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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

ENRIQUE A. BARRERA,
Petitioner,

- versus - C.T.A. Case No. 4525

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

1/8/93

x -- x

D E C I S I O N

This case involves an assessment of alleged deficiency capital gains tax in the amount of P2,387,940.36 on a real property sold by the Petitioner.

Petitioner is a Filipino, of legal age, and is allegedly engaged in the trade or business of a real estate dealer.

On August 30, 1983, Petitioner, sold to Erlinda Haoson et al., a commercial property located at Sto. Cristo, Binondo, Manila. The said property was rented by tenants and allegedly used by Petitioner in his trade or business as a real estate dealer. This was confirmed by the issuance of a Certificate Authorizing Registration No. 21713 issued by the Respondent's Revenue District Officer Mamerto Silangcruz, Jr. which states thus:

> "This is to certify that based on documents submitted in this office, Mr. Enrique Angeles Barrera with taxpayer account number B-6654-82728-A-7 and a resident of 446 Mendoza St., Quiapo, Manila was not required to pay the capital gains tax on the transfer of the real property described below for the reason that:
>
> Ordinary assets - used in business
>
> xxx xxx xxx"
>
> (See Annex B, Petition for Review)

Petitioner further presented documentary evidences that he is a real estate dealer and has paid his taxes as such (Exh. H-2); his 1983 Income Tax Return (Exh. H-1) declaring his income of P583,912.20 as rentals from various tenants of subject real property (Exh. H-1-A, Schedule 5); that he reported the sale under Schedule 7 of the Income Tax Return as an ordinary asset (Exh. H-7-B); that subject property was used in his trade and business showing contracts of Lease on the same at the time of the sale. (See Exhs. N to V and their sub-markings)

On October 31, 1986, Petitioner availed the Tax Amnesty under the provisions of Executive Order Nos. 41 dated August 22, 1986 (See Exh.C) covering the subject property and paid the corresponding tax due which is 10% of increase in Net Worth in the amount of P27,000.00 as evidenced by confirmation Receipt No. B10064226. (See p.8 BIR Records)

In an undated letter according to the Respondent, an assessment was issued before August 22, 1986 against the Petitioner for the year 1983 allegedly as "deficiency capital gains tax in the amount of P2,387,940.36 as computed below, subject to adjustment of interest up to the actual date of payment.

Net Capital Gains Per Investigation		P 153,500.00
Add: Disallowances		
Acquisition Cost	P 1,628,000.00	
Improvements	693,485.00	
Selling Expense	247,900.00	P 2,569,385.00
Net Capital Gains After Review		P 2,722,885.00
Tax Due Thereon		P 1,530,731.00
Add: Interest from 9-29-83 to 7-17-86		857,209.36
TOTAL AMOUNT DUE		P 2,387,940.36"

(See Exh.D)

In a letter dated September 25, 1987, and recieved by Respondent on October 7, 1987 or more than a year after receipt of the assessment letter, Petitioner for the first time protested the assessment claiming that he availed the tax amnesty under the provisions of E.O. 41. (See Exhs. 5 and 5-A p. 9 BIR Records) Exchange of correspondence between the Petitioner and the Respondent ensued with the former maintaining that the assessment issued by the latter was void since "the property involved in this case is an ordinary asset xxx In view of this, <u>we contend that your assessment for capital gains tax deficiency is void because no capital gains tax can arise from sale of ordinary assets.</u>"(See Exh.F)

Finally, on December 3, 1990, Petitioner received a final ruling from the Respondent saying thus:

> "xxx please be informed that in view of your failure to submit the desired documents to prove the acquisition cost, expenses of sale and cost of improvements which were claimed as deductions in computing the gains realized in the sale of the lot and building reported in your client's income tax return for 1983, as requested in our letter dated July 2, 1990, your protest is considered unsubstantiated and is, therefore, hereby denied." (See Exh.A)

Hence, this appeal.

Petitioner raised the issue on "whether or not the subject real property involved in the transaction/sale of 1983 is subject to capital gains tax" in the amount of P2,387,940.36. Respondent, also raised the issue on "whether this Honorable Court has jurisdiction to act on the petition."

We hold that this Court has no jurisdiction to act on this petition, the assessment having become final and unappealable.

It should be noted that on July 22, 1986 (See Exh. 4) which was admitted by the Petitioner when he said that "sometime in 1986 and more specifically, according to Respondent, before August 22, 1986, Respondent, all of a sudden, issued the disputed/void assessment of capital gains tax upon Petitioner on the above subject sale xxx" (See par. II, Petition for Review). Such assessment was, for the first time, only protested on October 7, 1987 in a letter dated September 25, 1987 (See Exh. 5 and Exh.5-A). It was already more than a year since the date of the issuance of the assessment when the Petitioner protested the same.

Clearly, said assessment had already become final and unappealable as provided under Section 270 of the 1986 Tax Code, thus:

> SEC. 270. ***Protesting of assessment*** – When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable. xxx

This Court can, therefore no longer act on the matter for lack of jurisdiction (*Commissioner of Internal Revenue vs. Western Pacific Corp*; 14 SCRA 105; Republic vs. Lim Tian Teng Sons and Co., Inc.; 16 SCRA 584).

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, July 8, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

Dissenting

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the **Constitution.**

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals