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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

May 17, 1966

WILLIAM C. REAGAN, thru
his attorney-in-fact
Jaime R. Blanco,
Petitioner

versus

CTA CASE NO. 1254

JOSE B. LINGAD, in his
capacity as Commissioner
of Internal Revenue,
Respondent.

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DECISION

This is a petition filed by the law firm William H. Quasha & Associates in behalf of petitioner for the recovery of ₱2,979.00 as alleged erroneously paid income tax, plus the legal rate of interest from the date of its collection up to the date of refund.

It appears that petitioner, a citizen of the United States and an employee of Bendix Radio, Division of Bendix Aviation Corporation, which provides technical assistance to the United States Air Force, was assigned at Clark Air Base, Philippines, on or about July 7, 1959 (Special Order No. PA-101, p. 3, BIR rec.). Nine (9) months thereafter and before his tour of duty expired, petitioner imported on April 22, 1960 a tax-free 1960 Cadillac car with accessories valued at $6,443.83, including freight, insurance and other charges.

On July 11, 1960, more than two (2) months after the 1960 Cadillac car was imported into the Philippines, petitioner requested the Base Commander, Clark Air Base, for a permit to sell the car which was granted provided that the sale was made to a member of the United States Armed Forces or a citizen of the United States employed in the U. S. military bases in the Philippines. On the same date, July 11, 1960, petitioner sold his car for $6,600.00 to a certain Willie Johnson, Jr. (Private first class), United States Marine Corps, Sangley Point, Cavite, Philippines, as shown by a Bill of Sale (Exhibit "E-5") executed at Clark Air Base. On the same date, Pfc. Willie (William) Johnson, Jr. sold the car to Fred Meneses for ₱32,000.00 as evidenced by a deed of sale executed in Manila.

On the theory that the sale of the car executed by petitioner in favor of Pfc. Willie Johnson, Jr. is fictitious and/or entered into for the purpose of avoiding the payment of income tax, respondent assessed against and demanded from petitioner the payment of ₱2,979.00 as income tax computed as follows:

Selling price of car	₱32,000.00
Less: Landed cost of car	12,887.66
Net income from sale	₱19,112.34
Less: Personal exemption	1,200.00
Net taxable income	₱17,912.34
Income tax due thereon	₱ 2,979.00

The income tax of ₱2,979.00 was paid by petitioner but he requested respondent for the refund thereof in accordance with the Military Bases Agreement between the Philippines and the United States, the pertinent provisions of which read as follows:

"ARTICLE XII.—<u>Internal Revenue Tax Exemption</u>

x x x x x x

"2. No national of the United States serving in or employed in the Philippines in connection with the construction, maintenance, operation or defense of the bases and residing in the Philippines by reason only of such employment, or his spouse and minor children and dependent parents of either spouse, shall be liable to pay income tax in the Philippines except in respect of income derived from Philippine sources or sources other than the United States sources." (43 O.G. 1025.)

Pending action by respondent on petitioner's request for refund of ₱2,979.00, the case was filed with this Court.

The only issue submitted for our resolution is whether or not the said income tax of ₱2,979.00 was legally collected by respondent from petitioner.

Petitioner contends that he is exempt from the payment of income tax under the provisions of paragraphs 2 and 3 of the Military Bases Agreement (par. 2, *supra*) because the car was sold to Pfc. Willie Johnson, Jr., another tax-exempt individual, at Clark Air Base which, in legal contemplation, is a place outside the Philippines (citing Co Po vs. Collector of Internal Revenue, CTA Case No. 313, May 13, 1960, and other cases cited in Martin's Revised Administrative Code, Vol. 5, p. 267; see Petitioner's memo., pp. 5-6). In other words, petitioner argues that, since the car was considered sold in a foreign soil, any income derived therefrom is not income from Philippine sources and, therefore, exempt from Philippine income tax.

On the other hand, respondent contends that the sale of the car took place in Philippine territory and the income realized therefrom was derived from Philippine sources. To bolster his contention, respondent assailed and disregarded the validity and legality of the sale of the car between petitioner and Willie Johnson, Jr., and maintained that the sale transaction between the said parties is fictitious because it was petitioner who actually sold the car to Fred Meneses for ₱32,000.00. In support of respondent's contention that the sale transaction was not at arm's length, he cites the following circumstances: (1) the due execution and authenticity of the deed of sale between petitioner and Willie Johnson, Jr., were not proven; (2) the said deed of sale suffers from defect or ambiguity because the names of the vendee appearing therein were Willie Johnson and William Johnson; (3) the Cadillac car is hardly suitable for petitioner's use in connection with the construction, maintenance, operation or defense of the military bases; (4) the sale of the car more than two (2) months after its importation evinces a desire to make profit and avoid the payment of Philippine income tax; (5) the sale of the said car on the same date, July 11, 1960, from petitioner to Johnson and the latter to Fred Meneses at Clark Air Base and Manila, respectively, indicates the falsity of the first transaction of sale because it was Fred Meneses who secured and paid the permit from the Motor Vehicles Office to bring the said car from Clark Field to Manila; and (6) petitioner received payment of ₱32,000.00 from Fred Meneses as shown by the typewritten words "Mr. William C. Reagan" (petitioner herein) after the typewritten words "Willie Johnson" appearing as payee in the cash voucher (Exh. "4-A," p. 15, BIR rec.). This fact is corroborated by a receipt signed by petitioner (Exh. "4-B," p. 17, BIR rec.).

Considering the facts and circumstances obtaining in this case, we are in accord with respondent's stand.

We do not subscribe to the view of petitioner that, for purposes of our income tax, Clark Air Base is a foreign soil or territory. Paragraph 2 of Article XII of the Military Bases Agreement, _supra_, precisely considers a national of the United States as "_serving in or employed in the Philippines_ in connection with the construction, maintenance, operation of the bases _and residing in the Philippines_ by reason only of such employment." (Underscoring supplied) The only limitation to the taxing power of the Philippine government refers to the income from military bases of a national of the United States derived from United States sources. If the U. S. Government believes that Clark Air Base and other U. S. military bases in the Philippines are foreign soils or territories for purposes of our income tax law, then paragraph 2 of Article XII had no reason to exist and be embodied in the Military Bases Agreement between the Philippines and the United States because the latter or its citizens would have enjoyed in the Philippines a privilege akin to extra-territoriality. The fact that the provisions of paragraph 2 of Article XII were incorporated in the Military Bases Agreement is a tacit recognition by the U. S. Government that, for income tax purposes, U. S. Military Bases in the Philippines are not foreign soils or territories.

If we follow petitioner's theory to its logical conclusion that Clark Air Base is a foreign country or territory, then we have stronger reasons to conclude that the sale of the Cadillac car made by petitioner to Pfc. Willie Johnson, Jr., was not satisfactorily proven because of non-compliance with the requirements of the Rules of Court which provide as follows:

> "SEC. 25. Proof of public or official record.—An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office." (Rule 132, Rules of Court; underscoring supplied.)

The sale of the car between petitioner and Pfc. Willie Johnson, Jr. was embodied in a deed of sale executed at Clark Air Base and authenticated by a competent public employee thereof. Consequently, the said deed of sale is a public record because "public documents are those authenticated by a notary public or by a competent public employee, with the formalities required by law." (Cia. Hispano-Filipina, Inc. vs. China Banking Corporation, 32 O. G. 449.) Moreover, a private instrument, legally acknowledged, has the same effect as a public instrument between the parties (Samson vs. Salvilla and Sierra, 12 Phil. 497). It is clear that, following petitioner's theory, the sale of the Cadillac car took place in a foreign soil or territory and, therefore, the transaction of sale between petitioner and Willie Johnson, Jr. was not proven as required by Sec. 25, Rule 132, of the Rules of Court, supra.

However, as the proceedings in this Court are not governed strictly by technical rules of evidence (Sec. 8, Rep. Act No. 1125), we are going to point out and enumerate the chain of circumstantial evidences which led the Court to sustain the validity of the assessment and collection of the income tax from petitioner.

We are constrained to believe that petitioner was induced by the profit-motive in purchasing and selling the costly, flashy and luxurious Cadillac car. In the first place, petitioner could have purchased a car for a moderate price considering that his tour of duty in the Philippines was about to expire. In the second place, the imported car was sold barely two (2) months after its importation. In the third place, petitioner does not appear to be in need of a car as shown by the fact that he was assigned at Clark Air Base, Philippines, on or about July 7, 1959 and it took him more than nine (9) months to acquire the said car, and yet he disposed and sold the same barely two (2) months after its acquisition. In the fourth place, it is very doubtful whether Willie Johnson, Jr., a mere private first class in the U. S. Marine Corps, could afford to buy an expensive Cadillac car for $6,600.00 considering the meager salary of his position. In the fifth place, since petitioner was authorized by the Base Commander, Clark Air Base, to sell the car solely to a member of the U. S. Armed Forces or to a citizen of the United States employed in the U. S. military bases in this country, he had to look for a convenient dummy or front to dispose of his Cadillac car at huge profit. In the sixth place, when the car was sold by petitioner for $6,600.00 to Willie Johnson, Jr. on July 11, 1960 and the latter sold the same car for ₱32,000.00 to Fred Meneses on the same date, we are convinced that the first sale is fictitious and a mere device to avoid the payment of Philippine income tax considering that the address of the first and second buyers is the same - 2515 Int. Taft Avenue, Pasay City, as shown by the deed of sale and registration receipt issued by the Motor Vehicles Office (BIR rec., pp. 16, 18-19). Lastly, to betray petitioner's profit-motive, it was petitioner who received ₱32,000.00 as consideration of the car from Fred Meneses as shown by the typewritten words "Mr. William C. Reagan" after the typewritten words "Willie Johnson" appearing as payee in the cash voucher. The said payment is corroborated by a receipt signed by petitioner (Exh. "4-B," p. 17, BIR rec.). To our mind, the foregoing circumstances are clearly indicative of petitioner's liability for income tax.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision appealed from is sustained and the refund of ₱2,979.00 is hereby denied, with costs against petitioner.

SO ORDERED.

Quezon City, May 12, 1966.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

I CONCUR:

R. M. Umali
ROMAN M. UMALI
Acting Presiding Judge