REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

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JULIETA LEDESMA,
Petitioner,

- versus - C.T.A. CASE NO. 691

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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D E C I S I O N

On February 27, 1956, the petitioner herein, Julieta Ledesma, filed her individual income tax return, Exhibit D, petitioner, also marked as Exhibit 1, respondent (pp. 49-56 BIR rec.) for the year 1955, claiming among others, the following items as deductions:

1. Losses on abaca plantation in Davao due to mosaic infestation ...... ₱21,278.09

2. Interest paid to the Estate of Don Julio Ledesma .... ₱ 5,083.76

However, the above figures were subsequently recomputed, and the deduction for alleged losses of abaca as it now stands by agreement of the parties, is ₱14,628.69 instead of ₱21,278.09 and the interest paid ₱5,073.86 instead of ₱5,083.76. (pp. 127, 146 CTA rec.)

After due investigation, the respondent Commissioner of Internal Revenue disallowed the two items (Exh. 2, p. 59 BIR rec.) as a result of which the amount of ₱11,236.00 was assessed (Exh. 3, p. 60 BIR rec.)

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against the petitioner as deficiency income tax for the year 1955.

On May 14, 1956, the petitioner paid under protest the amount of ₱5,618.00, representing 50% of the amount assessed under Official Receipt No. 460769, Exhibit 5 (p. 18 BIR rec.) leaving a balance of ₱7,961.38, inclusive of 5% surcharge, compromise penalty and interest computed up to August 15, 1959. As computed and summarized by the parties, should we sustain in this appeal the claim for deduction of the two questioned items, as the petitioner vigorously maintains we should, there would then be an overpayment in the amount of ₱1,052.00, the income tax due from the petitioner being only ₱4,566.00 deductible from the amount of ₱5,618.00 paid on May 14, 1956 (pp. 127, 146, 151 CTA rec.). The petitioner, through her accountant, filed two claims for refund and credit of the amount of ₱1,052.00 (p. 5 BIR rec.; Exh. 19, p. 68 BIR rec.) which were denied by the respondent in his letter, Exhibit 23 (pp. 89-90 BIR rec.) of July 14, 1959.

Hence, this appeal with respect to the denial of the claim for refund and/or credit of the amount of ₱1,052.00 and the deficiency assessment and demand for payment of the additional amount of ₱7,961.38 inclusive of surcharge, penalty and interest.

The defenses of the respondent, as may be gathered from his answer; the evidence adduced in his favor; and, his memorandum are threefold, to wit:

1. That the total loss of abaca plants in the Julieta Plantation due to mosaic infestation, with a total value of ₱14,628.69, which was claimed as a deduction in petitioner's income tax return for 1955, was not actually sustained that year but the year previous and, therefore, under Section 30 (d)(1)(A) of the Tax Code, said loss is not deductible for the year 1955, but the taxable year or years when such total loss was sustained. (pp. 2-4, Respondent's Memo.);

2. That there is a discrepancy of ₱641.00 between the interest payments shown in the receipts, Exhibits A, A-1 and A-2 (pp. 108-110 CTA rec.) and the interest income reflected in the income tax returns, Exhibits B, B-1 and B-3 (pp. 116-121 CTA rec.) of the Estate of Don Julio Ledesma, and therefore, "this unexplained discrepancy of ₱641.00 is material which lend credence to our contention that the interest payment in the alleged amount of ₱5,073.86 was not sufficiently proved to justify its deductions in petitioner's 1956 income tax return." (pp. 4-6, Respondent's Memo.); and,

3. That the claim for refund of the amount of ₱1,052.00 representing alleged overpaid income tax for the year 1955, is barred under Section 306 of the Tax Code, the said overpayment having been made on May 14, 1956, while the instant petition for review was filed on August 27, 1959, or over two (2) years from the date of payment (pp. 6-7, Respondent's Memo.).

The Supreme Court has repeatedly held in cases brought on appeal before our Court, that all presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. As a logical outgrowth of said presumption in favor of the Government, when such assessments are assailed, the burden of proof is upon the taxpayer to show clearly that the assessment was erroneous, in order to relieve himself from it (Inter-provincial Autobus vs. Collector, G.R. No. L-6741, Jan. 31, 1956; Collector vs. Bohol Land Trans. Co., G.R. Nos. L-13099 & 13462, April 29, 1960).

Has the petitioner overthrown by her evidence the presumption of correctness of the questioned deficiency assessment made by the respondent?

With respect to the first disallowance, the respondent does not challenge petitioner's total loss of abaca plants in her plantation amounting to ₱14,628.69 due to mosaic infestation. The controversy centers on the particular year or years when such loss or losses occurred. While the respondent maintains that the total loss occurred in 1954 and therefore deductible for income tax purposes in that particular year, the petitioner insists that it was in the middle part of 1955 when all the abaca plants including the new seedlings planted on the forty (40) hectares of the Julieta Plantation were totally destroyed because the mosaic infestation had eventually gone beyond control and the plantings beyond salvage that particular year.

According to Pilar Goyena, Manager from 1951 to 1955, of the Julieta Plantation in Davao, in the year

1951, only thirty (30) hectares of the farm under her management were planted to abaca; that she gradually increased the planted area to forty (40) hectares the next two years; that in 1953, one-third (1/3) of the abaca plantation became infested with mosaic; that in order to save the crop, she applied chemicals and at the same time uprooted the plants infested beyond cure; that since 1953, she started and kept on replacing the diseased plants with new seedlings bought from the local government nursery; that notwithstanding her efforts to prevent the spread of the disease, about 2/3 of the original area of 30 hectares planted to abaca was infested by the disease in 1954; that in the early part of 1955, all that was left on the forty (40) hectares were the new plants which she began planting in 1953, and which she was likewise forced to destroy in the middle part of that year because the infestation went beyond control and cogon grass started to grow profusely; and, that towards the end of that year, she destroyed all the remaining abaca plants on the plantation and planted instead coconuts, corn and palay. (pp. 9-14 t.s.n.)

The testimony of Pilar Goyena to the effect that the total destruction of the abaca plants took place in 1955 was corroborated by Simeon Alfeche, a laborer of the Julieta Plantation in Davao from 1951 to 1955 (pp. 47-57 CTA rec.) and Jorge Bolivar, overseer of the plantation from June 1951 to the present time (pp. 59-65 t.s.n.).

German S. Yap, a Certified Public Accountant of Davao who kept the books of accounts of petitioner since 1952, declared that according to their records the Julieta Plantation had abaca sales in 1953 amounting to ₱3,370.30; that starting 1952, he depreciated petitioner's abaca plants at 5% yearly on the bases of its total capitalization of ₱26,597.61; that he applied the rate of 5% as depreciation because the normal productive life of an abaca plant is twenty (20) years; that for 1953, he applied the same rate of depreciation; that for 1954, he stepped-up the depreciation to 10% because the abaca plants in the Julieta Plantation were greatly infested with mosaic and from his experience as a resident of Davao, once the infestation has crept in, it is impossible to save 99% of the diseased plants no matter what remedial measures are taken; that in 1954, the plantation still had small sales of abaca though not on a commercial scale; that on January 31, 1956, he wrote a letter to the petitioner recommending that the abaca plants account of her hacienda be written off from her books in its entirety for the year 1955, since her abaca plants were entirely beyond salvage and totally destroyed that particular year; and, that following his recommendation, the petitioner instructed her bookkeeper-accountant, one Atty. Sumbingco, to debit as a loss in her books the balance of the asset account of ₱21,278.09 for the year 1955. (pp. 29-39 CTA rec.)

We find the testimony of the four witnesses for the petitioner, as summarized above, quite credible and therefore accord it full weight. We are amply convinced that the total loss of abaca plants in the plantation of petitioner amounting to ₱14,628.69 took place in 1955 as satisfactorily established by her four witnesses and, therefore, under Section 30 (d)(1)(A) of the Tax Code, she is entitled to deduct said loss in her income tax return for 1955 and not the previous year as insisted by the respondent.

BIR Agent Bienvenido Entienza who investigated this case and conducted an ocular inspection of petitioner's plantation for the first time on June 26, 1957, testifying for the respondent declared that one Mrs. Amparo Balagtas, who owns the adjoining hacienda, told him that "her abaca plants were infested with mosaic pest in 1952 and the mosaic pests spread to the other plantations including the Julieta Ledesma Plantation which was totally destroyed in 1954"; that because of the insistence of German S. Yap, Auditor of the petitioner, and Jorge Bolivar, her overseer, who accompanied him during the ocular inspection, that the total loss of the abaca in the plantation of petitioner actually occurred in 1955 and not 1954, he (Entienza) went to the Office of the City Assessor of Davao to check the Real Estate Tax Declaration on the property and found from the records that the administrator of the hacienda, Pilar Goyena, who filed the 1954 Tax Declaration, Exhibit 11-B (p. 123 CTA rec.) for her employer, made no mention at all of the existence of abaca plants on the land for that particular year; that he also checked the records of the local Plant Pest and Disease Control Office of the Bureau of Plant Industry and from the information he gathered from Celso J. Palma Gil, the Provincial Officer in charge, the abaca mosaic eradication work in the district where petitioner's plantation is located was undertaken in 1952 and 1953; that he was not able to see for himself all of the fifty-three (53) hectares of the Julieta Plantation during his ocular inspection but according to information, there were no more abaca plants on the farm but instead palay, corn and coconuts were planted; and, that in his report to his superiors dated July 15, 1957, he made no specific recommendation for the disallowance of this questioned item (pp. 68-94 t.s.n.).

Pilar Goyena, who prepared the Real Estate Tax Declaration of the petitioner for 1954, has satisfactorily explained the alleged omission being imputed to her by BIR Agent Entienza, which was made the principal basis by the respondent for the disallowance of the abaca loss. According to this witness, she did not declare the abaca plants existing on the land in the Tax Declaration for 1954, which she prepared for the petitioner "because in 1954, when the abaca was still growing, it was very short and I thought it would not be of a commercial value any more. So, what we used to strip there, we just used it for the purpose of the

Hacienda; for the carabaos and other uses for the Hacienda only and not for commercial purposes" (pp. 18-19 t.s.n.).

Considering that the investigation and ocular inspection by BIR Agent Entienza took place on June 26, 1957, or about two years after the occurrence of the alleged loss, and that the information he gathered during said investigation as regards the particular year when such loss occurred was not of his own personal knowledge but purely hearsay, his testimony cannot be made to prevail over the declarations of the four witnesses for the petitioner who stated categorically of their own personal knowledge that the total loss of petitioner's abaca plants on her plantation took place in the year 1955.

We take judicial notice of the fact that destruction by plant disease such as the case now before us, is a slow and gradual process, unlike damage by fire, typhoon, floods and other sudden calamities and, as a general rule, it takes time before one can ascertain the extent of his actual damage and exact amount of his loss.

We hold, therefore, that the respondent erred in disallowing this item amounting to ₱14,628.69 as income tax deduction of the petitioner for the year 1955.

Let us come now to the second controversial item - the interest paid in 1955 by the petitioner to the Estate of Don Julio Ledesma which was also disallowed by the respondent from her income tax return for said year.

According to Carlos Ledesma, administrator of the estate of his deceased father, Don Julio Ledesma, he and his sisters, the petitioner herein and Mrs. Amparo L. Gustilo, bought the Hacienda La Fortuna from their father in 1948 on installment basis; that in the deed of sale they agreed to pay interest on the balance of the purchase price; that in 1955, as in previous years, he and his sisters paid the interest agreed upon in the total amount of ₱15,251.27, 1/3 of which or ₱5,073.76 corresponded to his sister Julieta; that as administrator of the Estate of Don Julio Ledesma, he issued in the name of the estate, the corresponding receipts, Exhibits A, A-1 and A-2, (pp. 108-110 CTA rec.) to himself and his co-heirs, evidencing payment of said interest; that he requested his sister Amparo to sign said receipts because he was absent from Negros Occidental most of the time; that he also declared this income as in previous years, in the income tax return of the estate for 1955 as reflected in the income tax return Exhibit B-1 (pp. 119-120 CTA rec.); and, that he himself deducted his share in the interest paid to the estate from his individual income tax return which was never questioned by the Bureau of Internal Revenue. (pp. 2-7, 39-46 t.s.n.)

As the record will show, the only grounds relied upon by the respondent for the disallowance of this particular item are (a) the failure of petitioner to present, during the initial investigation conducted by

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BIR Agent Entienza, which she eventually did, however, during the hearing of the case before us, the supporting documents evidencing said interest payment; and, (b) the mathematical computation of the interest paid wherein the respondent claims there is a discrepancy of ₱641.00 by simple comparison of the receipts and income tax returns.

After a careful examination of the supporting documents regarding this item, the genuineness and due execution of which is not challenged by the respondent, we believe he should now be convinced as we are, that the petitioner actually paid in 1955 interest amounting to ₱5,073.76 to the estate of her deceased father.

Certainly, the administrator of the estate of Don Julio Ledesma would not have declared in the income tax return of the estate for 1955 as in previous years, as he did, these interest payments as part of the income of the estate, thereby exposing said estate to the payment of a much bigger income tax were it not true that the heirs actually paid the same to the estate. A sensible taxpayer, no matter how accommodating he may be, will certainly not expose his own personal interest to all kinds of tax complications without any material benefit to himself by going all out to help another taxpayer evade taxes.

And with respect to the alleged discrepancy of ₱641.00 in the interest payment alleged by the respondent as another ground for disallowance of the entire item, the petitioner's counsel with the aid of her accountant (pp. 4-5 Petitioner's Reply Memorandum; Annex A of CPA Sumbingco), have shown in mathematical detail to our satisfaction that based on the accrual method of accounting, the alleged discrepancy does not exist at all. Therefore, the full item of ₱5,073.76 representing interest payments for the year 1955 should have been allowed by the respondent as a deduction.

Moreover, there is another circumstance tending to support the theory of petitioner that her case was investigated haphazardly by BIR Agent Entienza and that even the officials of said Bureau who had something to do with her case, were not in full accord as to the validity of the deficiency assessment. Regional Director Rodolfo D. Bernabe, in his written authority to change assessment, Exhibit E (p. 71 BIR rec.) recommended the following:

> "Losses on abaca plantation in Davao due to Mosaic which was disallowed in the original office audit is allowed as deduction as per report of the Davao PRO that same was actually incurred during the year and that interest under schedule A of the return is likewise allowed for the same was actually paid during the year to the Estate of Julio Ledesma on account of her liability. Such interest was also reported in the income tax return of the Estate of Julio Ledesma. ₱5,618.00 was paid under OR#460769 on May 14, 1956."

However, with respect to the claim for refund of the amount of ₱1,052.00 representing overpaid income tax for the year 1955, we fully agree with the decision of the respondent denying petitioner's claim for refund of said amount. Under Section 306 of the Tax Code, petitioner's action for refund is barred, the payment having been made on May 14, 1956 as evidenced by Official Receipt No. 460769 and the instant petition for review having been filed on August 27, 1959, or more than two (2) years from the date of payment. (Gibbs vs. Collector, G.R. No. L-13453, Feb. 29, 1960; Collector vs. J. N. Sweeney, G.R. No. L-12178, Aug. 21, 1959; P. J. Kiener Co. vs. David, G.R. No. L-5163, April 22, 1953; College of Oral & Dental Surgery vs. C.T.A., G.R. No. L-10446, Jan. 28, 1958.)

WHEREFORE, in view of the foregoing considerations, we hereby declare that there is no deficiency income tax due from and payable by petitioner Julieta Ledesma for the year 1955. However, her claim for refund of the amount of ₱1,052.00 should be, as it is hereby denied, for having been filed out of time. No costs.

SO ORDERED.

Manila, February 15, 1962.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge