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ALFREDO K. BANTUG,
Petitioner,

- versus - C.T.A. CASE NO. 2412

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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11/7/75

D E C I S I O N

This case was submitted on the pleadings and the B.I.R. record from which it can be gathered that the petitioner Alfredo K. Bantug has illegitimate children by women other than his wife. To put it differently said children were born at the time when petitioner could not have legally married their mothers and therefore cannot qualify as natural children. Petitioner claimed in his income tax return for 1966 exemption for being the head of a family and an additional exemption of ₱1,000.00 for each of his illegitimate children named therein. Respondent disallowed the claim for his illegitimate children and in March, 1969 assessed petitioner in the sum of ₱2,274.10 as deficiency income tax and interest for the year 1966. Petitioner filed a protest to this assessment but in a letter dated October 15, 1970, received by petitioner on November 23, 1970, respondent upheld his assessment and asked payment of "the total amount of ₱2,274.10 plus interest, within fifteen (15) days from receipt hereof." In a letter dated December 5, 1970 petitioner sought the reconsideration of the aforementioned denial which was likewise denied by respondent in a letter dated May 2, 1972 requesting payment "within fifteen (15) days from receipt hereof; otherwise, the collection thereof will be enforced through the summary remedies provided by law, without further notice." This denial was received by petitioner on May 29, 1972 and was appealed to this Court on June 17, 1972.

The issues posed by this appeal are:

(1) Whether or not this Court has jurisdiction to entertain the present appeal; and

(2) Whether or not petitioner is entitled to claim additional exemptions for each of his illegitimate children in his income tax return.

In the first issue respondent urges that the request for reconsideration of December 5, 1970 was pro-forma and did not suspend the running of the 30-day period for appeal to this Court. Hence the filing of the petition for review on June 17, 1972 was clearly out of time.

Even conceding that petitioner's request for reconsideration of December 5, 1970 is not pro-forma, the filing of the petition for review on June 17, 1972 was out of time.

The established doctrine in this jurisdiction is that under Section 11 of Republic Act No. 1125, a decision on a protest to a tax assessment is the decision on a disputed assessment and as such is the appealable decision. (St. Stephen's Association v. Collector of Internal Revenue, G.R. No. 11238, August 21, 1958, 104 Phil. 314 [1958]; Commissioner of Internal Revenue v. Villa, G.R. No. 23988, January 2, 1968.) Thus, the period for appeal to this Court started to run from November 23, 1970 when petitioner received respondent's letter of October 15, 1970 deciding his protest. It ran until December 5, 1970 when petitioner filed his request for reconsideration. This request suspended the period until May 29, 1972 when it ran again after petitioner received respondent's letter dated May 2, 1972 denying said request. From November 23, 1970 to December 5, 1970, twelve days elapsed and from May 29, 1972 to June 17, 1972 nineteen days elapsed, representing a total of 31 days. Thus petitioner had consumed 31 days when he filed his petition for review on June 17, 1972 which is more than the 30-day limit provided by law and this case should be dismissed on jurisdictional grounds.

At any rate, the law does not allow petitioner to additional exemption for his illegitimate children.

In the case of Juan D. Nasser v. The Commissioner of Internal Revenue, C.T.A. Case No. 1668, July 24, 1970, cert. denied in L-32659, October 19, 1970, this Court held that "legitimate, recognized natural, or adopted children" in section 23(b) and (c) of the National Internal Revenue Code do not include illegitimate children and hereunder we quote the pertinent portion of the decision therein:

> The first and second issues being interrelated, we are going to consider them at the same time. The law involved is Section 23(b) and (c) of the National Internal Revenue Code which provides -
>
> > SEC. 23. Amount of personal exemptions allowable to individuals.- For the purpose of the tax provided for in this Title, there shall be allowed in the nature of a deduction from the amount of net income the following personal exemptions:
> >
> > x x x x
> >
> > (b) Personal exemption of married persons or heads of family. - The sum of three thousand pesos, if the person making the return is a married man or a married woman or the head of a family: *Provided*, That only one exemption of three thousand pesos shall be made from the aggregate income of both husband and wife when not legally separated. For the purpose of this section the term "head of family" includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognized natural, or adopted children living with and dependent upon him or her for their chief support where such brothers, sisters, or children are not more than twenty-three[1] years of age, unmarried, and not gainfully employed, or where such children are incapable of self-support because mentally or physically defective.

[1] Now twenty-one.

> (c) Additional exemption for dependents.- 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 additional exemption under this subsection shall be allowed only if the person making the return is the head of the family.

The aforesaid law clearly allows ₱3,000.00 exemption only if the taxpayer is a married person or head of family. Petitioner is a single individual. He is not a married man. He could not have been legally married to Elisea Laperal because she was and still is legally married to Enrique R. Santamaria. Neither is he a head of family under the law. In order to be entitled to an exemption as head of family, petitioner must have one or more legitimate, recognized natural or adopted children living with and dependent upon him for their chief support, and the children are not more than twenty-three years of age, unmarried and not gainfully employed. The four (4) children, dependent upon him for support, are not legitimate or adopted children. Neither are they considered recognized natural children because Elisea Laperal at the time of the conception of said children was not in a legal position to marry petitioner because she was legally married to Enrique R. Santamaria. Their marriage was not severed by the decree of legal separation. (Art. 269, 271, 276 & 277, Civil Code.) Petitioner is not, therefore, entitled to a personal exemption of ₱3,000.00 as a married person or as head of family. It follows that he is not also entitled to the additional exemption of ₱1,000.00 for each of his illegitimate children. The finding of respondent that petitioner is entitled only to a personal exemption of ₱1,800.00 as a single individual is correct.

Needless to say, the illegitimate children of the petitioner are not covered by the exemption provided in section 23(c) of the National Internal Revenue Code.

WHEREFORE, the appeal is hereby dismissed with costs.

SO ORDERED.

Quezon City, November 7, 1975.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge