file

LAWRENCE Q. DEE, as
(having been) President
of Le Chevalier, Inc.,
Petitioner,

- versus -

C.T.A. CASE NO. 2597

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

5/18/78

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

D E C I S I O N

From the decision of respondent Commissioner of Internal Revenue holding Le Chevalier, Inc., liable for deficiency income tax for the year 1964 in the amount of ₱109,411.50, inclusive of surcharge and interest, petitioner Lawrence Q. Dee, as president of Le Chevalier, Inc., appealed to this Court.

On October 20, 1965, respondent Commissioner of Internal Revenue, acting on an affidavit executed by an informer, issued Authority No. 14735 authorizing Bureau of Internal Revenue Examiners Cayetano Medida and Antonio Tusaneza to verify and investigate the internal revenue tax liabilities of Le Chevalier, Inc. These examiners discovered that Le Chevalier, Inc., did not file nor pay income and business taxes for the years 1963 to June, 1965, although it catered services not only to its members and guests but also indiscriminately, to the general public. On the basis of their report, a letter dated November 15, 1965, and another letter dated December 7, 1965, were sent to Le Chevalier, Inc., informing it of the findings of Examiners Medida and Tusaneza and requesting it to present its side of the case. As no action was taken by Le Chevalier, Inc., on these letters, respondent, in his demand letter dated January 13, 1967, assessed and demanded from it the payment of ₱241,912.53 as fixed and percentage taxes and surcharges for the period from November, 1963 to June 30, 1965.

From this decision of respondent holding Le Chevalier, Inc., liable for payment of ₱241,912.53 as fixed and percentage taxes and surcharges, Lawrence Q. Dee, as president of Le Chevalier, Inc., appealed to the Court of Tax Appeals. The case which is entitled: "Lawrence Q. Dee as President of Le Chevalier, Inc., vs. Commissioner of Internal Revenue," was docketed as CTA Case No. 2208. In a decision dated December 15, 1975, this Court found that Le Chevalier, Inc., was in fact a business proposition disguised as a club, as well as a subterfuge for Lawrence Q. Dee's own business activities, and therefore held Lawrence Q. Dee personally liable for its tax liability in the amount of ₱241,912.53. The said decision of the Court became final and executory on September 27, 1976.

Meanwhile, and on the basis of the same report of Examiners Cayetano Medida and Antonio Tusanesa, respondent Commissioner of Internal Revenue, in a letter dated October 20, 1967, assessed and demanded from petitioner Lawrence Q. Dee, as president of Le Chevalier, Inc., the payment of the amount of ₱109,411.50, as deficiency income tax for the year 1964, inclusive of surcharge and interest, of Le Chevalier, Inc., computed as follows:

Net loss per return for 1964		(₱164,267.79)
Add: Unallowable deductions:		
1. Undeclared cash sales, (suppressed) . . .	₱244,294.35	
2. Entertainment expenses, disallowed	167,672.95	411,967.30
Net income per investigation . . .		₱247,699.51
Tax due thereon		₱ 66,310.00
Add: 50% surcharge . .		33,155.00
1/2% mo. int. fr. 4-20-65 to 10-20-67		9,946.50
TOTAL AMOUNT DUE & COLLECTIBLE . . .		₱109,411.50

(Exh. "C" for petitioner; Exh. "2" for respondent, pp. 113-114, Bureau of Internal Revenue records.)

For failure of Lawrence Q. Dee and/or Le Chevalier, Inc., to pay the aforementioned income tax assessment, a warrant of distraint of personal property (Exh. "H" for petitioner; Exh. "3" for respondent; p. 185, Bureau of Internal Revenue records) and a warrant of levy on real property (Exh. "G" for petitioner; Exh. "4" for respondent; p. 186, Bureau of Internal Revenue records) were issued by respondent against the properties of the Le Chevalier, Inc., to effect the collection of the deficiency income tax. The issuance of the warrants of distraint and levy prompted petitioner Lawrence C. Gee to file with this Court a petition for the review, docketed as CTA No. 2597, of the decision of respondent holding Le Chevalier, Inc., liable for the payment of the alleged deficiency income tax for 1964 in the amount of ₱109,411.50, inclusive of surcharge and interest. The original petition for review was later amended by petitioner to include his defense of prescription.

Against this backdrop, and because of the exact identity of the parties and the close similarity of the issues involved, this appeal should therefore be read in the light of the decision of this Court in CTA Case No. 2208. As a matter of fact, when the instant case was called for hearing on August 18, 1975, the parties merely marked and offered their documentary evidence which were all found in the records of the Bureau of Internal Revenue pertaining to this proceeding. No oral evidence was introduced by the parties, but in presenting and arguing their respective side of the case, they quoted extensively from the transcript of stenographic notes taken down during the hearings of CTA Case No. 2208, as well as from the decision thereof. For purposes of determining the internal revenue tax liabilities of Le Chevalier, Inc., which was the subject matter of the report of Examiners Medida and Tusaneza, this appeal is merely the continuation of CTA Case No. 2208, with the instant proceeding involving the question of the income tax liability, and the earlier case (CTA Case No. 2208) deciding its liability for fixed and percentage taxes. As a basis for the discussion of the question as to whether or not Lawrence Q. Dee as president of Le Chevalier, Inc., is liable to the deficiency income tax for the year 1964 in the amount of P109,411.50, inclusive of surcharge and interest, the facts and legal principlex involved in CTA Case No. 2208 are therefore pertinent.

Le Chevalier, Inc., per its Articles of Incorporation, is a non-stock, non-profit club organized for the benefit of its members and their guests. It established and maintained a bar, restaurant and nightclub where food and drinks were served. It was registered with the Securities and Exchange Commission on September 23, 1963 but actually started operating its bar, restaurant and nightclub on November 1, 1963.

As stated earlier, on the basis of the report of Examiners Medida and Tusaneza, respondent assessed and demanded from petitioner the payment of P109,411.50 as deficiency income tax for the year 1964, inclusive of surcharge and interest. In resisting the assessment, petitioner would, however, seek shelter in Section 27 of the National Internal Revenue Code by proffering to attach to the club services of Le Chevalier, Inc., privileges which were allegedly afforded and made available only to the members, immediate members of their families, as well as their guests and visitors. In other words, just like in CTA Case No. 2208, petitioner questions the finding of respondent that Le Chevalier, Inc., catered not only to its members and their guests but also to the general public. And in insisting that the finding that Le Chevalier, Inc., catered to the general public is based on information given by an informer who was not an insider in the club, petitioner attempts to draw support from the testimonies of witnesses presented by him in CTA Case No. 2208. This position of petitioner ignores, of course, the evidence adduced in CTA Case No. 2208, and the records of the Bureau of Internal Revenue pertaining to that case and to this case.

Sales invoices of Le Chevalier, Inc., were presented in evidence in CTA Case No. 2208. From these it appeared that Le Chevalier, Inc., had two sets of invoices: one for non-members and another for members. The fact that it had invoices for non-members is in itself proof that it catered to the general public. Moreover, the sales invoices for members presented as evidence in this Court show that the customers who paid them were not members of the club.

Lawrence Q. Dee testified that members were given membership cards and an account number. When served by Le Chevalier, Inc., the member signed and wrote his card number in the place indicated at the foot of the invoices. Neither the signatures of the members nor their card numbers appeared in the place indicated in the numerous invoices presented in CTA Case No. 2208. On the other hand, petitioner has not introduced in evidence any sales invoice signed by any member or at least with indication of his card number. The sales invoices presented by respondent and the testimony of Dee are certainly not hearsay.

It is significant too that Florencia Revilla, cashier of Le Chevalier, Inc., who was presented as witness for petitioner in CTA Case No. 2208, and whose testimony in that case was quoted extensively by petitioner in his memorandum filed in this appeal to support his stand that the club catered only to its members and other guests, admitted that the receipts of Le Chevalier, Inc., did not identify the members or the non-members. This tallies with the testimony of Silverio Coching, a waiter of the restaurant of Le Chevalier, Inc., since 1964 who testified in CTA Case No. 2208 that he did not notice any customer who signed chits and showed his identification card. According to him customers paid in cash. The testimonies of Revilla and Coching are not hearsay.

According to Examiner Medida, Le Chevalier, Inc., had nineteen (19) members in 1963 and thirty (30) in 1964. He based this finding on the Cash Journal Book of the corporation. There were two classes of members, one paid ₱1,000.00 and the other paid only ₱50.00 upon becoming a member thereof. In a letter dated December 14, 1970, counsel for petitioner admitted that in effect there were only nineteen (19) members in 1963 and thirty (30) in 1964. These members could hardly absorb sales of ₱70,000.00 in just two months of operation in 1963 nor could they absorb sales amounting to ₱800,000.00 for the year 1964 or the sales amounting to ₱510,288.35 from January to June 30, 1965. These figures do not include sales amounting to ₱244,000.00 discovered by the examiners which were not reflected in the income of Le Chevalier, Inc. The clear indication of the foregoing facts is that Le Chevalier, Inc., was in fact a business proposition disguised as a club. (See pp. 4-5, Decision dated December 15, 1975 of this Court in CTA Case No. 2208, Lawrence Q. Dee as president of Le Chevalier, Inc., vs. Commissioner of Internal Revenue.)

Le Chevalier, Inc., being in fact a business proposition disguised as a club which catered indiscriminately to the general public, it was not therefore a non-stock and non-profit exclusive corporation exempt from income tax under Section 27 of the National Internal Revenue Code but a corporation engaged in business taxable under Section 24 of the same Code.

With the above findings of this Court in CTA Case No. 2208 that there were only thirty (30) members in 1964 and they could not absorb sales amounting to ₱800,000.00 for that year, coupled by the fact that these figures do not include undeclared and suppressed cash sales in the sum of ₱244,294.25 which were not reflected in the income of Le Chevalier, Inc., we see no significance in the argument of petitioner that Le Chevalier, Inc., suffered a loss during its 1964 operations and, hence, not subject to income tax. The amount of ₱167,672.95 claimed by Le Chevalier, Inc., as entertainment expenses in 1964 was disallowed by respondent's examiners because it was found out to be fictitious. "Verification of this account disclosed that no particular persons are recipients of the huge disbursement." (Exh. "A", petitioner; Exh. "1", respondent, pp. 13-15, Bureau of Internal Revenue records.) If the entertainment expenses had really been incurred, receipts or chits would have been issued by the persons or entities to which the payments had been made; otherwise, if not properly supported, the claim must be rejected. (Collector of Internal Revenue vs. Goodrich International Rubber Co., No. L-22265, December 22, 1967, 21 SCRA 1336.)

We note that in his memorandum (pp. 13-14) petitioner refers to these entertainment expenses as "expenses for entertainers"; probably salaries and wages, whether in cash or in kind, paid or given to singers and other entertainers. This assertion is gratuitous and we deem it unnecessary to pass upon the deductibility of these expenses as salaries or other compensation for personal services actually rendered. The evidence shows that petitioner labeled this item as entertainment expenses but verification disclosed that no particular persons were recipients of these expenditures. (See El Porvenir Rubber Products, Inc. vs. Misael Vera, CTA Cases Nos. 1702 & 1705, July 26, 1969, certiorari denied, L-31583-84, February 11, 1970).

Petitioner now seeks refuge in the basic principle of corporation law that a corporation has a personality separate and distinct from the persons composing it. Le Chevalier, Inc., being a corporation with a personality separate and distinct from petitioner, the latter argues that he can not be held liable for the payment of the income tax liability of the former.

Petitioner's position has already been foreclosed by the decision of this Court in CTA Case No. 2208, supra, the parties, factual setting and issue of which, as earlier stated, are on all fours with the case at bar, and where the Court disposed of the same question and contention in clear and unequivocal terms, in the following wise:

> We agree with respondent that Lawrence Q. Dee is personally liable for the tax liability of Le Chevalier, Inc.
>
> In a statement of May 23, 1969 of Reynaldo G. Almario, accountant of Le Chevalier, he averred that Dee is the controlling capitalist of Le Chevalier, Inc. and we find it significant that neither Dee nor Almario ever mentioned any contribution from the members for the establishment and operation of the club, restaurant and nightclub. When in August, 1966, Dee sold a part of the corporation for ₱100,000.00 to Joseph Cham Say and Felipe Padilla and another part to Reynaldo Almario for ₱65,000.00, the decision to sell was apparently purely his as there is no evidence that the other members had any participation in the sale. He could make the decision

alone because Le Chevalier was but a subterfuge for his own business activities.

We find no cogent and valid reason to modify, much less depart from the conclusion reached in CTA Case No. 2208, as expressed in the above-quoted opinion of this Court there, and the same should resolve the identical problem again brought before us in this proceeding. By this rationale, this Court has looked beyond the corporate form, and ignored the separate entity of a corporation. In law and in fact, and for all practical purposes, Le Chevalier, Inc., and Lawrence Q. Dee were one and the same, with the former being but a subterfuge for the business activities of the latter.

The problem of prescription, another roadblock set up by petitioner to his liability for payment of the amount of ₱109,411.50 as income tax for the year 1964, inclusive of interest and surcharge, comes in. While petitioner does not quarrel with respondent that the assessment of the income tax in question had been made within the period of limitation prescribed in Section 331 of the National Internal Revenue Code, the former argues that the collection thereof is now time-barred because the warrants of distraint and levy were issued beyond the five-year prescriptive period provided for under Section 332(c) of the same Code.

By Section 332(c) of the Tax Code, where the assessment of any internal revenue tax has been made within the period of limitation prescribed in Section 331, such tax may be collected by distraint or levy or by a proceeding in court, but only if begun, insofar as pertinent hereto, within five years after assessment of the tax. However, where by repeated requests, or positive acts of the taxpayer, the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harrassment or injustice is meant by the Government, the taxpayer is prevented from setting up the defense of prescription even if he has not previously waived it in writing. (Collector of Internal Revenue vs. Suyoc Consolidated Mining Company, et al., L-11527, November 25, 1958, 104 Phil. 819; Republic vs. Acebedo, L-20477, March 29, 1968, 22 SCRA 1356.) If the taxpayer requests reconsideration of the assessment, the period between the petition for reconsideration and the revised assessment is to be substracted from the total prescriptive period. (Commissioner of Internal Revenue vs. Sison, L-13739, April 30, 1963, 7 SCRA 884, citing Republic vs. Ablaza, L-14519, July 26, 1960, 108 Phil. 1105; Querol vs. Collector of Internal Revenue, L-16705, October 30, 1962, 6 SCRA 304; Republic vs. Lopez, L-18007, March 30, 1963, 7 SCRA 566.) As a matter of fact, under the present provisions of Section 333 of the National Internal Revenue Code, as amended by Presidential Decree No. 69, when the taxpayer requests for a reinvestigation which is granted by the Commissioner of Internal Revenue, the running of the statute of limitations provided in Section 331 or 332 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection shall be suspended.

Here, in the case at bar, respondent, based on the report of the investigation dated November 10, 1965 submitted by his examiners Medida and Tusaneza, assessed and demanded from petitioner, in his demand letter dated October 20, 1967, the payment of ₱109,411.50 as income tax for the year 1964, inclusive of interest and surcharge. Petitioner must have been forewarned of the assessment for as early as October 2, 1967, prior to the issuance of the demand letter on October 20, 1967, Atty. Teofilo F. Manalo, counsel for Le Chevalier, Inc., had already requested reinvestigation of the income tax assessment in question. (p. 109, Bureau of Internal Revenue records.) This request for reinvestigation was favorably considered and taken cognizance of by respondent for as stated by him in his memorandum:

(a) The Chief, Special Investigation Division referred the case for immediate reinvestigation and report to the Supervising Revenue Examiner per his memorandum of March 11, 1968 (p. 115 BIR records);

(b) The Supervising Revenue Examiner submitted his comments and recommendation per 1st Indorsement dated April 25, 1968 (pp. 117-118 BIR records);

(c) The Group Supervisor submitted his comments and recommendation relative to the said investigation of the case to the Assistant Chief (Operation), Special Investigation Division, on April 30, 1968 (p. 116 BIR recs.);

(d) On May 28, 1968 the Supervising Revenue Examiner requested Teofilo F. Manalo, counsel of Le Chevalier, Inc., to submit a waiver of the Defense of Prescription under the statute of limitation and to have some records available for verification (p. 121 BIR records);

(e) On April 18, 1969, the Commissioner of Internal Revenue issued a subpoena duces tecum to Mr. Lawrence Dee requesting the latter to produce the books of account covering the period from 1963 to 1968 (p. 132 BIR records) and pursuant thereto, Mr. Dee appeared but failed to bring the books of accounts necessary to effect the reinvestigation of the tax case, alleging, among others, that the same were destroyed by fire (Memo. dated April 6, 1969, p. 131 BIR records; Sworn statement of Dee pp. 174-176 BIR records);

(f) On July 7, 1969, the Assistant Regional Director in his 1st Indorsement (p. 153 BIR records) forwarded the letter of the Commissioner of Internal Revenue dated June 18, 1969, to Examiner Medida requesting explanation as regards some of his findings relative to the assessment in question, and which explanation was submitted on July 11, 1969 (p. 154 BIR records).

While the reinvestigation of the assessment by respondent was in progress as discussed above, another letter dated December 14, 1970 was filed by Atty. Francisco J. Malate, Jr., for and in behalf of petitioner, which letter, after stating the facts of the case in detail and the arguments of petitioner, complete with citations of authorities and provisions of law, prayed that: "In view of the foregoing, it is respectfully requested that the above assessments be reinvestigated, reconsidered and withdrawn and that the case be considered closed." (pp. 117-180, Bureau of Internal Revenue records.) However, on February 6, 1974, respondent issued warrants of distraint and levy against the properties of Le Chevalier, Inc., to enforce collection of the income tax covered in the assessment in question. The parties are in agreement that the issuance of the warrants of distraint and levy by respondent to enforce collection of the income tax assessed, without categorically deciding the request of petitioner for reconsideration and reinvestigation , was an implied denial of the latter's request for reconsideration and reinvestigation, and petitioner may appeal therefrom to the Court of Tax Appeals, as he did by filing the present petition for review.

(Philippine Planters Investment Co. vs. Commissioner of Internal Revenue, CTA Case No. 1266, November 11, 1962.)

If a request for reconsideration or reinvestigation made by the taxpayer suspends the running of the prescriptive period provided in Section 332 of the National Internal Revenue Code for the assessment and collection of internal revenue taxes (Republic vs. Aquias, L-21874, June 30, 1970, 33 SCRA 607), then there seems to be no doubt that the right of the Government to collect the income tax covered in the assessment under consideration has not prescribed because as early as October 2, 1967, petitioner had already filed a request for the reconsideration and reinvestigation of the case, which was favorably considered by respondent; and it was only on February 6, 1974, when it was denied with the issuance of the warrants of distraint and levy to enforce collection of the income tax assessed. And even if the request for reconsideration and reinvestigation dated October 2, 1967 did not toll the prescriptive period, respondent argues correctly on this point that the letter dated December 14, 1970 of petitioner has however suspended the running of the period of limitation of collection of the tax in question and, hence, the Government has still one (1) year, eight (8) months and six (6) days within which to collect the tax due. For purposes of clarification, the computation of the period is as follows:

Date of request for reinvestigation - 12-14-70
Date of issuance of Assessment/Demand 10-20-67
No. of days spent of the 5-year period 1-24-3 or
3 yrs, 1 mo. & 24 days

Five years prescriptive period within
which to collect - - - - - - - - - - 5-0-0
Deduct: No. of days spent - - - - - 3-1-24
Total number of days left within which
the government can still
collect - - - - - - 1-8-6

(1 year, 8 months and 6 days)

Consequently, the issuance of the warrants of distraint and levy dated February 6, 1974, which were served upon petitioner on April 16, 1974, and which the parties admitted to be the final decision of respondent, is well within the five (5) year prescriptive period of collection prescribed in Section 332(c) of the National Internal Revenue Code. The right of the Government to collect the income tax involved in the assessment in question has not therefore prescribed.

For the foregoing reasons, the decision of respondent Commissioner of Internal Revenue finding Le Chevalier, Inc., liable for deficiency income tax for the year 1964 in the amount of ₱109,411.50, inclusive of interest and surcharge, and holding petitioner Lawrence Q. Dee personally responsible for this tax liability of Le Chevalier, Inc., must be sustained. There being no income tax return filed for the year

1964, and it appearing from the evidence presented, as discussed above, that Le Chevalier, Inc., charged fictitious expenses, suppressed cash sales, maintained two (2) sets of sales invoices, and was in fact a business proposition disguised as a club and a subterfuge for petitioner's own business activities, organized and operated by Lawrence C. Qua for tax-evasion purposes; which clearly evince willful intent not to file a return; as no returns for income and business taxes were in fact filed or paid by it during the periods covered by this case and CTA Case No. 2208; the imposition of the fifty per cent (50%) surcharge of the amount of the tax by respondent, which was never questioned by petitioner, is in accordance with law. Petitioner Lawrence C. Qua is, therefore, ordered to pay to respondent Commissioner of Internal Revenue the said amount of ₱100,411.50 as deficiency income tax for 1964, plus 5% surcharge and 1% monthly interest from October 20, 1967 up to October 20, 1970, in accordance with Section 51 of the National Internal Revenue Code, as amended by Republic Act No. 2343.

WHEREFORE, the appealed decision is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, May 18, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge