually received. Crediting the contractor with funds retained actually involves two steps, namely, (1) receipt by the contractor and (2) return by it to the Government in payment of damages due the latter

for non-performance of its obligations by the former. Such amounts are, therefore, legal receipts and subject to tax as such.

We will now proceed to the appeal of the Collector of Internal Revenue, who claims that the partnership filed a false or fraudulent return and that, therefore, the surcharge of 25 per cent on the gross receipts of the partnership has not prescribed and that the additional surcharge of 50 per cent for a fraudulent return should also be imposed on the partnership. The evidence on which the Collector of Internal Revenue relies for his claim of fraud on the part of the partnership is the fact that no return was made for the contractor's gross receipts and the further fact that said gross receipts were entered on the partnership books, not upon actual receipt, but on the first day of the month following that in which receipt was actually made. Thus receipts on June 9, 22 and 30, were all posted on July 1, that on August 27, on October 1, those on September 6, 7 and 22, on October 1, and that on March 22, on April 3.

We agree to the ruling of the court below that the failure to file a return and the late posting of receipts on the books of the partnership are not sufficient to prove the existence of fraud; Fraud is never presumed; good faith is. The two circumstances by themselves cannot be said to constitute fraud; they both amount to an error, but not fraud. The partnership could have believed in good faith that the rehabilitation projects undertaken jointly by the U.S. Government and the Philippine Government are to be exempt from taxes. As it was not shown that the partnership knew that receipts from U.S. funds were not exempt from taxes, the presumption of good faith was never rebutted.

We find no error in the decision appealed from, and we therefore affirm it in toto, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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