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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JULIO BUENO,
Petitioner,

--versus-- C.T.A. CASE No. 1481

BUREAU OF INTERNAL
REVENUE,
Respondent.
x- - - - - - - - - - - -x March 27, 1964

D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue assessing and demanding from petitioner the amount of ₱8,734.48 as fixed, sales, residence (Class "B") and income taxes, inclusive of penalties for the year 1958. Contending that he is not liable therefor, petitioner appealed the case to this Court.

It appears that petitioner is a holder of an ordinary timber license for an area of 1,175 hectares of public forest in Jones, Isabela, which license was to expire June 30, 1959. Upon complaint by one Jose Castro that petitioner was evading tax, the latter's tax liability was examined. On the basis of the findings and report of the examiner that petitioner manifested 3,035.45 cubic meters of logs in 1958 which he had sold to the Western Sawmills of Santiago, Isabela, a notice, dated January 6, 1961, was sent to the taxpayer informing him of a proposed assessment and advising him to present his objection thereto if he had any. On February 7, 1961, petitioner requested that the conference be held in Manila but the same was denied by the Regional Director of Baguio City. On September 20, 1961, an assessment notice demanding payment of the amount of ₱4,848.32 as income tax, inclusive of surcharge, interest and penalties for 1958, was issued to petitioner. And, on September 28, 1961, a demand was issued to petitioner for the amount of ₱3,885.96 as fixed, sales and residence taxes and penalties. Subsequently, in a letter dated March 28, 1963, the sums of ₱4,848.32, representing deficiency income tax for 1958 and ₱3,885.96, representing fixed, sales and residence taxes and penalties also for 1958 were demanded from petitioner. The assessments in question were allegedly made because petitioner sold a total of 3,035.45 cubic meters of logs for the amount of ₱28,232.27 to the Western Sawmill of Santiago, Isabela, from March 19, 1958 to December 31, 1958. From the letter-decision of the Regional Director of Baguio City, dated October 11, 1963 demanding the total amount of ₱8,734.78 as fixed, sales, residence (Class "B") and income taxes, inclusive of penalties, for the year 1958, petitioner appealed to this Court.

Respondent, in his answer, raised the jurisdictional issue. However, in his memorandum, he concedes that the petition for review was filed on time.

By and large, the issue presented to this Court is whether or not petitioner cut timber from his concession and then sold them to the Western Sawmill from March 19, 1958 to December 31, 1958, the period involved in the assessment in question.

Respondent's evidence mainly consist of petitioner's application for additional quota dated June 11, 1958 wherein he manifested 1,500 cubic meters of cut timber under his original license (Exhibit 19); a monthly report dated May 1, 1958 to the Forestry Officer of Echague, Isabela, of payments of forest charges purportedly signed by petitioner (Exh. 2-D); certifications of the municipal treasurers of Jones and San Agustin dated June 30, 1958 and July 1, 1958, respectively, as to the quantity of timber products manifested by petitioner on various dates (Exhs. 20 and 21); the journal and ledger of the Western Sawmill for the year 1958 showing an entry of purchases of logs by the latter from petitioner; and lastly, the testimony of Mauro T. Lucero, senior revenue officer of the Bureau of Internal Revenue who claims to have conducted investigations in connection with the assessment in question.

For his part, petitioner took the stand and testified that he was never able to cut timber in his concession and that neither did he sell logs to the said sawmill. He said that in the first half of 1958, forest official Yadao sent a letter to the municipal treasurer to collect forest charges from him; that he protested because it was the Western Sawmill that cut timber from his concession and this was done without authority from him; that he asked the said officials to collect the charges from the Western Sawmill; and that he further asked them to seize the illegally cut timber. Elaborating on this pretension, he said that on April 7, 1958, he wrote to Yadao formally complaining of illegal cuts of the Western Sawmill without his authority and asking that these activities be stopped by the government foresters (Exh.A); that this complaint and plea for help was reiterated in a letter of May 23, 1958 (Exh. B); that in a letter of May 8, 1959, petitioner elevated his complaint and plea to the Secretary of Agriculture as no action had been taken by the government foresters of Isabela on his complaint; that action was taken by the office of the Bureau of Forestry in Isabela only on May 12, 1959 when the officer in charge thereof wrote a letter to the Western Sawmill referring the complaint of the petitioner to the Western Sawmill and asking the latter if the said complaint was true and if so, to stop cutting petitioner's trees (Exh. D); that on June 22, 1959, petitioner again complained urgently to the office of the Bureau of Forestry in Bohague that the Western Sawmill continued to cut trees in his concession disregarding completely the previous warning (Exh. E); that on June 26, 1959, the said office reiterated its previous warning to the Western Sawmill (Exh. F); that on June 30, 1959, petitioner again reiterated his complaint against Western Sawmill and on August 12, 1959, the officer-in-charge of the forest station in Bohague set petitioner's complaint for hearing; and that on August 23, 1959, Carlos D. Lim alias Leon Giok Tia of the Western Sawmill wrote a letter to the petitioner, a pertinent portion of which reads as follows:

> "Granting that I might have made a mistake, please give me the chance to make the necessary amendment and please understand that I am willing to do so. All I ask of you is that you please tell me your conditions or terms on how I may satisfy you and I shall be glad to meet them. I am ready to pay you whatever amount is due you. All I request of you is that you please come over here so we could make the necessary computations of whatever amount is due you.
>
> "I am making this offer because, if possible, there should be no trouble between us that may cause us unnecessary mental anguish as we have plenty of cares doing our daily business chores. I appeal to your good sense of companionship. Let us please settle the cause of your complaint. If we could settle it now to your satisfaction, I shall be greatly obliged to you. I assure you that whatever good turn you extend me now shall

be repaid later. We have many more days in store for us in the future, God granting. For such, surely, there shall be occasions that I may be of some help or of service to you in the days that are to come. Be rest assured and please don't hesitate on me to extend you what you may want of me, if only to prove to you that I am really sincere in what I say.

"Please withdraw then your complaint against me. Please drop to my place anytime you are in a position to do so so I could make the necessary settlement. Only give me the chance to settle with to your satisfaction.

"Trusting that you are agreeable to an amicable settlement of your complaint, I am then looking forward to your early calling to me so that I can make the necessary settlement with you."

The various letters of petitioner complaining of illegal cuts made by the Western Sawmill are not denied nor controverted. It is well to note that the first formal complaint was lodged in April of 1958 and that the complaints were persistent; that the letter of May 8, 1959 of the Office of the Bureau of Forestry in Isabela obliquely but clearly admits that nothing had been done in connection with petitioner's complaints; and that the allegations of said complaints must be true because they are pervasively, if implied, admitted by the Western Sawmill in its letter of June 22, 1959. In the light of these facts, we are prone to believe the testimony of the petitioner that he was not able to cut timber in his concession during the period in question and that if cuts were made therefrom they were made by the Western Sawmill without petitioner's authority.

The certifications made by forest officers and municipal treasurers to the effect that petitioner reported or manifested cuts from his concession are not of much consequence. One of the treasurers subsequently certified that said reports were made not by the petitioner personally but by the Western Sawmill. Indeed, anyone from the Western Sawmill could have easily made the reports of cuts without the knowledge or authority of the petitioner and it seems meaningful that no forest officer or municipal treasurer ever appeared to contradict petitioner's claim that he had no participation in the making of the reports in question.

As regards the application for additional quota wherein petitioner manifested 1,500 cubic meters of cut timber under his original license, we do not find it difficult to believe the testimony of the petitioner that the officer in charge of the Echague Forest Station advised him to include the cuts previously made by the Western Sawmill assuring him that same would not affect his complaints against the Western Sawmill. In the absence of contradiction from said Forest Officer there seems to be no reason for disbelieving petitioner's plausible explanation.

Exhibit 2-D purports to have been submitted and signed by petitioner on May 1, 1958. It also purports to be a report of monthly payments for the months of March, April and June, 1958 but the entries appear to be for January, February, March, April and June. Thus, upon its face this exhibit appears to be irregular for how can a report for June, 1958 be submitted on May 1, 1958? Note that this exhibit is but a plain carbon copy, not even certified, and does not contain the signature of petitioner except for the typewritten "(SGD) JULIO M. BUENO". A document so ridden with contradictory and suspicious items can hardly have any evidentiary value specially as there is not even an attempt on the part of respondent to explain away these serious defects.

The ledger and journal of the Western Sawmill are acceptable as evidence only when there is a showing that the person who made the entries is either deceased or outside of the Philippines or unable to testify but respondent made no showing to this effect. (Sec. 37, Rule 130 of the Rules of Court). Under other circumstances the entries in said books are not receivable as independent evidence but only as a memorandum that may revive the recollection of a witness; but no one testified on these ledger and journal. (Tan Machan vs. De la Trinidad, 3 Phil. 684; Garrido vs. Asencio, 10 Phil. 691; Cang Yui vs. Gardner, 34 Phil. 376). Respondent's reference to Section 15 of the Tax Code authorizing reception of the best evidence obtainable can not apply to this case for there is no showing that testimony from the officers of the Western Sawmill is not obtainable. This is specially so because the credibility of the controverted journal and ledger is beclouded by Lim's letter marked Exhibit I.

In fine, it is our considered opinion that there is not enough evidence to show that petitioner cut from his concession and sold logs to the Western Sawmill from March 19, 1958 to December 31, 1958.

WHEREFORE, the assessment against petitioner in the amount of ₱8,734.78 as fixed, sales, residence (Class "B") and income taxes, inclusive of penalties, for the year 1958, is hereby set aside. Without pronouncement as to costs.

SO ORDERED.

Quezon City, March 27, 1967.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge