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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Jan. 16, 1965

ANTONIO TUASON, JR.,
Petitioner

versus

CASE NO. 1398

JOSE B. LINGAD, as
Commissioner of Internal
Revenue,
Respondent.

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DECISION

This case involves a deficiency income tax assessment for the year 1957 against the petitioner in the sum of ₱31,095.36.

Petitioner inherited in 1948 from his mother, Doña Angela S. Tuason, twenty-eight (28) small lots, which were leased to several tenants under contracts of lease, and one (1) big lot of 47,000 square meters. Atty. J. Antonio Araneta, who was petitioner's attorney-in-fact, subsequently sold the small lots to the tenants and caused the big lot to be subdivided in order to facilitate the sale thereof.

The profits realized from the sales of the lots were treated as capital gains and taxed only to the extent of 50% in accordance with the decision of the Collector of Internal Revenue on May 17, 1957.

Upon investigation, however, the Bureau of Internal Revenue, on January 28, 1963, assessed against petitioner the sum of ₱31,095.36, as deficiency income tax and interest for the year 1957.

The deficiency assessment is based on the theory that the lots in question were ordinary assets, and, therefore gains realized from their sale were taxable in full.

On February 20, 1963, petitioner, through counsel, requested a reconsideration of said deficiency assessment on the ground that the lots in question were capital assets and therefore the gains realized from their disposition were taxable only to the extent of 50%. This request was denied by respondent on February 28, 1963. On June 4, 1963, the instant petition for review was filed.

The only issue to be determined is whether the properties in question were capital or ordinary assets in the hands of petitioner. If they were capital assets as contended by petitioner, the gains realized from the sales thereof are taxable only to the extent of 50%.

Section 34 of the Revenue Code defines "capital assets" thus:

> Sec. 34. Capital gains and losses.—(a) Definitions.—As used in this Title—
>
> (1) Capital assets.—The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include, stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or pro-

> perty held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of section thirty; or real property used in the trade or business of the taxpayer.

Section 34 of the Revenue Code defines capital assets as including all property held by the taxpayer, but specifically excludes, among other items, "property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business" and "real property used in the trade or business of the taxpayer."

As already stated, the properties in question consisted of twenty-eight small lots and one big lot containing about 47,000 square meters. At the time the properties were inherited by petitioner from his mother, the twenty-eight small lots were held by tenants under lease. There can be no question that these lots were properties used in business and the gain derived from the sale thereof is ordinary gain. (Collector v. Bautista, G. R. Nos. L-12250 & L-12259, May 27, 1959; Ramirez v. Com., C. T. A. No. 554, Oct. 11, 1961.) The nature of these properties as ordinary assets was not changed upon the death of petitioner's mother and the acquisition thereof by petitioner through inheritance since the latter continued to have the said lots leased to the tenants.

With respect to the big lot which was subdivided into smaller lots, its subdivision and sale had the effect of converting the same into property used in business.

> ". . .It is obvious, we think, that Richards and the petitioners might have sold the property, as a whole, without going into business with it. The price desired might not have been secured in that way, it is true, but that only accentuates the idea that they went into a business to obtain a better price than was obtainable by selling the property as investment property as a whole, or at least without going into the real estate business." (Ehrman v. Com., 41 BTA 652, 662.)

If petitioner wanted to have his gain from the sale of said property treated as a capital gain, he should have sold the same as it was when he received it by inheritance without subdividing it or making improvements thereon. Since he chose to subdivide and improve the same and to sell the lots to the public, he is deemed to have engaged in the business of selling real estate. (Alexander Weil, 3 TCM 528; J. O. Chapman, 3 TCM 604.) The mere fact that a parcel of land was inherited and later disposed of for liquidation purposes does not prevent its being converted from an investment property into business property if the number, continuity and frequency of the sales of the subdivided lots are such as to constitute a business.

> ". . .We therefore conclude that the desire to liquidate an original investment, even under some necessity to secure a profitable return, . . . does not alter the fact of business actually entered into. It is business none the less. . ." (Ehrman v. Com., supra, p. 663.)
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> ". . .that the fact that property is acquired by inheritance is, by itself, neutral. The important inquiry is what the taxpayer thereafter does with the property. . ." (George Carnrick, 9 TC p. 756 /1947/)
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> ". . .if a taxpayer acquires by devise or inheritance a vacant tract of land which he causes to be subdivided for the purpose of selling individual lots, we think that he may regularly carry on the business of selling the lots, and the fact that his ultimate purpose is to liquidate his devise or inheritance is irrelevant. . ." (Guggenheimer v. Com. 209 F/2d/ 363, 364, 365; Jacques Ferber, 22 TC 261 /1954/.

It is clear that the properties in question were ordinary assets and the gains realized from the sales thereof were ordinary gains, taxable in full.

With regard to the ruling of May 17, 1957 of the then Collector of Internal Revenue, who held that the properties of petitioner were capital assets and the profits derived therefrom were capital gains, it is a settled rule in this jurisdiction that the administrative rulings of previous Commissioners of Internal Revenue are not conclusive and binding upon their successors. An incumbent

Commissioner of Internal Revenue may revoke, reverse or abrogate the acts or rulings of his predecessors-in-office if he becomes convinced that a statute warrants a different construction (Emilio Hilado vs. Coll. of Int. Rev., G. R. No. L-9408, Oct. 31, 1956; Coll. vs. Manila Lodge No. 761 of the Benevolent & Protective Order of Elks & C. T. A., G. R. No. L-11176, June 29, 1959).

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner Antonio Tuason, Jr. is ordered to pay the sum of ₱31,095.36, plus 5% surcharge and 1% monthly interest, in pursuant to Sec. 51(e), of the Revenue Code. With costs against petitioner.

SO ORDERED.

Quezon City, Philippines, January 16, 1965.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Acting Presiding Judge