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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARGARITA SORIANO DE S. DE VICUÑA and CARMEN SORIANO VDA. DE ANGOSO (deceased), REPRESENTED BY RAMIREZ & ORTIGAS,
Petitioners

September 6/66

versus

CTA CASE NO. 1517

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue holding petitioners Margarita Soriano de S. de Vicuña and Carmen Soriano Vda. de Angoso (deceased) liable for deficiency income taxes in the respective amounts of ₱4,940.00 and ₱5,027.00 for the year 1952.

The late Margarita Roxas de Soriano died on March 7, 1946 in San Sebastian, Spain, leaving an estate in the Philippines, and as heirs, her son, Andres Soriano, and daughters Margarita Soriano de S. de Vicuña and Carmen S. Vda. de Angoso. Among the properties of the estate was a piece of land situated in Laguna known as the Hacienda Calauan.

During the period of administration, the Estate subdivided the Hacienda Calauan into 171 lots and sold the same to the tenants on installments payable over a period of five years. The 171 lots sold to the tenants had a total selling price of ₱1,356,909.00.

Of this total amount, only ₱389,203.00 had been paid by the tenants as of September 20, 1947, leaving, therefore, an unpaid balance of ₱967,706.00. Realizing that they could not pay the balance of the price of their individual lots within five years, the tenants petitioned the Rural Progress Administration (RPA for short) to intervene so that their lots would not be forfeited to the Estate. Acting favorably on the tenants' petition, the RPA purchased from the Estate, and the latter sold to the former all its rights and title to the aforesaid 171 lots for the said balance of ₱967,706.00. The RPA agreed to respect the rights of the tenants-buyers acquired under their previous contracts with the Estate, and extended the period of payment to ten years. In turn, the heirs, Andres Soriano, Margarita Soriano de S. de Vicuña and Carmen Soriano Vda. de Angoso (the latter two being herein petitioners) agreed to act as representatives of the RPA in the collection of the accrued installments due from the tenants-buyers, free of charge.

In view of their undertaking to act as representatives of the RPA in the collection of installments due, the heirs retained the services of the late Juan Schultz and his staff to collect and account for the installment payments due from the tenants-buyers. And because the lots in question were later assigned to petitioners as their share in the inheritance, they paid equally the salaries of Juan Schultz and his staff which, in 1952, amounted to a total of ₱17,333.66. In their income tax returns for 1952, which were filed on February 25, 1953, petitioners each claimed and deducted ₱8,666.83, representating the total salaries paid to Juan Schultz and his staff, as an ordinary and necessary expense.

After an examination conducted by Revenue Examiner Domingo L. Salas of the 1952 income tax returns of petitioners, he recommended the disallowance of the salary deductions of ₱8,666.83 each, and the issuance of deficiency income tax assessments for 1952 in the respective amounts of ₱4,940.00 and ₱5,027.00. On the basis of this recommendation, respondent claims to have sent to petitioners assessment notices, dated February 17, 1958. Although the receipt by petitioners of these assessment notices was denied, petitioners nevertheless admitted having received form letters of respondent, dated October 3, 1959 (Exh. 6, pp. 32-41, BIR rec.), October 1, 1959 and February 22, 1960 (Exh. 7, pp. 54-56, BIR rec.), respectively, informing them of their unpaid deficiency income tax liabilities in the above-stated amounts. On the basis of these notices of tax liability, petitioners requested, in two (2) separate letters dated May 27, 1960 and May 30, 1960, the withdrawal of the assessments. In a letter dated October 14, 1960, the Regional Director of Regional District No. 3 denied the request for withdrawal of the assessment. Petitioners, in their letter of November 16, 1960, appealed this decision of the Regional Director to respondent Commissioner of Internal Revenue, requesting that the assessments be withdrawn and cancelled. This appeal was denied by respondent through the Regional Director in a letter of November 20, 1962, which was received by petitioners on December 13, 1962. Petitioners again requested for reconsideration in a letter dated December 18, 1962, received by respondent on December 20, 1962. This was also denied by the Regional Director in a letter dated January 9, 1963 and denied by respondent in a letter dated January 31, 1963, received by petitioners on February 21, 1963. Another reconsideration was asked in a letter dated on March 9, 1963 received on March 11, 1963 by respondent and denied by the Regional Director on July 2, 1963, notice thereof having been received by petitioners on August 6, 1963. On August 7, 1963, petitioners again wrote a letter for reconsideration which was received on the same day. Subsequently, in a letter dated April 23, 1964, which was received by petitioners on May 4, 1964, respondent denied the letter for reconsideration dated March 9, 1963 in these words:

> "In view of all the foregoing, your request for reconsideration is hereby denied, thus affirming the stand of our Regional Director. It is, therefore, requested that you urge your clients, Mesdames Carmen Soriano Vda. de Angoso

and Margarita Soriano de S. de Vicuña to pay immediately the amounts of ₱5,027.00 and ₱4,940.00 or an aggregate amount of ₱9,967.00 plus statutory penalties for late payment. However, if you are not satisfied with our decision, you may advise your clients to appeal our decision to the Court of Tax Appeals, Manila, within the time prescribed by law." (Underscoring ours.)

Not satisfied with the decision of the Commissioner of Internal Revenue, petitioners filed their petition for review on June 1, 1964.

The issues presented for determination are as follows:

1. Whether or not this Court has jurisdiction to take cognizance of this case;

2. Whether or not the right of respondent to assess these deficiency income taxes has prescribed; and

3. Whether or not the total sum of ₱17,333.66 is a deductible expense under the provisions of Section 30 of the National Internal Revenue Code.

As regards the first issue posed before this Court, respondent contends that petitioners' period for appeal to this Court should be counted from receipt of the Commissioner's decision of November 20, 1962, while petitioners insist that the counting should start from May 4, 1964 when they received the decision dated April 23, 1964.

It would seem that the decision that is appealable to this Court is that of April 23, 1964, in the light of the ruling of the Supreme Court in the case of St. Stephen's Assn. vs. Coll. of Int. Rev. (G.R.

No. L-11298, Aug. 21, 1958). The pervasive, not to say clear, implication of the denial of April 23, 1964 is that it is the Commissioner's last and final decision, for therein he advises petitioners to appeal to this Court within the time prescribed by law, if they were not satisfied with the same. Said this Court in the case of William J. Sutter vs. Commissioner of Internal Revenue (C.T.A. Case No. 1340, Nov. 11, 1965):

> "The appealable decision is that letter of respondent dated February 16, 1961 addressed to petitioner, which states that -
>
> > 'If you still believe that the assessments in question are not in accordance with law, then you may bring your appeal from this decision to the Court of Tax Appeals under Section 11 of Republic Act No. 1125, within thirty (30) days from receipt hereof.'
>
> This letter was intended by respondent to be his final decision as could be gleaned from his statement that if petitioner is not agreeable thereto, he may bring an appeal therefrom to the Court of Tax Appeals under Section 11 of Republic Act No. 1125. Hence, it is from the date of receipt by petitioner of this letter that the thirty-day period within which to appeal should be computed (St. Stephen's Assn. vs. Coll. of Int. Rev., G.R. No. L-11238, Aug. 21, 1958.)"

It is therefore from May 4, 1964 that the period for bringing the contested assessment to this Court should be counted,in which case this petition for review has been seasonably filed.

In the matter of the second issue which is that of prescription, respondent's very evidence, Exhibits 6 and 7 (pp. 41-43 and 54-56, BIR rec.), show that petitioners deny having received the originals of the deficiency income tax assessment notices, Exhibits Y and Y-1, although they admit having received form letters dated October 3, 1959 and February 22, 1960, sent to them by the Bureau of Internal Revenue as follow-ups. Respondent, for his part, urges that said assessment notices were sent February 17, 1958, and if this were true, the defense of prescription falls for lack of a leg to stand on, petitioners' deficiency income tax returns having been filed on February 25, 1953.

A perusal of respondent's memorandum readily shows that respondent's claim that the deficiency income tax assessment notices in question were sent petitioners on February 17, 1958, rests solely on a copy of entries on page 263 of the mailing book, Volume I, of Regional District No. 3 of the Bureau of Internal Revenue, certified by Juan Querubin, presumably clerk in charge of mailing, and purportedly verified to be correct by Conrado P. Castro, chief of the Administrative Branch of said Regional District. This copy, which is Exhibit 5 of respondent (p. 62, BIR rec.) contains this entry:

"Registered - Special Delivery

"2 - 17: Margarita Soriano de S. de Vicuña - - - - - - - - - - - ₱4,940.00

x x x x

"2 - 17: Carmen Soriano Vda. de Angoso - - - - - - - - ₱ 5,027.00"

Exhibit 5 is a lonely piece of documentary evidence because mailing clerk and record custodian Querubin was not presented to testify on it and neither was Castro presented to explain his ambiguous certification or testify as to what he knows of his knowledge and not by mere hearsay, of the mailing to petitioners of the assessment notices in question. In the case of Gonzalo P. Nava vs. Comm. of Int. Rev. (G.R. No. L-18470, Jan. 30, 1965), the Supreme Court refused to give probative value to a similar record of mails of the Bureau of Internal Revenue, although the clerk, whose duty it was to send the office mail and keep the record book of letters to taxpayers, took the stand but however admitted that all he could say was that there appeared in his record book a note that a letter to a taxpayer was mailed by special delivery on a specified date. Thus perforce we likewise refuse to give persuasive weight to Exhibit 5 of respondent standing alone as it does.

> "While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and 12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue officers, without adequate protection or defense." (Gonzalo P. Nava vs. Commissioner of Internal Revenue, supra.)

Respondent also marked and presented as evidence two registry receipts, Exhibits 5-A and 5-B, as corroboration of Exhibit 5. But again no witness was presented to identify them and link them to the assessment notices in question and of course they have no probative value at all. Indeed, proper basis not having been laid for these two receipts, no one can say for what mail they were issued.

Needless to say, we believe and so hold that it has not been sufficiently established that notices of the assessments in question were sent to petitioners on February 17, 1958. Valid and effective notices therefore were sent only in October 1958 as it is admitted by petitioners that they received the follow-up letters of October 1, 1959 and October 3, 1959, in which case the defense of prescription is well taken.

Having reached the conclusion that the action to collect the deficiency income tax in question has already prescribed, it is unnecessary to discuss the last issue raised by petitioners in the instant appeal.

WHEREFORE, the decision of the Commissioner of Internal Revenue under review is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Quezon City, September 6, 1966.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge