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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BENJAMIN HILADO,
Petitioner,

- versus - C.T.A. CASE NO. 712

MELECIO R. DOMINGO, Commissioner of Internal Revenue,
Respondent.

June 16, 1961

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

DECISION

This is an appeal from the decision of the respondent Commissioner of Internal Revenue dated October 15, 1959 (Exh. T, p. 43 CTA rec.; Exh. 19, p. 178 BIR rec.), denying petitioner's claim for refund of the amount of ₱1,384.53 representing contractor's fixed and percentage taxes paid in the years 1957, 1958 and 1959.

Petitioner Benjamin Hilado, an architect and Dean of the College of Engineering, University of San Agustin, Iloilo City, and a certain Mr. Isaac Masangkay, were hired by the University of San Agustin and the St. Clement's Church during the period from 1951 to 1956 to prepare plans of certain buildings (t.s.n. p. 18); "to supervise the (their) construction or repairs"; "to purchase, for and in behalf of the University or the St. Clement's School the materials necessary which were paid by the owners"; and "to hire laborers who were also paid by the owners" (Exh. 4, p. 78 BIR rec.). For their participation in these constructions, they were jointly assessed a total of ₱1,100.47 as contractor's percentage tax (Exh. 3, p. 63

BIR rec.). This assessment was later increased to ₱1,160.47 on December 14, 1956 with the additional imposition of the contractor's fixed tax from 1951 to 1956 in the sum of ₱60.00 (Exh. O, p. 34 CTA rec.; Exh. 6, p. 113 BIR rec.).

On May 3, 1957, respondent issued to the City Treasurer of Iloilo an "Authority to Accept Payment" from the petitioner alone of the amount of ₱676.57 as "Business (percentage) tax" (Exh Q, p. 36 CTA rec.) upon finding that petitioner and Mr. Masangkay are not partners. This amount of ₱676.57 was paid by the petitioner in three installments as appearing on Exhibits A, B and C (pp. 20-22 CTA rec.). Thereafter, petitioner continued to pay contractor's fixed and percentage taxes until April 20, 1959, when he was advised by his counsel to discontinue said payments.

On May 2, 1959, petitioner, thru his counsel, filed a claim for the refund of ₱1,384.53 paid by him as contractor's fixed and percentage taxes in the years 1957, 1958 and 1959 (Exh. R, p. 40 CTA rec.; Exh. 16, p. 161 BIR rec.; Exhs. A-n, pp. 20-33 CTA rec.), itemized as follows:

DATE	OFFICIAL RECEIPT	AMOUNT
May 6, 1957	C-351533	₱ 176.57
Aug. 2, 1957	C-354022	200.00
Sept. 2, 1957	Serial No. 0350004	300.00
Apr. 21, 1958	" No. 0889662	16.20
Sept 22, 1958	" No. 2004807	77.76
Oct. 20, 1958	" No. 2006013	60.00
Dec. 22, 1958	" No. 2007664	120.00
Jan. 22, 1958	D-9188288	77.00
Jan. 22, 1958	Serial No. 0887215	20.00
Apr. 21, 1958	B-2347739	75.00

Sept. 22, 1958	E-5772807	₱ 90.00
Jan. 20, 1959	E-4833198	77.00
Jan. 20, 1959	Serial No. 2007392	20.00
Apr. 2, 1959	E-9096646	75.00
	T O T A L	₱1,384.53

This claim for refund was denied by respondent in a letter dated October 15, 1959 (Exh. T, p. 43 CTA rec.; Exh. 19, p. 178 BIR rec.) which was received by respondent's counsel on October 29, 1959. Petitioner filed the instant case on November 20, 1959 seeking a review of respondent's denial of his claim for refund as contained in respondent's letter dated October 15, 1959.

In his answer as well as in his memorandum, respondent prays that petitioner be made to pay the additional sum of ₱169.94 as the balance of the amount of ₱1,160.47 demanded from him in respondent's letter of December 14, 1956 (Exhs. O & 6). Respondent alleges that of the ₱1,384.53 claimed by petitioner, ₱394.00 represents payment of municipal license and service fees, leaving only the amount of ₱990.53 as the payments for the fixed and percentage taxes demanded in the letter of December 14, 1956. Considering that the amount demanded by respondent from petitioner in said letter for contractor's fixed and percentage taxes is ₱1,160.47, respondent claims there is still a balance of ₱169.94 due from petitioner after deducting the total payments made by him in the amount of ₱990.53.

The issues in this case may be stated thus -

1. Is the petitioner a contractor within the contemplation of Section 191 of the Tax Code as to hold him liable for the percentage tax imposed therein and the fixed tax imposed in Section 182(A) of the same Code?;

2. Does the whole amount of ₱1,384.63 sought to be refunded by petitioner represent payment for contractor's fixed and percentage taxes exclusively?

The pertinent provision of Section 191 of the Tax Code reads thus:

> "Sec. 191. Percentage tax on road, building, irrigation, artesian well, waterworks, and other construction work contractors, proprietors or operators of dockyards, and others.- Roads, building, irrigation, artesian well, waterworks, and other construction work contractors; x x x shall pay a tax equivalent to three per centum of their gross receipts."

Petitioner contends that he is not a contractor within the purview of Section 191 of the Tax Code because, in undertaking construction work for others, he has limited himself to preparing plans and supervising the work to the end that it conforms with the plans. Moreover, the costs of materials and labor are borne by the owners.

We find petitioner's contention well taken. An architect is one whose occupation it is to form or devise plans and specifications for buildings or structure, and to superintend their construction (3 Am. Jur. sec. 2, p. 998). His duties are limited to the supervision and direction of work to be done by the contractor, or those acting under him and to see that the materials and worksmanship are in accordance with the specifications (Stark Weather v. Goodman, 48 Conn. 101, 40 Am Rep. 152).

There is nothing in the records which will disclose that petitioner went beyond these activities of an architect. The services he rendered were only twofold, to wit: preparation of the plans and specifications, and supervision of the work (t.s.n., p. 18), the scope of the latter activity being "to see to it that the plans are properly carried out in the construction and I helped the administration in securing the materials, checking as to the type of materials and their price." (t.s.n. p. 19). It is therefore obvious that his activities in all the construction work are activities inherent to his profession as an architect and these alone do not automatically make him a contractor within the intent of Section 191 of the Tax Code. He is an architect subject to fixed tax under Section 182 (B) (1) of the Tax Code.

Moreover, in all the constructions in the case at bar, both the materials and the labor were not furnished by petitioner but were provided by the owners (Exh. 4, p. 78, BIR rec.; t.s.n. pp. 12 and 20). This fact is a clear indication that petitioner is not a contractor, considering that for a person to be a contractor it is essential that he supply the materials, or labor, or both labor and materials, as maybe gleaned from the following accepted jurisprudential definition of the word:

> "Contractor" is x x x one who contracts to <u>furnish supplies</u>, or to construct work, or erect buildings, or perform any work or service at a certain price or rate. (Farmer v. St. Croix Power Co., 93 N.W. 830, 834, 117 Wis. 76, 98 Am. St. Rep. 914, cited in 9 Words & Phrases 339).
>
> A "Contractor" x x x is one who does work or <u>furnishes materials</u> for the owner, and upon a contract with the owner for the payment of the contract price. x x x (Richmond & I Const. Co. v. Richmond, N.I. & B. R. Co., 68 F. 105, 109, 15 C.C.A. 289, 34 L.R.A. 625 - cited in 9 Words & Phrases 340. <u>Emphasis supplied</u>).

Having arrived at the conclusion that petitioner is not liable for contractor's fixed and percentage taxes, we shall now proceed to resolve the second issue.

Upon close examination of the receipts of payments made by the petitioner in the amount of ₱1,384.53, we find that the following payments are not really for contractor's fixed or percentage taxes, but are for municipal license or service fees, including penalty in one case, as is shown in the receipts themselves:

D-9188288	(Exh. H, p. 27 CTA rec.)	---	₱ 77.00
E-2347739	(Exh. J, p. 29 CTA rec.)	---	75.00
E-5772807	(Exh. K, p. 30 CTA rec.)	---	90.00
E-4833198	(Exh. L, p. 31 CTA rec.)	---	77.00
E-9096646	(Exh. N, p. 33 CTA rec.)	---	75.00
	TOTAL		₱394.00

Consequently, we cannot order the refund of the amount of ₱394.00, which represents payments for municipal license and service fees, as the same is not in payment of internal revenue taxes, and, therefore, this Court has no jurisdiction over it.

Similarly, we find that the payments in the sums of ₱176.57, ₱200.00 and ₱300.00 were made on May 6, 1957, August 2, 1957 and September 2, 1957, respectively. It is obvious that the instant petition for their recovery, filed before this Court on November 20, 1959, was instituted after the expiration of two (2) years from the dates of said payments. But since respondent did not set up the defense of prescription against the recovery of these particular payments in his answer nor at any stage of the proceedings, we can not motu proprio deny their refund or recovery for "the two-year period within which suit for recovery of tax erroneously or illegally collected should be filed is a prescriptive period and not a jurisdictional fact x x x" (Lu Do & Lu Ym Corporation vs. Central Bank, G. R. No. L-13033 and Commissioner vs. Philippine Corn Products, Inc., G. R. No. L-13701, May 31, 1960; see College of Oral & Dental Surgery vs. Court of Tax Appeals, et al., G. R. No. L-10446, January 28, 1956; Panay Electric Co. vs. Collector, et al., G. R. No. L-10574, May 28, 1958).

IN VIEW OF ALL THE FOREGOING, respondent's decision dated October 15, 1959 denying petitioner's claim for refund of payments for contractor's fixed and percentage taxes is hereby modified. Respondent is ordered to refund to petitioner the amount of ₱990.53, without pronouncement as to costs.

SO ORDERED.

Manila, June 16, 1961.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge