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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

OSEO T. ALCOBILLA,
Petitioner,

- versus - C.T.A. CASE NO. 3180

REGIONAL DIRECTOR, REVENUE
REGION NO. 6A (WEST VISAYAS)
BUREAU OF INTERNAL REVENUE,
ILOILO CITY,
Respondent.

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11/29/82

D E C I S I O N

This is an appeal from the decision of the Regional Director, who is the legal representative of the Commissioner of Internal Revenue, Revenue Region No. 6A (West Visayas), Bureau of Internal Revenue, Iloilo City assessing against and demanding from petitioner the sum of ₱36.36, which was paid on October 19, 1980, as deficiency income tax, inclusive of interest and penalty for late payment for the year 1975.

Petitioner Oseo T. Alcobilla, a resident of San Remigio, Antique, on January 7, 1976 filed with the BIR Collection Agent of San Remigio his income tax return for 1975. In said income tax return, he claimed a total additional personal exemption of ₱5,000.00 covering the personal exemption for five (5) minor dependent children at ₱1,000.00 for each child. In said return, petitioner claimed, therefore, an additional exemption of ₱1,000.00 for his fifth (5th) minor child who was born on July 31, 1973. The minor children of petitioner and their corresponding dates of birth are as follows:

1. Oseo, Jr. Alcobilla - Feb. 26, 1966
2. May Flor Alcobilla - Aug. 26, 1967
3. Neil Floro Alcobilla - Aug. 7, 1969
4. Luella Alcobilla - Aug. 21, 1971
5. Daphne Alcobilla - July 31, 1973

On June 19, 1980, petitioner was sent an Audit sheet showing the following pertinent data:

BUREAU OF INTERNAL REVENUE
INCOME TAX DIVISION
AUDIT SHEET FOR INDIVIDUAL

Mr. Oseo Alcobilla
(Name of Individual)

Assessment No. 53-2-6A-033729-75

Income as per return		₱7,696.28
ADD: Deductions disallowed, etc., in office audit;		
Note: Taxpayer is only allowed 4 dependent children entitled to additional exemption of ₱1,000.00		
Total exemption	₱7,000.00	
Total net income as per office audit		₱7,696.28
LESS: Personal exemption	₱3,000.00	
Additional exemption	4,000.00	
Total exemptions		7,000.00
Amount subject to tax		696.28

Amount of tax due ------------------------	₱	21.00
Balance of tax due ------------------------		21.00
14% annual int. fr 4/16/76-8/15/80 (.42 max)-		8.82
TOTAL AMOUNT DUE OR REFUNDABLE ----------	₱	29.82

On August 15, 1980, after the pre-audit examination of the income tax return of petitioner for the year 1975, Assistant Regional Director Felixberto V. Arenas of said Revenue Region No. 6-A, due to the disallowance of petitioner's claim for exemption of the fifth child born on July 31, 1973, sent a letter to petitioner Oseo T. Alcobilla assessing against and demanding from him the payment of the sum of ₱29.82 as deficiency income tax, inclusive of interest, computed as follows:

Deficiency tax due ------------	₱ 21.00
1.167% mo. int. from 4-16-76 to 8-15-80 (.42% max) -------	8.82
Total amount due & collectible-	₱ 29.82

On August 29, 1980, petitioner sent a letter to the Assistant Regional Director, requesting for the reconsideration of the above assessment on the grounds that (1) petitioner is entitled to the additional personal exemption of five (5) dependent children and; (2) that the assessment has prescribed since the three year period within which to assess and collect the tax has prescribed.

On September 30, 1980, respondent in reply to petitioner's request for reconsideration, denied the same holding (1) that since his fifth child was born on July 31, 1973, he can be allowed to claim for only four (4) dependent minor children pursuant to Section 23(c) of the National Internal Revenue Code, as amended by Presidential Decree No. 69, which took effect on January 1, 1973; and (2) that the right to assess and demand payment has not prescribed as the prescription period is five (5) years from the date of filing of the 1975 income tax return which expired on April 15, 1981.

On October 19, 1980, petitioner paid, under protest, his deficiency income tax for 1975 to the BIR Collection Agent in San Remigio, Antique, the sum of ₱36.36, which increased amount is due to the delay in the payment which brought about an increased interest upon the basic deficiency income tax.

Hence, petitioner appealed.

We are in full agreement with respondent's position that under Section 23 (c) of the National Internal Revenue Code, as amended by P.D. 69, which took effect on January 1, 1973, already limited to only four (4) the number of dependents for which a claim for additional exemption may be allowed. Section 23 (c) of the Tax Code, as amended by P.D. 69, is quoted as follows:

> "Sec. 23. <u>Amount of personal exemptions allowable to individuals</u>. - xxx xxx xxx.
>
> (a) xxx xxx xxx;
>
> (b) xxx xxx xxx;
>
> (c) <u>Additional exemptions for dependents</u>. - The sum of one thousand pesos for each legitimate, recognized natural, or adopted child, wholly dependent upon and living with the taxpayer if such dependents are not more than twenty-three years of age, unmarried, and not gainfully employed or incapable of self-support because mentally or physically defective. The exemption under this subsection shall be allowed only if the person making the return is the head of the family."

As of the years 1972 or prior thereto, petitioner already has claimed an additional personal exemption for four (4) minor dependent children in his income tax return. The children and their dates of birth for which a claim for additional exemption was made are as follows:

1. Oseo, Jr. Alcobilla - Feb. 26, 1966
2. May Flor Alcobilla - Aug. 26, 1967
3. Neil Floro Alcobilla - Aug. 7, 1969
4. Luella Alcobilla - Aug. 21, 1971

Petitioner's claim for his fifth (5th) child, Daphne Alcobilla, born on July 31, 1973, cannot be allowed for purposes of additional exemption as it is in violation of Section 23 (c) of the National Internal Revenue Code, as amended by P.D. 69.

With respect to the assertion that respondent's right to assess and collect the deficiency income tax had prescribed under Section 51 of the National Internal Revenue Code, which provide only for three (3) years to assess from the filing of the income tax return, that provision of law is no longer applicable in this instant case. This provision has long been amended by Republic Act No. 2343 on June 20, 1959, which gives the Government five (5) years from the date of the filing of the return within which to assess and five (5) years from the date of the receipt of assessment within which to collect the tax thereon. (Section 331, National Internal Revenue Code.) Considering that the income tax return of petitioner was filed on April 15, 1976, respondent and in representation of the Commissioner of Internal Revenue, has, therefore, five (5) years or up to April 15, 1981, within which to legally assess the tax. The assessment (53-2-6A-00729-75/80) was issued against petitioner only on August 15, 1980 (p. 5, BIR rec.), and, hence, was issued within the five (5) year period to assess provided by law. (Sections 331 and 332, Ibid.) Hence, the right of respondent to assess or collect the tax has not yet prescribed.

The contention of petitioner that the amendment in Section 23 (c) of the National Internal Revenue Code by PD 69 limiting the additional personal exemption to four (4) dependent children does not apply to this case because his right to claim the additional exemption to five (5) children became vested on petitioner prior to the date the amendment of Section 23 (c) of the Tax Code took effect in 1973 is untenable. The provision of Section 23 (c) of the National Internal Revenue Code is very clear that the number of dependent children for which an individual taxpayer can claim for additional personal exemption is four (4) children and is effective January 1, 1973, when said Section 23 (c), as amended by PD 69 was passed. In the taxable year 1972, we take it that petitioner claimed in his return additional exemption for only four (4) dependent minor children which were the only dependent children at that time. The fifth child, said Daphne Alcobilla, conceived in 1972, was born later on July 31, 1973, for which child's conception, petitioner claims his entitlement to an additional exemption of ₱1,000.00 beginning 1972 and succeeding years. Petitioner reasoned out that "The additional exemption claimed by petitioner (him) is favorable to his fifth child" He claimed that under Articles 40 and 41 of the New Civil Code, the said child of the petitioner should be deemed born on the day she was conceived in November, 1972." (p. 3, Petitioner's Memo, p. 56, CTA rec.) In conclusion, petitioner, stated that - "Accordingly, under Section 23 (c) of the National Internal Revenue (Code), the petitioner's fifth child was already a "dependent" entitled to an additional exemption of ₱1,000.00 when Presidential Decree No. 69 took effect on January 1, 1973." (ibid, Petitioner's Memo; ibid, CTA rec; Underlining ours.)

We cannot agree with the contention of petitioner. The right to claim for additional exemption is one that belongs to the parent or head of the family and not a right, claimable by or accruing to the child himself. The Civil Code provisions, Articles 40 and 41, pertains to the rights of the conceived child which are favorable to him when born alive, or born 24 hours after complete delivery if the fetus had an intra-uterine life of less than seven months. The rights properly accruing to a conceived child, among others, are the rights to receive donations and inheritance. But the rights accruing under Arts. 40 and 41 of the Civil Code, indeed, does not include the right of the "dependent" minor child to claim and be entitled to an additional exemption of ₱1,000.00 when PD 69, amending Section 23 (c) of the Tax Code took effect on January 1, 1973. The right to claim for exemption belongs properly to the parent, or head of the family. Stated otherwise, the claim for additional exemption privilege can be claimed by the head of the family or parent only, and it is not the child that is entitled to claim for exemption. It is not also one of the rights, to repeat for emphasis, that accrues to a conceived child pursuant to said Articles 40 and 41 of the Civil Code. The fact that the child, Daphne Alcobilla, conceived in November, 1972 was born on July 31, 1973 will not give to the parent-petitioner a vested right to claim for an additional exemption with respect to the aforesaid conceived child after January 1, 1973. Moreover, claims for exemption, like in this case at bar, are generally derogatory to the taxing power and the clearest mandate of law must be shown by the petitioner claimant to exist in order to entitle him to an exemption under the law. The denial by respondent of the claim for additional exemption of ₱1,000.00 for petitioner's child born on July 31, 1973, in his income tax return for 1975, is legally in order and, hence, is disallowed.

WHEREFORE, respondent's decision dated September 30, 1980, is hereby affirmed _in toto_.

With costs _de officio_.

Quezon City, November 29, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge