Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARLOS O. YSMAEL, SR.,
Petitioner,

- versus - C.T.A. CASE NO. 3113

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

12/4/82

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing against and demanding from petitioner the payment of deficiency income tax for 1967, 1968 and 1969 in the respective amounts of ₱190,517.04, ₱1,096,119.36, and ₱686,819.52, or a total of ₱1,973,455.92.

On July 31, 1970, in a sworn statement filed with the office of respondent Commissioner of Internal Revenue, an informer denounced therein petitioner for having sold real estate properties without paying the tax on gains realized therefrom. (p. 35, BIR rec.) In the denunciation, the informer submitted photostat copies of the deeds of sale evidencing the transactions. (pp. 8-34, BIR rec.)

Acting on the confidential information by said informer, a group of revenue examiners conducted an investigation, and thereafter submitted their report and recommendation dated March 3, 1972. (pp. 96-97, BIR rec.)

It was ascertained in the investigation that petitioner have not reported in his 1967 income tax return, his income derived from (1) the sale of a Makati property to Gonzales Lao & Co., and (2) the sale of a San Lazaro property to Fernando Busuego.

It was further ascertained in the investigation that in 1968, petitioner had realized on the sale of real properties a gain of ₱832,892.38, but instead of reporting said amount, he reported only gain in that year of only ₱57,714.00. It was found out in the investigation that in the same year, 1968, petitioner had an understated income in his current account in the amount of ₱264,619.94.

Finally, it was also shown in the report that for the year 1969, he has understated his income in his current account in the amount of ₱681,399.42.

Based on this report and findings, respondent, in a letter dated March 16, 1972 (p. 105, BIR rec.), invited petitioner for a conference, which was twice reset. After the second resetting of the conference, petitioner's counsel, in a letter dated August 18, 1973, informed respondent that petitioner had availed of the tax amnesty under Presidential Decree No. 23 on April 1, 1973, which availment had been confirmed by the Tax Amnesty Implementation Officer of the Bureau of Internal Revenue. (pp. 121, 136, BIR rec.)

Notwithstanding the information given by petitioner to the effect that he had availed of Presidential Decree No. 23 which provided for tax amnesty to certain taxpayers, respondent sent on March 16, 1978, a letter of assessment and demand holding petitioner liable for deficiency income tax for 1967, 1968 and 1969 in the total amount of ₱1,973,455.92, inclusive of surcharge and interest and requesting petitioner to pay the amount not later than April 17, 1978. (pp. 154-157, BIR rec.) A little over two months after the issuance of the aforesaid assessment, a warrant of distraint and levy was issued on July 24, 1978 against the real properties of petitioner to effect the summary collection of the aforesaid deficiency income tax liabilities and which was served on petitioner's counsel on August 23, 1978. (p. 168, BIR rec.)

On September 20, 1978 (pp. 178-179, BIR rec.), petitioner, thru counsel, protested the assessment insisting that he should not be held liable for the deficiency income taxes as he had availed of the tax amnesty under Presidential Decree No. 23, as amended, which protest was denied by respondent in his letter-decision of April 28, 1980. (pp.189-190, BIR rec.).

Hence, petitioner appealed to this Court.

The only issue raised in this appeal is whether or not respondent could validly assess and demand from petitioner deficiency income tax for 1967, 1968 and 1969 in the amount of ₱1,973,455.92 despite the fact that petitioner availed of the tax amnesty provided under Presidential Decree No.23, as amended.

Petitioner contends that having availed of the immunities granted under Presidential Decree No. 23, as amended, from all investigations, both civil and criminal, with respect to previously untaxed income earned or realized prior to 1972, the deficiency income tax assessment issued against him for the years 1967, 1968 and 1969 in question is in violation of said decree, and hence, is illegal. Petitioner also cites, in support of his stand, a letter of respondent cancelling the deficiency income tax assessed against him for

1967 in the amount of ₱47,235.40 on the ground of his having availed of Presidential Decree No. 23, as amended.

Respondent contends otherwise, asserting in effect, that petitioner cannot avail of the benefits granted under Presidential Decree No. 23, as amended by Presidential Decree No. 67, because taxpayers against whom a valid information under Republic Act No. 2338, denominated as Confidential Information No. 381-3 in this instant case, has been filed as early as July 31, 1970, or prior to the effectivity on October 20, 1972 of Revenue Regulation No. 8-72, which implements Presidential Decree No. 23.

We agree with the claim of respondent.

To this end, this Court takes the privilege of quoting verbatim, the pertinent portion of respondent's memorandum (pp. 5-8, "Memorandum for Respondent", at pp. 58-61, CTA rec.), to which we are in fullest agreement:

> Benefits granted by Presidential Decree 23, as amended, not available to petitioner.
>
> Petitioner contends that subject deficiency income tax assessments for 1967, 1968 and 1969 are violative of the provisions of Presidential Decree No. 23, as amended, which expressly

grants immunity from all investigations, whether civil or criminal, to those who availed of the tax amnesty under the decree with respect to previously untaxed income earned or realized prior to 1972. It is claimed that since petitioner took advantage of the privileges granted by the decree, respondent erred in issuing subject assessments. In further support of his stand, petitioner cites a letter dated 15 February 1978 whereby respondent cancelled the deficiency income tax assessed against petitioner for 1967 in the amount of ₱47,235.40, upon his availment of Presidential Decree 23, as amended.

The contention is without merit.

Presidential Decree 23 was issued on 16 October 1972. Pertinent portion thereof is hereunder quoted:

> 'Section 3. After the tax imposed under this Decree shall have been paid, the taxpayer shall be cleared of all investigations, whether civil or criminal, insofar as such previously untaxed income is concerned.'

On 20 October 1972, Revenue Regulation No. 8-72, implementing Presidential Decree No. 23, was issued, pertinent portion of which is quoted as follows:

> 'Section 2. The term "previously untaxed income" means:
>
> (a) In the case of an individual, all gains, profits or income which he, knowingly or unknowingly, failed to declare for income tax purposes in any year prior to 1972. If such be incapable of exact determination then the total increase in his equity or networth up to calendar year ending December 31, 1971 which cannot be explained by the

total amount of income reported in his previous income tax returns, after excluding therefrom all items of income not subject to income tax and acquisitions by gift or inheritance, shall be deemed to be his "previously untaxed income."

xxx xxx xxx'

On 24 November 1972, Presidential Decree No. 67, amending paragraphs 1 and 3 of Presidential Decree No. 23, was issued. Paragraph 2 thereof is here quoted, to wit:

'2. Paragraph 3 of the same Decree is hereby amended to read as follows:

'3. After the tax imposed under the decree shall have been paid, <u>the taxpayer shall not be subject to any investigation, whether civil, criminal or administrative</u> insofar as such previously untaxed wealth and/or income is concerned and shall not be used as evidence against, or to the prejudice of, the declarant in any proceeding before any court of law or body, whether judicial, quasi-judicial or administrative in which he is a defendant or respondent, and such declaration shall not be examined, inquired or looked into by any person, government, official, bureau or office x x x.' (Underscoring supplied)

On 11 December 1972, Revenue Regulation No. 15-72, implementing Presidential Decree No. 67 was issued. Section 4 thereof reads:

> 'Section 4. <u>Who may not avail of the amnesty</u>.- All taxpayers, natural or juridical against whom a valid information under Republic Act No. 2338 has been filed x x x prior to the effectivity of Revenue Regulations No. 8-72, as amended, may not avail of the immunity provided for in Presidential Decree No. 23, as amended by Presidential Decree No. 67.'

It is thus clear that Section 4 of Revenue Regulation No. 15-72 expressly excludes from the immunity granted by Presidential Decree No. 23, as amended by Presidential Decree No. 67, taxpayers against whom a valid information under Republic Act No. 2338, denominated as Confidential Information No. 381-3, has been filed prior to the effectivity of Revenue Regulations No. 8-72 on 20 October 1972.

In this case, a valid information under Republic Act No. 2338 was filed against petitioner as early as 31 July 1970. Petitioner availed of the tax amnesty under Presidential Decree 23 as amended by Presidential Decree No. 67 on April 1, 1973. Subject deficiency assessments, therefore, issued against petitioner subsist notwithstanding his availment of the tax amnesty on April 1, 1973 under Presidential Decree No. 23, as amended.

With respect to the reference made to respondent's letter dated 15 February 1978, relieving him of tax liability for having availed of Presidential Decree No. 23, the same is not applicable to subject assessments as the said letter refers specifically to the deficiency income tax assessment of ₱47,235.40, which is not covered by a valid information under Republic Act No. 2338.

With respect to the 50% surcharge imposed in this case, the fact that the gains realized in the sale of petitioner's properties and were not reported in his returns for 1967, 1968 and 1969, making the said returns false and knowing it to be so, such returns were, therefore, filed with the evident intention to evade the payment of the correct taxes. (Juan D. Nassr vs. Comm. of Int. Rev., CTA Case No. 1668, July 24, 1970; Jose B. Aznar vs. Court of Appeals & Coll. of Int. Rev., GR L-20569, August 23, 1974, 58 SCRA 519). This fact was not the least disputed by petitioner by showing contrary evidence, except only to rely on the immunity provided under Presidential Decree No. 23, as amended. We hold petitioner therefore liable for 50% surcharge for the years 1967, 1968 and 1969 in question.

WHEREFORE, petitioner Carlos O. Ysmael, Sr. is hereby ordered to pay deficiency income tax for 1967, 1968 and 1969 in the amount of ₱1,973,455.92, plus 10% surcharge, and interest at 14% per annum from March 16, 1978 to July 31, 1980, and at 20% per annum from August 1, 1980, to the date of full payment, provided that the maximum amount that maybe collected as interest on the deficiency shall in no case exceed the amount corresponding to a period of three (3) years pursuant to Section 51(e) of the National Internal Revenue Code of 1977, as amended.

SO ORDERED.

Quezon City, Metro Manila, December 4, 1982.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge