REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

EUFEMIA EVANGELISTA, MANUELA EVANGELISTA, and FRANCISCA EVANGELISTA,
Petitioners,

- versus -

C.T.A. CASE NO. 53

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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August 29

DECISION

This is a case involving an assessment against the petitioners by the respondent Collector of Internal Revenue in the total amount of ₱6,878.34 allegedly representing income tax from an unregistered partnership composed of petitioners, together with the real estate dealers' fixed tax, and the corporation residence tax, all for the years 1945 to 1949, inclusive, computed as follows:

INCOME TAXES

1945	₱ 614.84	
1946	1,144.71	
1947	910.34	
1948	1,912.30	
1949	1,575.90	
Total including surcharge and compromise		₱6,157.09

REAL ESTATE DEALERS' FIXED TAX

1946	₱ 37.50	
1947	150.00	
1948	150.00	
1949	150.00	
Total including penalty		527.50

RESIDENCE TAXES OF CORPORATION

1945	₱ 38.75	
1946	38.75	
1947	38.75	
1948	38.75	
1949	38.75	
Total including surcharge		193.75
TOTAL TAXES DUE		₱6,878.34

The case was submitted for decision by this Court upon an agreed statement of facts involving as it does purely questions of law. The pertinent portions of the stipulation read as follows:

"1. That the petitioners borrowed from their father the sum of ₱59,140.00 which amount together with their personal monies was used by them for the purpose of buying real properties;

2. That on February 2, 1943 they bought from Mrs. Josefina Florentino a lot with an area of 3,713.40 sq. m. including improvements thereon for the sum of ₱100,000.00; this property has an assessed value of ₱57,517.00 as of 1948;

3. That on April 3, 1944 they purchased from Mrs. Josefa Oppus 21 parcels of land with an aggregate area of 3,718.40 sq. m. including improvements thereon for ₱18,000.00; this property has an assessed value of ₱8,255.00 as of 1948;

4. That on April 23, 1944 they purchased from the Insular Investments, Inc., a lot of 4,353 sq. m. including improvements thereon for ₱108,825.00. This property has an assessed value of ₱4,983.00 as of 1948;

5. That on April 28, 1944 they bought from Mrs. Valentin Afable a lot of 8,371 sq. m. including improvements thereon for ₱237,234.14. This property has an assessed value of ₱59,140.00 as of 1948;

6. That in a document dated August 16, 1945 they appointed their brother Simeon Evangelista to 'manage their properties with full power to lease; to collect and receive rents; to issue receipts therefor; in default of such payment, to bring suits against the defaulting tenant; to sign all letters, contracts, etc., for and in their behalf, and to endorse and deposit all notes and checks for them';

7. That after having bought the above-mentioned real properties, the petitioners had the same rented or leased to various tenants;

8. That from the month of March, 1945 up to and including December, 1945, the total amount collected as rents on their real properties was ₱9,599.00 while the expenses amounted to ₱3,650.00 (₱3,650.67) thereby leaving them a net rental income of ₱5,948.33;

9. That in 1946, they realized a gross rental income in the sum of ₱24,786.30, out of which amount was deducted the sum of ₱16,288.27 for expenses thereby leaving them a net rental income of ₱7,498.13;

10. That in 1948 they realized a gross rental income of ₱17,453.00, out of which amount was deducted the sum of ₱4,837.65 as expenses, thereby leaving them a net rental income of ₱12,615.35.

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"C. - That in the deed of sale executed by Josefina Florentino dated February 2, 1953, each of the petitioners are named as vendee of 1/4 only of the properties therein described; that in the three subsequent deeds of sale in favor of the petitioners, they were not named as individual vendees of 1/4 only but collective vendees of the whole properties described therein."

The only legal question we are called upon to resolve based on the facts as stated above is whether or not the petitioners have formed an unregistered partnership for purpose of applying section 84 (b) of the National Internal Revenue Code, and thus subject to income tax under section 24 of the same Code, and as a consequential but corollary issue therefor, whether or not the petitioners could likewise be subject to the real estate dealer's and residence taxes assessable on the authority of sections 193 (q) and 194 (s) of the National Internal Revenue Code and Commonwealth Act No. 465.

Under the Income Tax Law (Title II, National Internal Revenue Code), a "corporation" is subject to the income tax levied and assessed under section 24, thereof, and for purposes of this law, the term "corporation" is defined as follows:

"The term 'corporation' includes partnerships no matter how created or organized, joint stock companies, joint accounts (cuentas en participación), associations or insurance companies, but does not include duly registered general co-partnerships (companias colectivas)." (Sec. 84 (b), National Internal Revenue Code; underscoring provided)

Likewise under the Residence Tax Law (Commonwealth Act 465) the term "corporation" —

> ". . . . . includes joint-stock company, partnership, joint account (cuenta en participación), association, or insurance company, no matter how created or organized." (section 2, Com. Act 465; underlining provided).

From the aforecited provisions of the National Internal Revenue Code and Commonwealth Act No. 465, the "partnership . . . . no matter how created or organized", is deemed included in the term "corporation" and taxable as such.

In the case at bar, therefore, it will be necessary to determine whether the petitioners had formed a partnership as to be liable for the taxes imposed on corporations. Considering that the facts and circumstances in this case occurred prior to 1950, or more particularly from 1943 to 1949, the determination of the question will be made by applying the pertinent provisions of the Civil Code of 1889 and other previous laws enforced at the time (Art. 2253, Civil Code of the Philippines). The concepts of partnership are set forth in the following applicable provisions:

> "By the contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves". (Art. 1665, Spanish Civil Code; see also Art. 1767, New Civil Code)

> "The contract of association by which two or more persons bind themselves to place in a common fund property, industry, or any of these things, in order to obtain profit, shall be commercial whatever its class may be, provided it has been constituted in accordance with the provisions of this Code". (Art. 116, Spanish Code of Commerce).

The foregoing definitions indicate the distinguishing characteristics of partnerships, which are: (1) mutual contribution to a common stock or fund and (2) a joint interest in the profits (Fernandez vs. De la Rosa, 1 Phil. 676). The respondent contends that the petitioners herein have formed a partnership, and although the same is not registered, it comes within the purview of section 84 (b) of the National Internal Revenue Code and section 2, Commonwealth Act No. 465. The petitioners on the other hand maintain that they have not formed a partnership, but merely a community of property and the latter is not embraced within the definition of corporation" as prescribed by the aforecited provisions of the Tax Code and Commonwealth Act No. 465.

In order to determine the existence of a partnership, where the parties have not expressly called themselves as partners, eo nomine, their intention must be ascertained. This real intention refers to their legal intention and must be determined from their representations, acts and conduct, and if they have agreed to everything or perform such acts as are necessary to constitute or form a partnership, they are partners whether their purpose was to create or avoid the relation.

> "The controlling intention is the legal intention deducible from the acts of the parties, and if they intend to do a thing which in law constitutes a partnership, they are partners, whether their purpose was to create or avoid the relation." (Go Chung Cang v. Pacific Commercial Co., 45 Phil. 142).

> "Where the question of partnership vel non is to be determined, between the parties to the contract, the main inquiry is to be directed to the ascertainment of their real intention. If it be found that they have agreed upon those matters which, in law, constitute a contract of partnership, it must be presumed that they intended that contract. If, on the other hand, some essential element of that contract is omitted, it is not a contract of partnership, no matter what it may be called." (Amacker v. Kent, (1919) 144 La. 545, 553, 80 So. 717, 720)

" . . . . . if the contract by its terms establishes a partnership between the parties, even the expressed intent that it should not be so classed would be of no avail. It is the intent to do the things which constitute a partnership that usually determines whether or not that relation exists between the parties." (Associated Piping & Engineering Co. v. Jones, (1936), 17 Cal App. 2d 1?7, 61 P 2d 536). (all underscoring supplied)

In this particular instance, we note the following salient facts: (1) the petitioners in 1943 and 1944, pooled their resources together to purchase lands with a total acquisition value of ₱464,059.14 and an assessed value as of 1948 of ₱129,895.00; (2) that they administered the properties jointly until August 16, 1945, when they constituted their brother, Simeon Evangelista, as their attorney-in-fact to manage their properties; (3) that after the aforesaid properties were acquired, the same were rented or leased to various tenants; (4) that the petitioners have not divided the properties from the time of acquisition up to the present, or approximately eleven (11) years; and (5) that during the years 1945 to 1949 inclusive, the petitioners realised the following rentals, and after deducting the expenses, the net rental income was divided among the petitioners.

	Gross Rental	Expenses	Net Rental Income
1945	₱ 9,599.00	₱ 3,650.67	₱ 5,948.33
1946	24,786.30	16,288.27	7,498.13
1947	18,230.00	12,294.45	5,935.55
1948	17,453.00	4,237.65	12,615.35

From the foregoing facts over which there is no dispute, we believe and so hold that the petitioners were holding the real properties not under a mere community of property but as partners. The distinguishing characteristics of the partnership first given above are present in the case at bar. By the acts of the petitioners they have actually contributed, money or property into a common fund, for the purpose of operating and keeping the properties for rental purposes, and actually divided the net profits among themselves. They administered, as principals the properties involved, either by themselves personally or thru their chosen attorney-in-fact or manager.

> " . . . . it is well settled that, where the parties to a contract, by their acts, conduct or agreement show that they intended to combine their property, labor, skill and experience or some of these elements on one side and some on the other, to carry on, as principals or co-owners, a common business, trade or venture as a commercial enterprise and to share, either expressly or by implication, the profits and the losses or expenses that may be incurred, such parties are partners." (47 C.J. pp. 675-676)

The contention of the petitioners that there was a mere community of property is belied by their very acts. It is a generally recognized rule that a partnership is not possible unless there is a community, and the mere existence of a community of property does not of itself indicate a partnership. However, if the community which is created voluntarily is established with the purpose of acquiring profits which has to be divided among the parties, there is in fact a partnership. The presence of this element of dividing profits, is the principal distinguishing characteristics between the voluntary community and the partnership. The presence of that purpose in the case at bar, and although we assume <u>arguendo</u> that it was merely a community of property at the beginning, however, it became and was in fact a partnership thereafter.

> "Por el último de los motivos antes indicados o sea por su fin u objeto, distinguense aún más el contrato de sociedad y la noción de la comunidad, pues la idea de la ganancia o provecho común reportable de las cosas o de la industria aportada a la

sociedad que ésta se propone como nota esencial, falta en la comunidad, ya sea voluntaria, ya incidental o accidental, independiente de la voluntad.

Los socios, ha dicho Troplong, se asocia para obtener un beneficio, para especular, para acrecentar su fortuna, y por el contrario, los comuneros están en comunidad sin ningún espiritu de lucro, y aun cuando la comunidad no resulte de causa independiente de la voluntad, como el azar, la sucesión o por ministerio de la ley, sino que exista en virtud de una con convención, es siempre sin ningún fin de especulacion, y por lo tanto, no puede ser aplicable a la misma el concepto de la sociedad, ni puede estimarse existente ésta.

Es decir que los socios se constituyen en tal carácter por el contrato de sociedad, siempre con la mente y la aspiración de alcanzar algún provecho o ganancia, en tanto que los comuneros, voluntarios o no, no se inspiran en el propósito de lucro nacido del concurso personal de los mismos.

Esa idea de lucro común o sea esperanza de la ganancia repartible entre los socios, es lo que más distingue la sociedad de la comunidad, como tenemos ya dicho, y, por lo tanto, no es preciso insistir más en ello.

Algunos otros motivos existen por los que pueden diferenciarse la sociedad y la comunidad; pero bastan los expuestos, que son los principales, para no incurrir en el error de confundirlas." (11 Manresa, Comentarios al Código Civil Español, 4th Ed. 1931, p. 232).

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"Basta, a nuestro juicio, para dislindar las dos instituciones de que venimos tratando (partnership and community of property), tener presente que es uno de los elementos esenciales de la sociedad el intento de obtener un lucro común y partible, como fin principal y director del contrato. Cuando concurra esa voluntad de conseguir y distribuir una ganancia común--entendida la palabra ganancia en el sentido estricto que hay que darle en relación con el articulo 1.665 de nuestro Codigo--habrá lugar al contrato de sociedad. Cuando falte eso requisito o alguna de las circunstancias en que se descompone, se dará una simple comunidad de bienes.

"Lo que hay es que este criterio, téóricamente sencillo, puede en la práctica dar lugar a dificultades y controversias, que se resolverán, como cuestiones de hecho, según las circunstancias. En la duda entiende la doctrina francesa que habrá de considerarse que hay comunidad más bien que sociedad. Especialmente, se habrá de declarar la comunidad, en defecto de circunstancias reveladoras de la intención de formar sociedad (tales como la indicación de las aportaciones, la fijación de la cuota de cada uno en los beneficios y en las pérdidas, el nombramiento de administradores), cuando los copropietarios permanezcan en la indivisión únicamente para evitar la disminución de rentas que resultaría de una partición. Por el contrario, es de presumir la existencia de la sociedad—aunque el punto ha sido resuelto muy contradictoriamente por la jurisprudencia extranjera—cuando los herederos continúan el negocio industrial o mercantil de su causante, realizando todos los actos propios del mismo, pues basta esto para revelar la intención de obtener y partir los beneficios de la empresa, transformando el estado pasivo, propio de la comunidad hereditaria, en el estado activo propio de la sociedad." (25 Scaevola por Castan, Codigo Civil, Vol. 1, 1933 Ed. p. 516-517) (underscoring supplied)

Moreover, we note that the herein petitioners did not maintain and keep the properties in question only for the purpose of their preservation, conservation and common enjoyment. On the contrary, the properties were in fact acquired and retained for the purpose of deriving rentals and income therefrom, and had in fact been retained for approximately eleven (11) years by the petitioners for such purpose. Under such circumstances, the relation was a partnership relation and the petitioners who appear as co-owners must be treated as partners. In cases involving the provisions of the Civil Code and the Code of Commerce brought before it, the Supreme Court of Spain has applied this test of "mere conservation and common enjoyment" as applicable to the community of property as distinguished from the test of "common partible profit" indicative of the partnership.

"que si en nuestro derecho positivo, y singularmente en su aplicación, se ofrecen a veces dificultades al tratar de fijar la línea divisoria entre comunidad de bienes y contrato de sociedad, la moderna orientación de la doctrina científica, señala como nota fundamental la diferenciación, aparte del origin o fuente de que surgen, no siempre uniforme, de la finalidad perseguida por los interesados--lucro común partible en la Sociedad y mera conservación y aprovechamiento en la comunidad--lo que llevaría a estimar que la explotación de un Café-Bar es negocio propio del contrato de sociedad, y más específicamente del de sociedad mercantil, con el contenido, objeto e índole comercial de sus operaciones". (Sentencia del Tribunal Supremo de 15 de Octubre, 1940, cited in 1940 Enciclopedia Juridica Española p. 1187)

" . . . . . como los coherederos litigantes al dejar en común bienes determinados, afectos a negocios industriales, contraren la continuación de esos negocios para obtener un lucro común partible y no la mera conservación de los bienes para su aprovechamiento, preciso se hace admitir que la relación jurídica creada en ese contrato es la llamada comunidad societaria, porque si bien la falta de los requisitos formales que el Código de comercio establece para el contrato de sociedad impide el reconocimiento de la personalidad jurídica social frente a terceros, por concurrir en el caso presente los requisitos de esta clase de contratos, según antes se dice, el concertada entre los coherederos litigantes debe surtir efecto como sociedad irregular o de hecho, ya que los arts. 1278 y 1667 del C.c. y los 117 y 120 del de Comercio autorizan esta conclusión". (Decision of the Supreme Court of Spain of April 16, 1942, cited and quoted in 1 Garrigues, Tratado de Derecho Mercantil (Vol. I, 1947 Ed.) p. 469.) (emphasis ours)

We find no other conclusion than to hold that the herein petitioners did in fact operate a partnership for the purpose of engaging in the real estate business and for which the income tax prescribed in section 24 in relation to section 84 (b) of the National Internal Revenue Code may be levied and assessed. For the same reason such partnership should be likewise subject to the residence tax imposed by Commonwealth Act No. 465, and the real estate dealers' tax imposed by sections 193 (q) and 194 (s) of the National Internal Revenue Code. The mathematical computation of the taxes in question demanded by the respondent from the petitioners in the total amount of ₱6,878.34, not being disputed by the petitioners, the same is deemed correct.

FOR ALL THE FOREGOING, we hold that the petitioners are liable for the income tax, real estate dealer's tax and the residence tax for the years 1945 to 1949, inclusive, in accordance with the respondent's assessment for the same in the total amount of P6,878.34, which is hereby affirmed and the petition for review filed by petitioners is hereby dismissed with costs against petitioner.

SO ORDERED.

Manila, Philippines, August 29, 1955.

MARIANO NABLE
Presiding Judge

I concur:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge Roman M. Umali did not take part in the proceedings.