REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LEON BALBAS, DONATO ABITONG
and NEMESIO VALDEZ,
Petitioners,

- versus -

C.T.A.
CASE NO. 951

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

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D E C I S I O N

This is a joint appeal from decisions of respondent requiring petitioners to pay contractor's fixed and percentage taxes, plus surcharge and compromise penalties. However, in view of the ruling in Collector vs. U.S.T., G.R. Nos. L-11274 and L-11280, November 28, 1958, relative to compromise penalties, respondent, in the memorandum submitted in support of his stand, has withdrawn his claim for the payment of said penalties.

On August 10, 1956, petitioners Leon Balbas, Donato Abitong and Nemesio Valdez individually executed contracts with the Canlubang Sugar Estate, a corporation duly organized under Philippine laws, in consequence of which they earned gross receipts. On the theory that petitioners are independent contractors, respondent assessed against and demanded from them the payment of the respective sums of ₱5,722.95, ₱4,715.90 and ₱6,818.70, as fixed and percentage taxes, surcharge and compromise penalties. Having failed to obtain from respondent a cancellation of the assessments, petitioners interposed the instant appeal.

The resolution of this case hinges upon the question of whether petitioners are independent contractors. If in the affirmative, as contended by respondent, they are subject to the payment of fixed and percentage taxes in pursuance of Sections 182 and 191 of the Tax Code. Otherwise or if they are merely employees, as is urged upon us, they are not thusly liable.

"Whether a person is an employee or an independent contractor is an ultimate fact to be determined from the evidence, and it may be called a conclusion of fact, since it is a conclusion to be drawn from the contract itself, the attitude of parties toward each others, the nature of work and all relevant circumstances." (Words and Phrases, Vol. 14, p. 572, _citing_ Review Board of Unemployment Compensation Division of Department of Treasury v. Mammoth Life & Accident Ins. Co., 42 N.E. 2d 379, 382, III Ind. App. 660.) In this determination, "there are many well-recognized and fairly typical indicia of the status of an independent contractor, even though the presence of one or more of such indicia in a case is not necessarily conclusive." (27 Am. Jur., Sec. 5, p. 485.) However, the true test of the latter person "would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished." (Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803, 807-808 citing In re Unger, 22 Okla., 755; State vs. McNally, 45 La. Ann., 44, 46; Ney vs. Dubuque, etc., Railroad Co., 20 Iowa, 347, 352; Lehigh, etc. Co. vs. Central Railroad Co. of New Jersey, 29 N.J. Equity, 252, 255; State vs. Emerson, 72 Me., 455, 456; Todd vs. Kentucky Union Ry. Co., 52 Fed. Rep., 241, 247 /18 L.R.A., 305/; Hale vs. Johnson, 80 Ill., 185.)

With the above jurisprudential considerations in mind, we will now proceed to determine the status of petitioners.

By the terms of the contracts entered into between petitioners and the Canlubang Sugar Estate, the former are obliged to recruit men, preferably natives of the Ilocos provinces, to harvest the cane of the Estate in accordance with a harvest schedule to be provided by the latter which reserves the right to change the same at any time. The fact that a person is empowered to hire the persons who will assist him in the performance of the work affirms his independent status (20 A.L.R. pp. 774-775). This indication of independence is further bolstered by the provision of paragraph 6 of the contract that petitioners "will pay for his (their) own account all recruiting expenses, actual cost of transportation of recruits and their subsistence allowance while en route to Canlubang." It is unusual for an employee or servant to defray like expenses incurred by persons he hired to assist him in the work. And the contractual limitation at bar to the effect that petitioners recruit preferably natives of specifically named provinces does not detract from the independence of the contract. Neither does the condition that the work be done in accordance with a harvest schedule.

The second provision of the contracts relates to the payment by the Estate of petitioners' services at rates fixed per ton and from which rates petitioners agree to pay their men. The circumstance that the remuneration of the person employed is computed with reference to the quantity of work performed by him indicates an independent contractor relationship (27 Am. Jur., Sec. 13, p. 495). The contractual requirement that petitioners pay their men from what they receive from the Estate as compensation does not alter this relationship, considering that, as affirmed in the last sentence of paragraph 3, all payments to petitioners' men are made by the petitioners or their duly authorized representatives.

Paragraph 3 yields to petitioners the right of access to copies of cane weigher's reports from which they compile the payrolls of their men. The payrolls are submitted to the Estate for verification of the total amounts appearing thereon. And all payments are made by the petitioners or their duly authorized representatives, with persons assigned by the Estate to witness the same. The preparation of the payrolls by petitioners and the added circumstance that payments to the men are made by the former lend credit to the claim of independence. If petitioners were employees of the Estate, persons in the accounting or clerical department of the Estate would normally attend to these tasks. The presence of men assigned by the Estate during the payments does not disprove the independence of petitioners because the former are there merely "to witness all payments which will be made by the contractor or his duly authorized representative."

Under the provisions of paragraphs 4 and 5, the Estate furnishes the tools, implements, track or other equipments for which petitioners are responsible. Any damage thereto due to lack of proper care and precaution shall be repaired or replaced at petitioners' expense. Provisions relative to responsibility for tools and equipments are not ordinarily found in contracts of hiring and service. They have a tendency to prove independence status. And the fact that, in the case at bar, the tools, implements, track or other equipment are furnished by the Estate is not conclusive of dependency as other factors point otherwise.

Paragraph 7 regulates the daily tonnage of harvested cane that petitioners can deliver to t he main line. This is not indicative of petitioners' subserviency. It is a mere prudent precaution in the regulated use of the Estate's portable track.

Paragraphs 8, 9 and 11 respectively provide for the cutting of cane in accordance with rules or instructions laid down by the Estate, violation of which empowers the Estate to employ laborers to do the cutting accordingly and for the account of petitioners, plus 50% penalty; the gathering of cane found on the ground and left unloaded within two days after cutting for the account of petitioners, plus 50%; the responsibility of petitioners for seeing to it that seed cutting shall not be more than one day ahead of the cutting of the cane; the nonloading by petitioners of rotten, diseased or decayed cane, and either deduction from the weight of loaded cane of the weight of rotten, diseased or decayed cane, or sorting out of the latter cane at petitioners expense; the prohibition of cane burning without written instructions of the Estate; and that petitioners shall abide by the rules, regulations, orders or instructions furnished by the Estate for the proper harvesting of all cane.

It has been held that a contract is none the less independent in its character merely because it contains stipulations to the effect that the work is to be done with instructions from the employer or as the employer may direct (27 Am. Jur., Sec. 9, p. 491). This is particularly true where, as in the present case, provisions for defraying by the contractor of expenses or damages for violations of such rules, regulations or instructions are provided.

Paragraph 10 encumbers petitioners with the obligation to furnish at their expense loading boards to be used in loading. This has a tendency to indicate that petitioners are independent contractors.

Finally, petitioners are required to execute security for the performance of their undertaking under the contracts and for full payment of all advances made to them (Paragraph 12). In this connection, it has been observed that a contractual provision obliging the person employed to provide protection to the employer for losses or damages occasioned to the latter is specified among the material elements involved in the many cases where the former is held to be an independent contractor. The validity of the conclusion relative to his being an independent contractor springs from the consideration that contractual provisions of similar tenor are absent from contracts of hiring and service (27 Am. Jur., Sec. 24, p. 503; 20 A.L.R. pp. 788-789).

But, petitioners, with the view of contending for their subservience presented testimonial evidence showing the presence, in the fields, of plantation or field superintendents, hacienda overseers, foremen and other employees of the Estate who see to it that the work is done according to the rules, regulations or instructions. The circumstance that the work is to be done under the supervision of the employer's agent does not make a contract none the less independent in its character (27 Am. Jur., Sec. 9, p. 491).

Similarly, that medical treatment is provided to the cane cutters by the Estate's own physicians in the latter's hospitals, and that some cane cutters were given compensation under the provisions of the Workmen's Compensation Act by the Estate are not conclusive of the subservient status of petitioners because the probative significance of these circumstances is not sufficient to change the status of petitioners which is shown by the remainder of the evidence to be an independent one.

WHEREFORE, the decisions appealed from are hereby modified in the sense that petitioners are ordered to pay to respondent Commissioner of Internal Revenue or his authorized representative fixed and percentage taxes, including 25% surcharges, in the following amounts:- Pedro Balbas - ₱5,522.95; Donato Abitong - ₱4,515.90; and Nemesio Valdez - ₱6,618.70. Without costs.

SO ORDERED.

Manila, February 9, 1962.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

(84)