Library

July 30, 1965

ISHAR SINGH,
Petitioner

versus CTA CASE NO. 1167

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

DECISION

This case refers to a claim for refund in the amount of ₱17,018.08, representing percentage taxes for the period from February 28, 1957 to October 5, 1960, inclusive.

The parties agreed and stipulated on the facts, the pertinent portions of which are as follows:

> "2. That petitioner operates the Honest Watchman Agency with place of business situated at Manila, Philippines.
>
> "3. That pursuant to Section 191 of the National Internal Revenue Code, which provides in part, to wit:
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> > '... printers and book-binders, business agents and other independent contractors, shall pay a tax equivalent to three per centum of their gross receipts.'
>
> the respondent taxed the petitioner and the latter paid the corresponding taxes therein set forth in the total sum of ₱17,018.08 under the following official receipts and on the dates respectively hereafter named:

Official Receipt Number	Amount	Date
B-0549405	₱ 352.29	February 28, 1957
B-0541365	285.00	March 8, 1957
B-0559645	286.75	April 10, 1957
B-0573115	278.92	May 8, 1957
B-0583275	320.00	June 6, 1957
B-0593836	325.00	July 8, 1957
Serial #0097463	323.29	August 6, 1957
Serial #0108606	299.40	September 4, 1957
Serial #0120656	311.92	October 7, 1957
Serial #0411204	321.03	November 8, 1957
Serial #0420493	341.31	December 10, 1957
Serial #1157204	351.57	January 9, 1958
Serial #1193443	193.30	February 10, 1958
Serial #1492415	337.83	March 10, 1958
Serial #1506482	364.84	April 10, 1958
Serial #1591914	325.35	May 9, 1958
Serial #1634870	415.87	June 10, 1958
Serial #1789009	319.69	July 10, 1958
Serial #2014093	351.45	August 8, 1958
Serial #2038224	363.25	September 10, 1958
Serial #2169305	321.70	October 10, 1958
Serial #21-1628	341.68	November 20, 1958
Serial #2197847	287.61	December 12, 1958
A-065865	448.56	January 12, 1959
A-097973	369.52	February 10, 1959
A-321507	426.83	March 6, 1959
A-329058	511.00	April 1, 1959
A-355562	301.00	May 9, 1959
A-524931	367.74	June 8, 1959
A-584589	424.92	July 6, 1959
A-720507	435.09	August 7, 1959
A-774682	460.98	September 7, 1959
A-880030	427.95	October 6, 1959
A-929246	382.62	November 9, 1959
A-939160	445.20	December 4, 1959
A-1134255	469.20	January 7, 1960
A-1340208	406.26	February 5, 1960
A-1350970	476.82	March 4, 1960
A-1591236	410.10	April 11, 1960
A-1606125	364.53	May 9, 1960
A-1620728	543.96	June 10, 1960
A-2103757	466.86	July 11, 1960
A-2117160	483.39	August 5, 1960
A-2244418	569.76	September 5, 1960
A-2257757	406.74	October 5, 1960
T O T A L	₱17,018.08	

"4. That on October 21, 1960, the petitioner filed with the respondent a claim for refund of the said taxes paid by him, which claim was ordered for investigation on October

24, 1960, to determine whether or not said claim could be approved and that when petitioner filed the present action, the respondent was formulating his decision. (See Annexes 'A' & 'A-1'.)

"5. That under the decisional rules and jurisprudence applicable, the present petition may, under the circumstances, be filed without the necessity of awaiting the decision of the respondent commissioner, to avoid the running out of the 2-year prescriptive period.

"6. That the petitioner entered into contracts with the following:

Estrella del Norte (Levy Hermanos, Inc.)
Farmacia Rubi
Theo. Davies Co.
Shell House
Caltex Philippines
Sherwin Williams
Estraco
B. F. Goodrich
Investment & Financing Corporation
American Wire & Cable Co.
Tan-Chi Brother's Residence
Riverside Manufacturing Corp.
Mrs. Camus Residence

whereby the petitioner agreed to furnish the above-named parties watchmen services, as evidenced by the following documents attached hereto as Annexes 'B,' 'C,' 'D,' 'E,' 'F,' 'G,' 'H,' 'I,' and 'J.' With respect to the four parties, Farmacia Rubi, Investment and Financing Corporation, Riverside Manufacturing Corporation, and Mrs. Camus Residence, no written contract had been entered into with petitioner. (See also BIR Records, pp. 13, 15; 16-18; 19-22; 23-25; 26-27; 28-31; 32-35.)

"7. That the petitioner has collected from the above-stated companies the following amounts during the years 1957 to 1961:

1957 - - - - - - - - - -	₱103,854.40
1958 - - - - - - - - - -	142,443.28
1959 - - - - - - - - - -	167,575.81
1960 - - - - - - - - - -	195,595.00
1961 - - - - - - - - - -	91,431.00"

(Stipulation of Facts, CTA Rec., pp. 25-27.)

The issues raised in this case are:

1. Whether or not petitioner's claim for refund has already prescribed; and

2. Whether or not petitioner should be taxed as an independent contractor within the context of Section 191 of the National Internal Revenue Code.

On the issue of prescription, it appears from the afore-quoted stipulation of facts, that the taxes in question had been paid from February 28, 1957 to October 5, 1960. It also appears that the instant petition seeking the refund of the said taxes was filed on January 27, 1962.

As to the taxes paid from February 28, 1957 to January 27, 1960, inclusive, we find that the instant petition for review was filed beyond the statutory period of two (2) years provided by law, which reads as follows:

> "Recovery of tax erroneously or illegally collected. x x x In any case, no such suit or proceeding shall be begun after the expiration of 2 years from the date of payment of the tax or penalty." (Sec. 306, National Internal Revenue Code.)

The taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within two (2) years after the payment of the tax is a bar to the recovery of the same, irrespective of whether or not a claim for refund of such taxes filed with the Collector of Internal

Revenue is still pending action by the latter. (College of Oral & Dental Surgery v. Coll., G. R. No. L-10446, Jan. 28, 1958; Gibbs v. Coll., G. R. No. L-13453, Feb. 29, 1960.) Hence, the right of the petitioner to recover the taxes which were paid from February 28, 1957 to January 27, 1960 has already prescribed.

With respect to the other issue, petitioner contends that he is not an independent contractor within the purview of Section 191 of the Revenue Code because he receives instructions as to what to do, and how to do the work for his clients. Moreover, he invokes the rule of "ejusdem generis" that where general words follow the designation of particular things, or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated (Crawford, Sec. 191); and then concludes that the phrase "x x x and other independent contractors" mentioned in Section 191 of the Revenue Code should include only those enumerated in the said section. Petitioner further claims that his business is not similar to those enumerated in Section 191 of the Revenue Code, and therefore he cannot be taxed under the said law.

We had occasion to pass upon the question of whether a person is an independent contractor in the case of Balbas et al., v. Domingo, C. T. A. Case No. 951, Feb. 9, 1962, wherein the court set the following criterion:

> "'Whether a person is an employee or an independent contractor is an ultimate fact to be determined from the evidence, and it may be called a conclusion of fact, since it is a conclusion to be drawn from the contract itself, the attitude of parties toward each others, the nature of work and all relevant circumstances.' (Words and Phrases, Vol. 14, p. 572, citing Review Board of Unemployment Compensation Division of Department of Treasury v. Mammoth Life & Accident Ins. Co., 42 N.E. 2d 378, 382, III Ind. App. 660.) In this determination, 'there are many well-recognized and fairly typical indicia of the status of an independent contractor, even though the presence of one or more of such indicia in a case is not necessarily conclusive.' (27 Am. Jur., Sec. 5, p. 485.) However, the true test of the latter person 'would seem to be that he renders the service in the course of an independent occupation, representing the will of his employer only as to the result of his work, and not as to the means by which it is accomplished.' (Luzon Stevedoring Co. v. Trinidad, 43 Phil. 803, 807-808 citing In Re Unger, 22 Okla., 755; State vs. McNally, 45 La. Ann., 44, 46; Ney vs. Dubuque, etc., Railroad Co., 20 Iowa, 347, 352; Lehigh, etc. Co. vs. Central Railroad Co. of New Jersey, 29 N.J. Equity, 252, 255; State vs. Emerson, 72 Me., 455, 456; Todd vs. Kentucky Union Ry. Co., 52 Fed. Rep., 241, 247 [18 L.R.A., 305]; Hale vs. Johnson, 80 Ill., 185.)"

In the light of the test laid down in the above case, we will now determine the status of petitioner in the case at bar.

A cursory examination of the records reveals that the various contracts entered into between petitioner and his clients are almost of the same tenor. The former undertakes to furnish the latter with security guards or protection service. This obligation is common in all the contracts. For a better appreciation of the real nature of the business of petitioner, we are quoting below Article 5 of petitioner's contract with the Shell Company of the Philippines:

> "5. There shall be no employer-employee relationship between the AGENCY and/or its employees, on the one hand, and the COMPANY, on the other. The AGENCY shall have entire charge, control, and supervision of the work herein agreed upon, and the COMPANY shall in no manner be answerable or accountable for any accident or injury of any kind which may occur to any employee of the AGENCY during the time and consequent to the performance of the work under this contract; for any injury, loss or damage arising from the negligence or carelessness of the AGENCY or of any one in its employ to any person or persons or their property; nor for any amount, claim, or liability, civil or criminal, appertaining to licenses, taxes, permits for overtime work, or any other permits, all of which shall be for the account of the AGENCY; and the AGENCY hereby covenants and agrees to assume all liability for or on account of any injury, loss, or claim above described, and to save the COMPANY harmless therefrom.
>
> "It is further understood and agreed between the parties hereto that, although the AGENCY, in the performance of its obligations hereunder, is subject to the control or direction of the COMPANY merely as to the result to be accomplished by the work herein specified and not as to the means and methods for accomplishing such result, the AGENCY hereby warrants that it will perform the work in such manner as will be consistent with the achievement of the result herein contracted for, and

more particularly in consonance with paragraph 2 above set forth."

From the above-quoted provision of the contract, it appears that petitioner assumes the liabilities for injury to the guards, negligence or carelessness of petitioner or any of the guards, and those appertaining to licenses, taxes, permits for overtime work, or any other permits. This assumption of liabilities is a clear indication of the independent status of petitioner.

The instructions, contained in some of the contracts, relative to the duties of petitioner to check and verify all goods and merchandise being taken out of the premises, to prevent thefts or robberies, destruction or damage by fire or any other such calamity, which may occur in the premises under guard; and to report any such occurrence to the client and to the proper police authorities, do not affect the status of petitioner as an independent contractor because they are necessary and appropriate to ensure the performance of the obligation of the contractor under the contracts.

Furthermore, it appears that petitioner has under his employ about fifty watchmen, more or less (BIR Records, p. 36), who are all under his own personal responsibility, and that there is no employer-employee relationship between him and his clients. The former has the entire control and supervision of the work agreed upon. The petitioner is subject to the control of the client merely as to the result to be accomplished. He represents the will of his clients only as to the result of his work, and not as to the means by which it is accomplished. Indisputably, such circumstances show that petitioner is an independent contractor.

Moreover, it is to be noted that Section 191 of the Revenue Code has undergone several amendments. As gathered from House Bill No. 5809, which became Republic Act No. 1612, the manifest congressional intent is to broaden the scope of the law to include other activities of the nature which is essentially sales of services and are heretofore enjoying exemption from tax in view of the deficiencies of the law (See Congressional Rec., House of Rep., 3rd Congress, 3rd Reg. Session - 1956, Vol. 6, Nos. 74-76, pp. 2946-2947).

The doctrine of "ejusdem generis" is but a rule of construction adopted as an aid to ascertain and give effect to legislative intent when the intent is uncertain or ambiguous; it should not be so applied as to defeat the purpose of the law. In other words, the doctrine is not of universal application. Its application must yield to the manifest intent of Congress (Genato Commercial Corp. v. Court of Tax Appeals, et al., G. R. No. L-11727, Sept. 29, 1958).

Finding no merit in the herein appeal, the same has to be, as it is hereby, dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, July 30, 1965.

TEOFILO D. REYES, SR.
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Judge Afurong did not take part.