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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

November 29, 1960

GREGORIO ANTIGUA,
Petitioner,

- versus -

C.T.A.
CASE NO. 579

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

AMENDED DECISION

On November 2, 1959, this Court rendered its decision in the above-entitled case affirming the decision of respondent holding petitioner liable for the deficiency income tax and penalties in the sum of ₱147,239.11 for the year 1949. On December 8, 1959, petitioner filed a motion for reconsideration or, in the alternative, for the reopening of the case to enable him to present newly discovered evidence. A supplemental motion for new trial was filed on December 14, 1959.

During the hearing on the motion for reopening of the case, respondent interposed no objection, apparently convinced of the merits of petitioner's case. Accordingly, in its resolution of February 11, 1960, this Court ordered the reopening of the case to enable petitioner to present the alleged newly discovered evidence.

It appears that before the hearing for the introduction of the alleged newly discovered evidence, petitioner presented said evidence to respondent and requested that the latter's assessment be cancelled. Apparently, convinced of the illegality of the assessment and of the injustice committed against petitioner, respondent agreed to withdraw the assessment and suggested that petitioner and counsel for the Government take "the necessary legal steps to close the case," considering that the case is "pending consideration in the Court of Tax Appeals." The letter of respondent is hereunder quoted in full:

May 24, 1960

Attys. Meer, Meer & Meer
Suite 302-306 Singson Bldg.
Plaza Moraga, Manila

Gentlemen:

This is in reply to your letter dated May 14, 1960 refering to the case of your client Mr. Gregorio Antigua of Borbon, Cebu, which is presently the subject of C.T.A. Case No. 579, entitled "Gregorio Antigua vs. Collector of Internal Revenue", wherein you have requested that in view of the additional evidences brought out in your motions for new trial and reconsideration in the said case, the deficiency income tax assessment for the year 1949 against your client appears to be patently erroneous and should not be sustained, hence a ruling be issued by this Office withdrawing the aforesaid assessment.

In this connection, please be advised that this Office is inclined to agree with your request after a further consideration of the evidences presented. In view of the fact that the case is pending consideration in the Court of Tax Appeals, it would be proper for your good selves and our counsel to take the necessary legal steps to close the case.

Very truly yours,

(SGD.) MELECIO R. DOMINGO
Commissioner of Internal
Revenue

(Page 173, C.T.A. records.)

In view of the decision of respondent to withdraw the assessment, petitioner filed a "Motion for Dismissal and Withdrawal of Petition for Review." Notwithstanding that respondent interposed no objection to the motion, this Court denied the same in its resolution of August 24, 1960, for the following reasons:

> "It appearing from the records that this case has already been completely and fully heard and decided on the merits against the petitioner on November 2, 1959 (see Decision, pp. 90-99, CTA rec.), and that, 'in the interest of justice', this case was reopended on February 11, 1960 'for the reception of the additional evidence which petitioner has proposed to submit' (see Resolution, pp. 155-156, C.T.A. rec.), and considering further that the respondent, at the present stage of the proceedings, 'is not authorized to accept anything different from or anything less than what is adjudicated in favor of the Government' (Revere vs. Amparo, G. R. No. L-5482, May 5, 1952) and that he has not actually withdrawn the disputed assessment, but only expressed his inclination to cancel the questioned assessment (Annex A, Motion for Dismissal and Withdrawal of Petition for Review, pp. 171-173, CTA rec.), we find the motion under consideration without merit." (Page 176, CTA records.)

As a consequence of the denial of the motion to withdraw the appeal, petitioner presented the documentary exhibits constituting the newly discovered evidence showing that there is no deficiency income tax due from petitioner for the year 1949. These are the same documentary exhibits which prompted respondent to agree to the withdrawal of the assessment. (See letter of respondent dated May 24, 1960, page 173, C.T.A. records, quoted above.)

FOR THE FOREGOING CONSIDERATIONS, and particularly the fact that respondent himself is convinced of the illegality of the assessment as shown by his instructions to counsel for the Government to join petitioner in seeking the withdrawal of the case, our decision of November 2, 1959 is hereby set aside. As prayed for by petitioner, without objection on the part of respondent, the decision appealed from is reversed, without pronouncement as to costs.

SO ORDERED.

Manila, November 29, 1960.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

I abstain:

MARIANO NABLE
Presiding Judge