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MANUEL B. PINEDA
as one of the heirs
of deceased ATANASIO
PINEDA,
Petitioner,

Nov. 29/63

versus C. T. A. CASE NO. 364

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - - x

D E C I S I O N

This is an appeal by petitioner Manuel B. Pineda, as one of the heirs of the deceased Atanasio Pineda, from the decision of respondent Collector (now Commissioner) of Internal Revenue assessing and demanding from the estate of said deceased (1) deficiency income taxes for the years 1945, 1946 and 1947 in the amounts of ₱135.83, ₱436.95 and ₱1,206.91, respectively, plus 5% surcharge of ₱88.98, 1% monthly interest thereon from November 30, 1953 to April 15, 1957 in the amount of ₱720.77 and compromise penalties for late filing and late payment in the respective amounts of ₱80.00 and ₱40.00; (2) residence tax for 1945 in the amount of ₱14.50; and (3) real estate dealer's fixed tax for the 4th quarter of 1946 and the whole year 1947 in the sum of ₱207.50, inclusive of compromise penalty in the amount of ₱20.00.

Originally heard and tried on four (4) issues, the first of which was whether or not the right of the Collector (now Commissioner) of Internal Revenue to assess and collect from the estate of the deceased Atanasio Pineda the above taxes has prescribed, this Court, in a decision dated August 30, 1958, held that said right had prescribed. Consequently, the decision appealed from was reversed and the respondent was enjoined from collecting the taxes sought to be collected. The remaining three issues raised during the appeal were not passed upon. Subsequently, the respondent Commissioner of Internal Revenue appealed to the Supreme Court which reversed our decision "insofar as it holds the action for the collection of income taxes for 1945 and 1946, the real estate dealer's fixed tax for the 4th quarter of 1946 and the whole year of 1947 and the residence tax for 1945 is barred by the statute of limitations, and affirmed insofar as the income tax for 1947 is concerned" (G. R. No. L-015422, May 31, 1961), and remanded the records of the case to us for further proceedings.

Pursuant to the order of the Supreme Court, the case was heard on August 29, 1962 and the parties submitted the case for decision without further evidence.

As borne out by the evidence of record, the facts pertinent to the issues left to be resolved by us may be stated as follows: Atanasio Pineda died on May 23, 1945, survived by his widow, Felicisima Bagtas Pineda, and fifteen (15) children, one of whom is the herein petitioner Manuel B. Pineda. The deceased Atanasio Pineda left, among others, buildings which were rented by the City of Manila and private individuals.

Proceedings for the settlement of the estate of Atanasio Pineda began on August 30, 1945 in the Court of First Instance of Manila, during which the widow, Mrs. Pineda, was appointed administratrix. The estate did not file income tax returns for 1945 and 1946. The settlement proceedings ended on June 8, 1948 and the administratrix was relieved of her duties and responsibilities.

After an investigation conducted by Examiner E. Z. Espinosa and on the basis of her reports, the respondent determined deficiency income taxes against the estate, c/o Manuel B. Pineda (petitioner herein), which deficiencies are, for purposes of this decision, itemized as follows:

1945

Net income per return			₱1,722.07
Add: Disallowances and discrepancies:			
Rental Receipts per investigation . . .	₱7,522.07		
Rental Receipts per return . .	7,282.07	₱ 240.-	
Repairs - Major repairs (reconstruction)		2,200.-	
Collector - not supported		460.-	

Expenses of administration not supported	₱ 500.-	
Amounts to be distributed to some heirs - not supported	1,500.-	4,900.00

Net Income per investigation	₱6,622.07
Less: Personal Exemption	1,000.00
Amount subject to tax	₱5,622.07

Tax due thereon . . .	₱108.66
25% surcharge	27.18
Total due as tax . .	₱135.83

(See Exh. 14, p. 10, BIR rec.)

1946

Net income per return		₱ 708.00
Add: Disallowances and Discrepancies:		
Rental Receipt per investigation . . . ₱11,066.-		
Rental Receipt per return 11,020.-	₱ 46.00	
Repairs - Major Repairs . .	3,000.00	
Collector - not supported	480.00	
Expenses of administration - not supported . .	1,000.00	
Amount to be distributed to some of the heirs . .	1,650.00	6,176.00
Net Income per investigation		₱ 6,884.00
Less: Personal Exemption		1,000.00
Amount subject to tax		₱ 5,884.00

Tax due thereon	₱ 349.56
25% Surcharge	87.39
Total due as tax . .	₱ 436.95

(See Exhibit 15, p. 36 BIR rec.)

The data in the reports of Examiner Espinosa were taken from the records of the estate proceedings, the records of other offices and the income tax returns of the estate filed at a late date, e.g. on August 24, 1953 (Exhs. 2-A and 4-A, pp. 8 and 34, BIR rec., respectively), for the years 1945 and 1946.

The respondent also assessed the estate for real estate dealer's fixed tax for the 4th quarter of 1946 and the whole year of 1947 and residence tax for 1945, computed as follows:

Basic residence tax . . .	₱ 0.50
Surcharge	.25
Additional residence tax	11.00
25% surcharge	2.75
	₱14.50
Real estate dealer's fixed tax 4th quarter,	
1946	37.50
1947	150.00
Compromise for failure to provide with real estate dealer's fixed tax receipt	20.00
	₱207.50

(See p. 106, BIR rec.)

The remaining three (3) issues to be resolved are restated hereunder.

> "2. Whether or not the series of assessments made by respondent against the Estate of the deceased Atanasio Pineda, served on the petitioner Manuel B. Pineda in his personal capacity, are valid, considering the fact that the judicial administration of the estate was closed by order of the Court on June 8, 1948, long before the disputed assessments were made and served.
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> "3. Whether or not the assessments under review are supported by the facts and law applicable thereto; and
>
> "4. Whether or not the petitioner herein, Manuel B. Pineda, may be held liable for all the taxes assessed against the estate of his deceased father Atanasio Pineda."

In view of their nature we shall jointly consider the second and fourth issues. Petitioner contends that the assessments are not valid for the reason that the same were made against the estate, the judicial administration of which was already closed, and that he cannot be held liable for all the taxes in question.

We believe and are of the opinion that an assessment cannot be made out against a non-existent estate. (Deforest Hulburd v. Commissioner, 27 BTA 1123; 296 U. S. 300.) However, the tax assessments are valid against the petitioner in proportion to the share he received from the estate for the "heirs and distributees are liable individually for the payment of all lawful outstanding claims against the estate in proportion to the amount or value of the property they have respectively received from the estate" (Government vs. Pamintuan, 55 Phil. 16). Moreover, the claim for payment of taxes embodied in respondent's answer to the petition for review of petitioner partakes of the nature of an assessment against him personally (See Rep. of the Phil. vs. Uy, G. R. L-015386, April 29, 1961).

But it is also contended by petitioner that the income tax assessments in question are not supported by the facts and the law. The resolution of this contention hinges on the deductibility or
non-deductibility of the expense claims from the

gross income of the estate. In this connection, it must be stated that the petitioner did not introduce evidence, oral or documentary, to justify the deduction of these expenses. It was incumbent upon him to show that respondent committed an error or mistake in disallowing the deduction of these expenses. To be more specific, he did not show that the repairs for which the estate spent ₱2,200 and ₱3,000 for the years 1945 and 1946 were minor repairs. On the contrary, the findings of Examiner Espinosa show that these amounts represented items for contractor, new lighting installations and materials, construction of garage, painting of roof, new stairs, 24 keys for room, wire fence, etc. These should be capitalized and depreciated annually as the additions appreciably prolonged the life and increased the value of the buildings. He also failed to prove that the collector fees were duly expended by the estate. Similarly, he did not show that the amounts distributed to some heirs came from the rental income of the estate and not from the corpus of the estate as found by respondent's examiner. (Sec. 57(a) of the Tax Code; Sec. 207, Rev. Reg. No. 2, Department of Finance; see also Irene O'D Ferrer v. Commissioner, 20 BTA 811; Elizabeth Anderson v. Commissioner, Memo Op. Dkt. 99972-99974; Itola Ramson v. Comm., 2 TC 647;

Carrie Cox v. Commissioner, 31 BTA 819; Brown v. Commissioner, 9 BTA 521.) As to the expenses for administration which were disallowed by respondent, the same are expenses of the estate which are deductible from the gross estate and not from gross income. (Monserrat v. Collector, C. T. A. Case No. 11, Dec. 28, 1955.)

It is suggested by petitioner that the surcharges and interests sought to be collected in consequence of delinquency are contrary to law. We agree with this suggestion. Section 51(e) of the Tax Code, before its repeal by RA No. 2343, exempts the estate of a deceased person from liability for the 5% surcharge and 1% interest for delinquency in the payment of the income tax.

Anent the disputed real estate dealer's fixed tax in the sum of ₱207.50, the evidence shows that the income of the estate of the deceased is derived from the rental of its real properties. However, petitioner argues that the estate cannot be held liable on the ground that it is not a person under Section 194(s) of the Tax Code, as amended by Republic Act No. 42 and that it was not engaged in a real estate business. That the estate was a person in the juridical sense during its existence is without question. And the fact that its income was derived solely from the lease of its buildings is a clear indication that it was engaged in leasing real estate within the contemplation of Section 194(s) of the Tax Code, as amended.

As to the residence tax imposed for the year 1945 in the amount of ₱14.50, we are of the opinion that since those held liable for this tax by Sections 1 and 2 of Commonwealth Act No. 465 are inhabitants of the Philippines and corporations, and the estate is not one of them, the imposition of residence tax cannot be allowed.

Finally, the compromise penalties sought to be collected by respondent cannot be legally imposed. (Central Azucarera de Tarlac v. Coll. of Int. Rev., C. T. A. No. 206, Oct. 15, 1956 affd. in G. R. Nos. L-11760 & L-11761, July 31, 1958; Western Mindanao Lumber v. Coll. of Int. Rev., C. T. A. Case No. 223, Oct. 27, 1956, affd. in G. R. No. L-11710, June 30, 1958.)

WHEREFORE, the decision of the respondent is hereby modified. Petitioner is ordered to pay respondent his share of the following taxes: (1) deficiency income taxes for the years 1945 and 1946 in the amounts of ₱135.83 and ₱436.95, respectively; and (2) real estate dealer's fixed tax for the 4th quarter of 1946 and the whole year of 1947 in the sum of ₱187.50, to be computed in proportion to his share in the inheritance, without special pronouncement as to costs.

SO ORDERED.

Manila, November 29, 1963.

(Sgd.) MARIANO NABLE
Presiding Judge

I CONCUR:

(Sgd.) ROMAN M. UMALI
Associate Judge