REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SIAO TIAO HONG,
Petitioner,

- versus - CTA CASE No. 1755

COMMISSIONER OF INTERNAL REVENUE and/or Regional Director, Bureau of Internal Revenue No. 11,
Respondent.

march 13/70

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D E C I S I O N

Petitioner appealed from respondent's decision dated March 31, 1966 holding him liable for the payment of fixed taxes amounting to ₱2,400.00 as a lending investor for the years 1953 to 1960 inclusive.

Petitioner filed his income tax returns for the years in question. After examining and investigating petitioner's 1958 income tax return, respondent assessed the former on June 2, 1961 for fixed taxes and compromise penalty of ₱2,560.00 for engaging in business without securing the necessary privilege tax receipts as a lending investor for the years 1953 to 1960. In a letter dated September 4, 1961, respondent reiterated his demand for the payment of the lending investor's fixed taxes for the aforesaid years.

Upon failure of petitioner to pay the said assessment for fixed taxes, respondent on May 27, 1963 instituted a civil action for collection thereof in the City Court of Dumaguete (Exh. "12", Vol. II, pp. 91-92, BIR rec.). After due hearing, the said court rendered a decision dismissing the complaint, but giving the herein petitioner a period of thirty (30) days from receipt of said decision within which to take whatever action he may deem proper in connection with the assessment, and failure on his part to dispute the same shall be considered a waiver of his right to contest the assessment in question and thereafter respondent shall proceed to enforce the same in accordance with law. (Exh. "13", pp. 178-183, Vol. II, BIR rec.)

In compliance therewith, petitioner on August 6, 1965 filed with the BIR Regional Director, Bacolod City, his protest to the assessment in an affidavit form (Exh. "10", pp. 66-67, Vol. I, BIR rec.). In a letter to petitioner dated March 31, 1966, respondent denied said protest. Thus, on May 16, 1966, petitioner interposed the present appeal.

The issues to be resolved by this Court are as follows:

> 1. Whether or not petitioner is liable for fixed taxes as a lending investor for the years 1953 to 1960 inclusive;
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> 2. Whether or not the right of respondent to assess the fixed taxes covering the period from 1953 to 1960 has prescribed; and
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> 3. Whether or not the decision rendered by the City Court of Dumaguete in Civil Case No. 478 constitutes *res judicata*.

First Issue -

Respondent alleges that petitioner was engaged in the business of lending money with interest to third persons for the years 1953 to 1960 and therefore said petitioner is liable for the fixed taxes imposed by Section 182(A)(3)(u), in relation to Section 194(u), of the Tax Code, which provides as follows:

> SEC. 182. Fixed Taxes.—(A) On business x x x
>
> x x x x x
>
> (3) Other Fixed taxes.— x x x
>
> x x x x x
>
> (u) Lending investors—
>
> 1. In chartered cities and first-class municipalities, three hundred pesos;

x x x x

SEC. 194. Words and phrases defined.— x x x

x x x x x

(u) "Lending investor" includes all persons who make a practice of lending money for themselves or others at interest.

On the other hand, petitioner denies that he is engaged in business as a lending investor and claims that his main occupation is that of a real estate dealer who occasionally loaned money to several persons for accommodation without realizing any profit therefrom.

We find petitioner's allegations devoid of merit. It can be gathered from petitioner's testimony that, on several occasions, he gave loans to several entities and different individuals.

Specifically, in 1953 and 1954, petitioner gave loans to banks and Siao Tiao Hong Co., Inc. (Deposition, pp. 42-43, CTA. rec.). In 1955 and 1956, petitioner extended loans to banks, Siao Tiao Hong Co., Inc. and Adolfo Velez (Deposition, pp. 43-44, CTA rec.). In 1957 and 1958, petitioner again gave loans to banks, Siao Tiao Hong Co., Inc., Adolfo Velez and to the following persons: Nicanor Ramas Uy Pitching, Ricardo Chua, Andrea Saberon, and Lorenzo Yo Yuk Suy. In 1959 and 1960, loans were again extended by petitioner to the above-stated entities and persons except to one Nicanor Ramas Uy Pitching (Deposition, pp. 44-45, CTA rec.).

From the above transactions, it is apparent that petitioner continuously and habitually engaged in the business of lending money with interest to several entities and persons. These lending transactions were not isolated cases but they represent a series of loans showing habituality. "Habituality" in the practice of commerce presupposes the repetition and continuation of commercial acts, in such manner that they are related to each other by reason of the commercial purpose or end which they tend to have. (Agbayani's Commentaries and Jurisprudence on Commercial Laws of the Philippines, 1964 ed., Vol. I, p. 5.)

Anent petitioner's allegation that the loans were made by him merely to accommodate friends without deriving profit therefrom, no other evidence was adduced by petitioner to corroborate said allegation except his own self-serving deposition. Moreover, petitioner's contention is belied by the fact that he collected interest from the borrowers and on several occasions required them to execute deeds of mortgages to guarantee the payment of said loans. These interest income from loans and mortgage transactions are reflected in petitioner's income tax returns.

The case of Melo v. Yateo (G.R. No. 47413, April 14, 1941, Law Journal, July 15, 1941, 71 Phil. 465-468) is in point. In this case, Melo extended loans to six different persons with interest of 12% per annum for the period from 1929 to 1934. The Supreme Court held:

> Where it appears that on six occasions a person accepted mortgages to guarantee loans to be made to different persons at an interest of 12% and such person does not prove that such transactions were made accidentally or because of certain peculiar circumstances, it should be presumed that he in reality made a practice of lending money at interest, thus becoming a lending investor under the law.

In the light of the decision of the Supreme Court in the Melo case and considering the series of lending transactions entered into by petitioner with third parties, it is obvious that he is engaged in the business of lending money. Consequently, we hold that petitioner is subject to the fixed taxes imposed by the Tax Code as a lending investor.

Second Issue -

Petitioner claims that respondent's right to assess the fixed taxes for 1953 to 1960 has already prescribed in accordance with Section 331 of the Tax Code. Respondent disputes petitioner's theory and alleges that inasmuch as the latter did not file any return for the purpose of determining his fixed tax liability as a lending investor, Section 332 of the Tax Code should apply.

The pertinent provisions of the Tax Code relied upon by the parties are as follows:

> SEC. 331. Period of limitation upon assessment and collection.— Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

> SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.—(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after

> the discovery of the falsity, fraud, or omission.
>
> x x x x x

The question has already been squarely decided by the Supreme Court in the case of Butuan Sawmill, Inc. v. Hon. Court of Tax Appeals, et al., G.R. No. L-20601, Feb. 28, 1966, wherein it held:

> On the second issue, petitioner avers that the filing of its income tax returns, wherein the proceeds of the disputed sales were declared, is substantial compliance with the requirement of filing a sales tax return, and, if there should be deemed a return filed, Section 331, and not Section 332(a) of the Tax Code providing for a five-year prescriptive period within which to make an assessment and collection of the tax in question from the time the return was deemed filed, should be applied to the case at bar. Since petitioner filed its income tax returns for the years 1951, 1952 and 1953, and the assessment was made in 1957 only, it further contends that the assessment of the sales tax corresponding to the years 1951 and 1952 has already prescribed for having been made outside the five-year period prescribed in Section 331 of the Tax Code and should, therefore, be deducted from the assessment of the deficiency sales tax made by respondent.
>
> The above contention has already been raised and rejected as not meritorious in a previous case decided by this Court. Thus, we held that an

<u>income tax return cannot be considered as a return for compensating tax for purposes of computing the period of prescription under Section 331 of the Tax Code, and that the taxpayer must file a return for the particular tax required by law in order to avail himself of the benefits of Section 331 of the Tax Code; otherwise, if he does not file a return, an assessment may be made within the time stated in Section 332(a) of the same Code</u> (Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue & Collector of Internal Revenue v. Bisaya Land Transportation Co., Inc., G.R. Nos. L-12100 & L-11812, May 29, 1959). The principle enunciated in this last cited case is applicable by analogy to the case at bar. (Underlining supplied.)

It is undisputed that petitioner failed to file a separate return on his interest income as a lending investor corresponding to the years 1953-1960 and this omission was discovered by respondent's examiner only on June 21, 1960 (Exh. 5, pp. 18-20, BIR rec.). Under Section 332 of the Tax Code, *supra*, the assessment thereof may be made by respondent within ten (10) years from and after the discovery of the petitioner's failure to file the corresponding return. Consequently, respondent's right to assess the fixed tax has not yet prescribed.

<u>Third Issue</u> -

Finally, petitioner contends that the decision rendered by the City Court of Dumaguete in Civil Case No. 478 is res judicata to the instant case because the parties, the issue and the subject matter in these two cases are identical.

We cannot subscribe to petitioner's pretension. For a judgment or order of a court in a case to be conclusive in a subsequent case, the following requisites must exist:

(a) There must be a final judgment or order;

(b) The Court rendering the same must have jurisdiction of the subject-matter and the parties;

(c) There must be a judgment or order of the court on the merits; and

(d) There must be between the two cases identity of parties, subject matter, and cause of action. (San Diego v. Cardona, 70 Phil. 281.)

An order or judgment of the court is deemed final when it disposes of the pending action, thereby leaving nothing more to be done by the trial court. The judgment, however, rendered by the City Court of Dumaguete in Civil Case No. 478, is neither a final judgment nor a judgment on the merits of the case. In fact, it did not resolve the legality or validity of the assessment, but the court only held that the letter of respondent dated July 16, 1962, which was considered his final decision, was not received by petitioner and gave the latter a chance to take whatever action he may deem proper. Pursuant thereto, petitioner filed a protest with respondent. As the requirements of finality of judgment and decision on the merits are absent in the judgment of the City Court of Dumaguete in Civil Case No. 478, the same does not constitute res judicata.

WHEREFORE, the decision of respondent Commissioner of Internal Revenue appealed from is hereby affirmed and petitioner is hereby ordered to pay ₱2,400.00 as lending investor's fixed taxes. With costs against petitioner.

SO ORDERED.

Quezon City, March 13, 1970.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge

I CONCUR IN THE RESULT:

R. M. Umali
ROMAN M. UMALI
Presiding Judge