REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ALFONSO FAVIS, ARTURO
FAVIS or FAVIS CAR
EXCHANGE,
Petitioners,

- versus - C.T.A. CASE NO. 97

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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October 18, 1956

DECISION

This is a petition for review of the decision of the respondent Collector of Internal Revenue assessing against and demanding from the petitioner Favis Car Exchange the sum of ₱2,511.00 representing sales tax on one (1) 1950 Chevrolet automobile alleged to have been originally purchased by it from a certain Lt. H. N. Maragides of the United States Navy with station at Cavite City.

During the hearing of this case, the respondent asked for the dismissal of the petition for review originally filed by Alfonso Favis on the ground that he was not the owner of the Favis Car Exchange although some of the correspondence sent by the respondent were addressed to Alfonso Favis. In view of this seeming confusion, by mutual agreement of the opposing counsels and upon suggestion of the Court, however, an amended petition for review impleading Arturo Favis the owner of said car exchange and the Favis Car Exchange itself as party petitioners.

From the evidence adduced it appears that in a "Report of Sale of Motor Vehicle" dated January 20, 1953 (Exhibit "7") Lt. H. M. Maragides gave notice to the Commanding Officer, U.S. Naval Station, Subic Bay, of the sale to the Favis Auto Exchange, Taft Avenue, Manila, of one (1) Chevrolet, Tudor Sedan, Fleetline de Luxe, 1950, bearing engine serial No. HAM 198779, body serial No. 14 HRD 66495 belonging to the former. On the basis of a copy of said report furnished the respondent, he assessed and demanded from the Favis Car Exchange the amount of ₱2,511.00 (Exhibit "1", p. 4, BIR rec.) as sales tax on the car in question in accordance with a ruling of the Secretary of Finance dated September 29, 1952 to the effect that the first <u>bona fide</u> purchaser of motor vehicles brought in tax free by members of the United States Armed Forces stationed in the Philippines shall be liable to the payment of the compensating or sales tax, as the case may be.

This assessment was protested at first by petitioner Arturo Favis, owner of Favis Car Exchange but was later joined by Alfonso Favis. Petitioners maintain that neither Alfonso Favis or Arturo Favis, nor the Favis Car Exchange is liable for said tax for the reason that the car in question was not acquired by any of them. Meanwhile, the case was heard by the Conference Staff of the Bureau of Internal Revenue and in turn further investigation was conducted by revenue agent to determine the true purchaser of the car in question. Petitioners presented a certified true copy of a motor vehicle certificate of Registration of said car showing that one Jose Crisologo of 844 Vito Cruz, Manila, was the purchaser thereof from Lt. H. M. Maragides. And on his part, Alfonso Favis executed an affidavit dated October 23, 1953, wherein he stated that the car in question was purchased by Jose Crisologo, his first cousin, who borrowed from him the sum of ₱4,500.00 with which to purchase the car, the said amount to be paid back as soon as the car has been sold.

From a report submitted by assistant revenue agent Mazzar M. Mingoa, it appears however that Jose Crisologo was formerly employed as helper of the Favis Car Exchange and is living in a "barong-barong". He could not have purchased the car in question for the sum of ₱4,500.00 nor would anybody loan that amount without any security, as in fact no security was given. Furthermore, during the first investigation of the case, Jose Crisologo admitted that the sum of ₱4,500.00 was not his own, although he later voluntarily assumed liability for the payment of the sales tax in question. From these circumstances the respondent therefore concluded that there was a desire on the part of Alfonso Favis to evade the payment of the sales tax and that placing the car in question in the name of Jose Crisologo was a devise for this purpose. Thus, in his letter dated August 26, 1954, the respondent reiterated his demand for the payment of the sum of ₱2,511.00 from the Favis Car Exchange from which decision this appeal was interposed.

The questions now before us are: (1) Whether or not the petitioners herein are the first bona-fide purchasers of the car in question; and (2) in the affirmative, whether or not they are liable for the payment of the sales or compensating tax thereon. These questions are more factual than legal.

The respondent Collector of Internal Revenue, in support of his contention that the Favis Car Exchange was the first bona-fide purchaser for value of the car in question from Lt. Maragides, mainly relies on the "Report of Sale of Motor Vehicle" marked as Exhibit "7", which is alleged to be a copy of the seller's report to his commanding officer relative to the sale of the car in question, as well as on the investigation report and testimony of BIR agent Hazzar M. Mingoa to the effect Jose Crisologo, the registered purchaser and owner of the said car, was in no financial position to purchase the same or any car for that matter.

On the other hand, the petitioners rely on the following documents to show that Jose Crisologo was the real purchaser and eventual owner of the car in question: (1) Exhibit "B", Certified true copy of the "Deed of Sale" from Lt. Maragides to Jose Crisologo, duly signed, notarized, and attested to by witnesses; (2) Certified true copy of the "Certificate of Registration" of the car in question found in Annex "A" of the report of BIR agent T. Surisantos (p. 30, BIR rec.); and (3) Exhibit "F", Certified true copy of the "Deed of Sale" from Jose Crisologo, vendor, to Luneta Motors Co., vendee, duly signed and notarized. Likewise, the petitioners presented the following records of the Favis Car Exchange which show no entry which may indicate that it had dealt with or purchased the car in question: (a) Exhibit "A", 1953 Ledger Book of Arturo Favis, owner of the Favis Car Exchange; (b) Exhibit "B", Columnar Cash Journal of Arturo Favis for 1953; (c) Exhibit "C", 1953 Journal Book of Arturo Favis, and (d) Exhibit "D", Working papers of summary of purchases for 1953-1954 of the Favis Car Exchange prepared by its Cashier and Bookkeeper, T. L. Bucay. In addition, the petitioners also submitted in evidence Exhibit "G", which is an affidavit of Alfonso Favis confirming a loan of ₱4,500.00 extended to Jose Crisologo sometime in January 1953. The latter used this sum of money for the purchase of the car from Lt. H. N. Maragides, the loan having been repaid sometime in March, 1953.

From these documentary evidence presented for the consideration of the Court, we observe that the "Report of Sale of Motor Vehicle" (Exhibit "7", p. 2, BIR rec.) does not bear the signature of Lt. Maragides, nor does it contain any other signature, initial, stamp, mark, seal or notation to indicate that it is an official correspondence of the responsible officials of the

U. S. Armed Forces. Neither is there any notation or indication to identify that the same has been officially transmitted to the Motor Vehicles Office or the Bureau of Internal Revenue. We have gone over the records of the case, and except for the statement in the decision of the Conference Staff of the Bureau of Internal Revenue to the effect that "the sale of the car in question is evidence by the Notice of Sale of Motor Vehicles usually furnished the Motor Vehicles Office by the U. S. agency with which the Army and Navy personnel making the sale is usually connected", we can not find any basis to regard said Exhibit "7" with the same probative strength accorded to it by the respondent. Moreover, the fact that the statements contained in said Exhibit "7" are neither under oath or affirmation greatly weekens whatever probative value it has.

On the other hand, we have before us the two "Deeds of Sale", Exhibits "E" and "F" and the Certificate of Registration of the car in question all of which are public documents. Even standing by themselves, uncontroverted by evidence of greater or equal weight, we find these document sufficient to establish the proposition that Jose Crisologo and no other was the first bona fide purchaser of the car in question and eventual owner of the same. In the absence of a showing that the Favis Car Exchange has been irregular in the keeping of its books of accounts, the presumption is that the transactions of the said Favis Car

Exchange have been fair and regular and that it has been following the ordinary course of business. (Rule 123, section 69, subsections (p) and (q), Rules of Court.) It is our considered opinion therefore that Exhibits "A" to "D" inclusive of the petitioners negates any dealing by Favis Car Exchange in said car and at least establishes prima facie that the Favis Car Exchange was not a purchaser bona fide of the car in question.

The fact that Jose Crisologo purchased the car herein involved and registered the same in his own name, then sold the afore-mentioned car in the concept of an owner to the Luneta Motors Co. as established by Exhibit "G" nullifies the contention of the respondent that Jose Crisologo could not have been bona fide purchaser and owner thereof. The respondent however insists that the funds with which the car was purchased had presumably come from the Favis Car Exchange, and thus said Car Exchange and not Jose Crisologo should be deemed as the real purchaser of the same. We find no sufficient evidence to support this inference. In the first place, we are not quite convinced that the funds used for the purchase of the car in question came from the Favis Car Exchange, for it was not Arturo Favis the owner thereof, who extended the loan to Jose Crisologo but his brother Alfonso Favis. Any inference that the loan was in fact made by Arturo Favis is not supported by the evidence and neither ~~can~~ we further infer that Alfonso Favis obtained the money loaned to Jose Crisologo from Arturo Favis. And in the second place, even granting for the sake of argument that the money for the purchase of the said car came from the Favis Car Exchange, the fact that Jose Crisologo purchased and registered the same car in his own name and later sold it as owner thereof cannot outweigh the presumption that Jose Crisologo was in truth and in fact the purchaser and owner of the car in question.

> "Purchase in one's own name with another's money generally gives title to the purchaser, without prejudice to the action of the owner of the money with respect to the investment". (Enriquez v. Olaguer, 25 Phil. 541)

After having weighed in the balance all the evidence, documentary and oral, submitted before us for consideration, we find the scale overwhelmingly tilted in favor of the petitioners. The respondent however, arguing with seeming conviction, would want this Court to believe that all the documentary evidence presented by the petitioners, such as the deeds of sale, the registration of the car, the books of accounts, and the affidavit of Alfonso Favis are subtle artifices resorted to by petitioners attesting to their consumate skill in tax evasion. In other words, respondent would have us make a finding that the petitioners acted with fraudulent intent to evade taxes lawfully due, notwithstanding the absence of clear and convincing proof on the same. This we cannot do without running counter to the established jurisprudence that fraud is never presumed and that he who alleges the same must prove it by clear and convincing proof.

In view of the foregoing we are of the opinion and so hold that the petitioners Alfonso Favis, Arturo Favis and Favis Car Exchange are not the first bona fide purchasers for value of the car sold by it. Maragides. The Favis Car Exchange not falling within the purview of section 190 of the Revenue Code, it should not therefore be made to pay the alleged sales tax due on the first sale of the car in question. With this conclusion, we no longer find any necessity to discuss the other issues raised in this case which has already become moot and academic.

WHEREFORE, the decision of the respondent Collector of Internal Revenue dated August 23, 1953 is hereby reversed and the assessment of ₱2,511.00 against the Favis Car Exchange ordered withdrawn and cancelled. Consequently, the constructive distraint and levy on the real and personal properties of the latter should be, as it is hereby, ordered lifted, with no pronouncement as to costs.

SO ORDERED.

Manila, October 18, 1956.

MARIANO NABLE
Presiding Judge

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CUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO did not take part.