REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LORENZO T. OÑA, and HEIRS OF JULIA BUNALES, namely: RUDOLFO B. OÑA, MARIANO B. OÑA, LUZ B. ONA, VIRGINIA B. ONA, AND LORENZO B. ONA, JR.,
Petitioners,

- versus -

C.T.A. CASE NO. 617

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from the decision of the respondent finding the petitioners to have formed an unregistered partnership and, therefore, subject to the corporate income tax under Section 24, in relation to Section 84(b), of the National Internal Revenue Code. The facts of the case have been correctly stated in the memorandum of counsel for the Government from which we quote:

> Julia Buñales died on March 23, 1944, leaving as heirs her surviving spouse, Lorenzo T. Ona and her five children. In 1948, Civil Case No. 4519 was instituted in the Court of First Instance of Manila for the settlement of her estate. Later, Lorenzo T. Ona, the surviving spouse was appointed administrator of the estate of said deceased (Exhibit 3, pp. 34-31, BIR rec.). On April 14, 1949, the administrator submitted the project of partition, which was approved by the Court on May 16, 1949 (See Exhibit K). Because three of the heirs, namely Luz, Virginia and Lorenzo, Jr., all surnamed Ona, were still minors when the project of partition was approved, Lorenzo T. Ona, their father and administrator of the estate, filed a petition in Civil Case No. 9637 of the Court of First Instance of Manila for appointment as guardian of said minors. On November 14, 1949, the Court appointed him guardian

of the persons and property of the aforenamed minors (See p. 3, BIR rec.)

The project of partition (Exhibit K; see also pp. 77-70, BIR rec.) shows that the heirs have undivided one-half (½) interest in ten parcels of land with a total assessed value of ₱87,860.00, six houses with a total assessed value of ₱17,590.00 and an undetermined amount to be collected from the War Damage Commission. Later, they received from said Commission the amount of ₱50,000.00, more or less. This amount was not divided among them but was used in the rehabilitation of properties owned by them in common (t.s.n., p. 46). Of the ten parcels of land aforementioned, two were acquired after the death of the decedent with money borrowed from the Philippine Trust Company in the amount of ₱72,173.00 (t.s.n., p. 24; Exhibit 3, pp. 34-31, BIR rec.).

The project of partition also shows that the estate shares equally with Lorenzo T. Ona, the administrator thereof, in the obligation of ₱94,973.00, consisting of loans contracted by the latter with the approval of the Court (see p. 3 of Exhibit K; or see p. 74, BIR rec.).

Although the project of partition was approved by the Court on May 16, 1949, no attempt was made to divide the properties therein listed. Instead, the properties remained under the management of Lorenzo T. Ona who used said properties in business by leasing or selling them and investing the income derived therefrom and the proceeds from the sales thereof in real properties and securities. As a result, petitioners' properties and investments gradually increased from ₱105,450.00 in 1949 to ₱480,005.20 in 1956 as can be gleaned from the following year-end balances:

Year	Investment Account	Land Account	Building Account
1949		₱ 87,860.00	₱ 17,590.00
1950	₱24,657.65	128,566.72	96,076.26
1951	51,301.31	120,349.28	110,605.11
1952	67,927.52	87,065.28	152,674.39
1953	61,258.27	84,925.68	161,463.83
1954	63,623.37	99,001.20	167,962.04
1955	100,786.00	120,249.78	169,262.52
1956	175,028.68	135,714.68	169,262.52

(See Exhibits 3 & K; t.s.n., pp. 22, 25-26, 40, 50, 102-104).

From said investments and properties petitioners derived such incomes as profits from install-

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ment sales of subdivided lots, profits from sales of stocks, dividends, rentals and interests (see p. 3 of Exhibit 3; p. 32 BIR rec.; t.s.n. pp. 37-38). The said incomes are recorded in the books of account kept by Lorenzo T. Ona, where the corresponding shares of the petitioners in the net income for the year are also shown. Every year, petitioners returned for income tax purposes their shares in the net income derived from said properties and securities and/or from transactions involving them (Exhibit 3, supra; t.s.n. pp. 25-26). However, petitioners did not actually receive their shares in the yearly income. (t.s.n. pp. 25-26, 40, 98, 100). The income was always left in the hands of Lorenzo T. Ona who, as heretofore pointed out, invested them in real properties and securities (See Exhibit 3, t.s.n. pp. 50, 102-104).

On the basis of the foregoing facts, respondent decided that petitioners formed an unregistered partnership and therefore, subject to the corporate income tax, pursuant to Section 24, in relation to Section 84(b), of the Tax Code. Accordingly, he assessed against the petitioners the amounts of ₱8,092.00 and ₱13,899.00 as corporate income taxes for 1955 and 1956, respectively. (See Exhibit 5, amended by Exhibit 17, pp. 50 and 86, BIR rec.). Petitioner protested against the assessment and asked for reconsideration of the ruling of respondent that they have formed an unregistered partnership. Finding no merit in petitioners' request, respondent denied it (See Exhibit 17, p. 86, BIR rec.). (See pp. 1-4, Memorandum for Respondent, June 12, 1961.)

The original assessment was as follows:

1955

Net income as per investigation ---------------	₱ 40,209.89
Income tax due thereon ---------	₱ 8,042.00
25% surcharge ----------------	2,010.50
Compromise for non-filing ------	50.00
Total -----------------------	₱ 10,102.50

1956

Net income as per investigation ---------------	₱ 69,245.23
Income tax due thefeon ---------	₱ 13,849.00
25% surcharge ----------------	3,462.25
Compromise for non-filing -----	50.00
Total -----------------------	₱ 17,361.25

(See Exh. 13, page 50, BIR records)

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Upon further consideration of the case, the 25% surcharge was eliminated in line with the ruling of the Supreme Court in Collector v. Batangas Transportation Co., G. R. No. L-9692, Jan. 6, 1958, so that the questioned assessment refers solely to the income tax proper for the years 1955 and 1956 and the "Compromise for non-filing," the latter item obviously referring to the compromise in lieu of the criminal liability for failure of petitioners to file the corporate income tax returns for said years. (See Exh. 17, page 86, BIR Rrecords.)

It is alleged on behalf of petitioners that they did not organize a partnership; that they are merely co-owners of the properties left by the deceased; and that although a project of partition was submitted to and duly approved by the probate court, no actual partition took place, some of the heirs being minors at the time and in view of the impracticability of actually dividing some of the properties. Reliance is placed upon Article 1767 of the Civil Code which provides that -

> "By the contract of partnership two or more persons bound themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits among themselves."

and upon Article 1769 which provides that "Co-ownership or co-possession does not of itself establish a partnership, whether such co-owners or co-possessors do or do not share any profit made by the use of the property."

In this case, however, petitioners did not limit themselves in holding the properties inherited by them. They bought real property for the purpose of resale, as in fact the same was resold at a considerable profit. They also engaged in the purchase and sale of corporate securities from which they realized substantial profits. The evidence shows that the bulk of the earnings and profits of petitioners during the years under review were derived from transactions entirely unrelated to the properties inherited by them. (See statement of income and expenses for 1955 and 1956, pp. 63 and 71, C.T.A. records.) And they divided the profits among themselves proportionately in accordance with their shares in the inheritance. (See pp. 61 and 68, C.T.A. records.) Under the circumstances, we are of the opinion that petitioners established a partnership, and, as such, subject to the corporate income tax under Section 24 of the Revenue Code, in relation to Section 84 (b) of the same Code.

It is also contended that there was no intention on the part of petitioners to form a partnership. For tax purposes, the intention of the parties is not essential. What is important is the nature of the transactions and the result thereof.

It is also argued that no partnership could have been constituted by petitioners because, under Article 1771 of the Civil Code, it is essential that, where real property or real rights are contributed, the partnership agreement must be embodied in a public instrument. It is enough to state here that under Section 84(b) of the Revenue Code, the term "corporation" includes partnerships (except registered general copartnerships), no matter how created or organized. Therefore, the fact that petitioners failed to comply with certain requirements for the validity of the partnership agreement does not militate against the taxability of such partnership as a corporation.

Finally, petitioners contend that Lorenzo T. Ona shared the profits from his transactions with his children solely because of his love for them and of his desire to provide for their support and not because they are legally entitled to such shares. It would seem from this line of reasoning that since the various transactions from which profits were derived were entered into exclusively in the name of Lorenzo T. Ona, his children by the first marriage (the other petitioners) are not entitled to share in said profits, as in fact there was "no actual cash delivery to them." (See pages 6-7, Memorandum for Petitioners.) This appears to be a very bold admission. If, as now alleged, said profits belong exclusively to Lorenzo T. Ona, he alone would be subject to income tax on the entire income. Consequently, it would seem that he made a gross underdeclaration of his incomes for the years 1955 and 1956 when he declared only one half thereof, in his income tax returns, the other half having been declared by the other petitioners herein in equal proportion for the purpose of evading payment of a bigger amount of income tax. Upon a careful review of the records of the case, we prefer to believe that petitioners formed an informal partnership and that the profits earned by the partnership pertained to them proportionately in accordance with their shares under the project of partition duly approved by the probate court.

Included in the assessment is the sum of ₱100.00

which is denominated as "compromise for non-filing" of corporate income tax returns for the years 1955 and 1956. As there appears to be no compromise agreement between petitioners and respondent which could be made the basis for the collection of said amount, the inclusion thereof in the assessment is unauthorized and illegal.

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby affirmed, except with respect to the compromise. Accordingly, petitioners are ordered to pay the sums of ₱8,042.00 and ₱13,849.00, or a total of ₱21,891.00, within thirty days from the date this decision becomes final, plus 5% surcharge and 1% monthly interest from December 15, 1958, subject to the provisions of Section 51 (e)(2) of the Revenue Code, as amended by Section 8 of Republic Act No. 2343. With costs against petitioners.

SO ORDERED.

Manila, July 31, 1961.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge