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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WILLIAM J. SUTER,
Petitioner,

-versus- C.T.A. CASE No. 1340

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

Nov. 11/65

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from petitioner William J. Suter deficiency income tax for the years 1954 and 1955 in the amounts of ₱2,678.06 and ₱4,467.00, respectively.

It appears that on September 30, 1947, petitioner William J. Suter, Julia Spirig and Gustav Carlson entered into a limited partnership, which was registered in the Securities and Exchange Commission on October 1, 1947 under the firm name "William J. Suter 'Morcoin' Co., Ltd." Petitioner William J. Suter was the general partner, while Julia Spirig and Gustav Carlson were the limited partners. Their contributions to the partnership were as follows: William J. Suter, ₱20,000.00; Julia Spirig, ₱18,000.00; and Gustav Carlson, ₱2,000.00. The limited partnership was engaged, among others, in the importation, sales, marketing, distribution and operation of automatic phonographs, radios, television, equipment, and battery operated or electrically operated amusement machines, parts and accessories. It had an office and held itself out as such limited partnership to its customers; had a quota allocation with the Central Bank; used invoices, bills and letterheads bearing its trade name; maintained separate books of accounts and bank accounts; and handled or carried merchandise.

In 1948, petitioner William J. Suter and Julia Spirig were married. Thereafter, or on December 18, 1948, Gustav Carlson sold his share of ₱2,000.00 to petitioner and his wife. The sale of the interest of Gustav Carlson in the limited partnership was recorded in the Securities and Exchange Commission on December 20, 1948.

The limited partnership had been filing its income tax returns as a corporation. This manner of reporting the income of the partnership had never been questioned until the respondent Commissioner of Internal Revenue, in an assessment dated August 5, 1959, consolidated the income of the partnership in the years 1954 and 1955 and the individual incomes of petitioner and his wife for the same years, thereby determining a deficiency income tax against petitioner for the said years in the respective amounts of ₱2,678.06 and ₱4,567.00.

In a letter dated September 22, 1959, petitioner disputed the assessment of respondent on the ground that there was no factual or legal basis for disregarding the separate entity of the partnership, and requested the withdrawal and cancellation of the assessment.

On June 20, 1960, petitioner received the letter of respondent dated May 17, 1960, denying the request for cancellation and withdrawal of the assessment.

On that same day, or on June 20, 1960, petitioner reiterated his request for the cancellation and withdrawal of the assessment. In the meantime that this second request for reconsideration was pending, Acting Assistant Regional Director Emeterio M. Trinidad, in a letter dated December 13, 1960 addressed to petitioner, decided to withdraw the "proposed assessments" against petitioner covering the taxable years 1954 to 1957.

On March 17, 1961, petitioner received a letter from respondent dated February 16, 1961 (p. 381, BIR rec), which reads in part:

> "x x x the protest against the said assessments has already been decided in the approved memorandum of this Office dated March 31, 1960 x x x."
>
> "If you still believe that the assessments in question are not in accordance with law, then you may bring your appeal from this decision to the Court of Tax Appeals under Section 11 of Republic Act No. 1125, within thirty (30) days from receipt hereof."

Petitioner, in a letter dated April 4, 1961, which was received on April 5, 1961, again requested that the deficiency assessment be cancelled and withdrawn as the assessment had already been withdrawn by Acting Assistant Regional Director Trinidad.

On February 18, 1963, petitioner received the reply of respondent of January 21, 1963 that the letter of Acting Assistant Regional Director Trinidad referred to a "proposed assessments", and not to the existing assessment against petitioner, and was revoked. Consequently, the payment of the deficiency tax, plus the statutory penalties, was demanded.

Hence, the instant petition for review, which was filed on February 25, 1963.

The issues presented for determination are as follows:

> 1. Whether or not the instant petition for review was filed within the thirty-day period prescribed in Section 11 of Republic Act No. 1125; and
>
> 2. Whether or not the corporate personality of the William J. Suter 'Morcoin' Co., Ltd. should be disregarded so that the partnership's income be consolidated with the individual incomes of petitioner and his wife for tax purposes.

With respect to the first issue, petitioner contends that the instant petition for review was filed within the thirty-day period prescribed in Section 11 of Republic Act No. 1125. On the other hand, respondent contends the contrary.

The appealable decision is that letter of respondent dated February 16, 1961 addressed to petitioner, which states that --

> "If you still believe that the assessments in question are not in accordance with law, then you may bring your appeal from this decision to the Court of Tax Appeals under Section 11 of Republic Act No. 1125, within thirty (30) days from receipt hereof."

This letter was intended by respondent to be his final decision as could be gleaned from his statement that if petitioner is not agreeable thereto, he may bring an appeal therefrom to the Court of Tax Appeals under Section 11 of Republic Act No. 1125. Hence, it is from the date of receipt by petitioner of this letter that the thirty-day period within which to appeal should be computed (St. Stephen's Assn. vs. Coll. of Int. Rev., G.R. No. L-11238, Aug. 21, 1958.).

From the receipt by petitioner on March 17, 1961 of the final decision to the filing on April 5, 1961 of the letter of petitioner, dated April 4, 1961, requesting the cancellation and withdrawal of the assessment, 19 days elapsed. The period of appeal was suspended during the time that the request for cancellation and withdrawal was pending. The period resumed to run upon receipt by petitioner on February 18, 1963 of respondent's letter, dated January 21, 1963, denying his request for cancellation and withdrawal. From February 18, 1963, the date of receipt of respondent's denial, to the date of the filing of the petition for review on February 25, 1963, 7 days passed. Petitioner used a total of only 26 days of the 30-day period within which to file an appeal with this court. Consequently, we hold that the petition for review was filed on time.

With respect to the second issue, petitioner contends that the partnership has a distinct juridical personality which should not be disregarded for tax purposes; and that the marriage between petitioner and Julia Spirig did not dissolve the limited partnership. On the other hand, respondent contends otherwise, arguing that by the circumstances of marriage between William J. Suter and Julia Spirig, and the subsequent sale by Gustav Carlson of his interest in the partnership to the spouses, the limited partnership, which became a single proprietorship, was terminated by operation of law.

We agree to petitioner's contention that the partnership has a personality distinct from that of the partners. And we see no justification, both in fact and in law, to sustain respondent's disregard of the limited partnership's juridical personality.

From the factual standpoint, the records show that the limited partnership was formed for a legitimate business purpose; that it had functioned as a separate juridical entity since 1947; that it assumed a trade name and had dealt itself with the public under such trade name; that it had an allocation with the Central Bank; that it maintained an office and had separate books of accounts and bank accounts; and that it used invoices, bills and letterheads bearing its name. It can not be seriously contended that the partnership could be availed of as an instrument to evade the payment of taxes. All these circumstances establish a corporate identity of the limited partnership distinguishable from the personality of petitioner. They do not justify the disregard of the partnership's corporate identity for tax purposes.

And from the legal viewpoint, we find no law decreeing the legal death or dissolution of a limited partnership by reason of marriage of the partners. The authority relied upon by respondent in support of his assertion that the partnership is dissolved by the marriage of the partners refers to the prohibition of a husband and a wife from entering into a universal partnership, and not to a limited partnership.

> "A husband and a wife may not enter into a contract of general copartnership, because under the Civil Code, which ap-

> plies in the absence of express provision in the Code of Commerce, persons prohibited from making donations to each other are prohibited from entering into universal partnerships. (2 Echaverri, 196) It follows that the marriage of partners necessarily brings about the dissolution of a pre-existing partnership. (1 Gay de Montella 58)" [Tolentino, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. I, 4th Ed., p. 58.]

In the case at bar, the prohibition does not apply because the limited partnership between petitioner and his wife had been existing prior to the marriage.

Similarly, the law does not ordain the dissolution of a limited partnership on the ground of sale of interest in the partnership by one partner to the remaining married partners. ]

IN VIEW OF THE FOREGOING, the decision appealed from should be, as it is hereby, reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, November 11, 1965.

TEOFILO L. REYES, SR.
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge Alejandro B. Afurong did not take part.