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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

C. N. HODGES & CO., INC.,
Petitioner,

-versus- C.T.A. CASE No. 1623

ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.
x- - - - - - - - - - - - - -x Sept. 22/64

D E C I S I O N

From a decision of the respondent dated August 11, 1960 (Annex "A", Petition for Review), requiring the petitioner to pay the sum of ₱51,140.09, representing deficiency percentage tax and 25% surcharge, plus the sum of ₱8,000.00 as compromise penalty, for the period from October, 1953 to September, 1958, this appeal was taken to this Court.

The facts, briefly stated, are as follows: Petitioner, a domestic corporation, with offices at 303 Dasmariñas St., Sta. Cruz, Manilá, is a real estate broker engaged in the business of developing and subdividing landed estates, and thereafter promoting the sale or lease of the subdivided lots to the public. It entered into agreements with several real estate owners (Paradise Farms, Inc., Patricia, Inc., Realty Investments, Inc., and Bay Boulevard Subdivision, Inc.) for the purpose of developing their properties into subdivisions, dividing them into smaller suitable lots, introducing community improvements thereon, like roads, lighting and drainage system, and thereafter selling them to the public. For the services thus rendered, it was paid in the form of commission and/or fees. (Exhibits D, D-1, D-2, E, and F, pp. 24, 26, 28, 30 & 33, CTA rec.) Pursuant to said agreements, and during the period from October, 1953 to September, 1958, petitioner received from the real estate owners the sums of ₱1,572,953.54 as selling commission, ₱392,658.58 as supervision fees, and ₱285,991.47 as collection fees. On the selling commission, petitioner paid ₱94,184.14 as brokerage tax. He did not pay any percentage tax on the supervision and collection fees. (Exh. A & A-1, p. 6, CTA rec.)

On the theory that the "supervision and collection fees" are part of the taxable compensation received by petitioner as real estate broker under Section 195 of the National Internal Revenue Code, respondent, in a letter dated August 11, 1960 (Exh. A), demanded from petitioner the sum of ₱51,140.09 as deficiency percentage tax and 25% surcharge, itemized as follows:

Commissions earned from sales of lots -	₱1,206,763.52
Brokerage fees -------	361,146.27
Other brokerage fees -	5,043.75
	₱1,572,953.54

6% tax thereon -------------------		₱94,377.21	
Less taxes paid ------------------		94,184.14	
		₱ 193.07	
Plus 25% surcharge ---------------		48.27	₱ 241.34
Supervision fees --------	₱ 392,658.58		
Collection fees ------	285,991.47		
	₱ 678,650.05		
6% tax thereon -------------------		₱40,719.00	
Plus 25% surcharge ---------------		10,179.75	50,898.75
T O T A L ---------------			₱51,140.09

In addition to the said sum of ₱51,140.09, petitioner was required to pay ₱8,000.00 as compromise penalty.

In a letter dated September 19, 1960, received by respondent on September 20, 1960, petitioner agreed to pay, and in fact paid under O.R. No. ML-2-7987, the deficiency assessment, inclusive of surcharge on the sales commission, in the amount of ₱241.34. It, however, requested the cancellation and withdrawal of the assessment of ₱50,898.75 (Par. 6, Petition; Par. 5, Answer) on the ground that the supervision and collection fees are not includible in the computation of the 6% tax. This request having been denied by respondent in his letter dated March 12, 1965, received by petitioner April 22, 1965 (t.s.n., p. 90), the latter appealed to this Court.

The issues are:

(a) Whether or not the amounts of ₱392,658.58 and ₱285,991.47 denominated as supervision and collection fees, respectively, are subject to the 6% tax, plus 25% surcharge; and

(b) Whether or not the right of respondent to assess the tax corresponding to the 4th quarter of 1953 to the 2nd quarter of 1955 has already prescribed.

On the first issue, petitioner contends that the supervision and collection fees are not part of the gross receipts subject to the 6% tax because they are payments for different and distinct forms of service or prestation, separate and apart from petitioner's brokerage functions. It is urged that its obligations under the contracts with the real estate owners, unlike that executed by and between J. M. Tuazon & Co., Inc. and the Varsity Hills, Inc. in the case of J. M. Tuazon & Co., Inc. vs. Collector of Internal Revenue, G.R. No. L-11530, June 30, 1960 (57 O.G. 39, p. 6952), are divisible because they provide for separate rates of compensation for supervision, collection and brokerage services.

Respondent, however, claims that this case is on all fours with the case of J. M. Tuazon & Co., Inc. vs. Collector of Internal Revenue, supra, because the contracts with the various real estate owners are single and indivisible. Consequently, he contends that the supervision and collection fees in question are part of the gross receipts subject to the 6% tax.

Respondent's contention is well taken. The various contracts in question (Exhibits D-1, D-2, E &

F, pp. 26-35, CTA rec.) show that, as far as the real estate owners are concerned, the main purpose and consideration of the contracts is the sale of the properties in smaller and suitable lots by petitioner. Until the sales of the lots were effected and proceeds therefrom collected, petitioner can not receive any compensation, whether as supervision, collection or brokerage fee, for said compensation must come from the proceeds of the sales. However, to bring about such sales, the real estate properties must be subdivided into smaller and suitable lots. This subdivision involves supervisory functions. And after the sale, there must be collection. The three kinds of service are correlated and interdependent upon each other, considering that these prestations are indivisibly assumed by petitioner.

It appearing that the different services complement each other and cannot stand separately and the compensations therefor are payable from one and the same source, the gross sales, and, therefore, the contracts in question are single and indivisible, we find that no error was committed by respondent in including the supervision and collection fees as part of petitioner's gross compensation subject to the 6% tax under Section 195 of the Revenue Code. (J. M. Tuason & Co., Inc. vs. Collector of Internal Revenue, *supra*.)

This being our conclusion, it also follows that the imposition of the 25% surcharge for the late payment of the deficiency percentage tax in question is in order.

Petitioner also contends that the portion of the assessment pertaining to the 4th quarter of 1953 to the 2nd quarter of 1965 has already prescribed. In this connection, respondent's justification for his right to assess the questioned deficiency assessment within 10 years on the ground that petitioner filed fraudulent returns is not borne by the evidence. Moreover, the fact that respondent failed to impose the fraud penalty of 50% is an indication that he himself did not believe that petitioner is guilty of fraud. Consequently, respondent has only five (5) years from the filing of the returns within which to assess the deficiency percentage tax for said period (Sec. 331, Revenue Code). As the questioned deficiency assessment was made on August 11, 1960, the right to assess the deficiency tax for said period has already prescribed.

As regards the compromise penalty of ₱8,000.00, it is now well-settled that the exaction of compromise penalties by the Commissioner of Internal Revenue is illegal and unauthorized in the absence of an agreement with the taxpayer (Collector vs. UST, et al., G.R. Nos. L-11274 & L-11280, November 28, 1958).

WHEREFORE, the decision appealed from is modified. Petitioner is hereby ordered to pay to respondent the sum of ₱38,731.95 as deficiency percentage tax and 25% surcharge for the period from the 3rd quarter of 1955 to September, 1958, itemized as follows:

Supervision fees		₱392,658.58
Collection fees		285,991.47
Total fees from Oct. 1953 to Sept., 1958		₱678,650.05
Less: Supervision fees, 4th quarter, 1954 to 2nd quarter, 1955 . . .	₱82,995.31	
Collection fees - 4th quarter, 1953 to 2nd quarter, 1955 . .	79,228.71	162,224.02
Total fees subject to percentage tax		₱516,426.03
6% tax thereon		₱ 30,985.56
Plus 25% surcharge		7,746.39
Total percentage tax & surcharge due		₱ 38,731.95

Without costs.

SO ORDERED.

Quezon City, September 22, 1967.

ROMAN M. UMALI
Presiding Judge

WE CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

RAMON L. AVANCEÑA
Associate Judge