REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

J.L. MANNING, E.E. SIMMONS,
and W.D. MACDONALD,
Petitioner,

- versus -

C.T.A CASE NO. 2449

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - x

3/25/94

DECISION

This is an appeal from the decision of respondent Commissioner of Internal Revenue dated October 6, 1972, denying petitioner's protest on deficiency income tax in the total amount of P13,879,529.74, including increments thereon, for the taxable year 1968.

FACTS: Petitioner, J.L. Manning, E.E. Simmons and W.D. MacDonald are all American citizens who at the time of the filing of the instant petition for review, on November 24, 1972, were all of legal age, married and residing at Makati, Metro Manila.

Sometime in 1968, petitioners sold their shares of stock in Manila Trading & Supply Co. to First Manila Management Corporation amounting to P31,172,940.00. The initial payment in 1968 was P6,422,940.00, an amount less than 25% of the purchase price of P31,172,940.00. Since the initial payment is less than 25% of the purchase price , the sale according to petitioners qualified as an installment sales.

Respondent contended that the amount of P1,500,000.00, representing the credit line extended to petitioners by Manila Trading & Supply Co., should be included as part of the initial payment of P6,422,940.00. Therefore, the initial payment totalled P7,922,940.00, which is already more than 25% of the purchase price. Thus, the sale could not qualify under the installment basis. Hence, the income tax thereon cannot be paid in installments.

Assessment letters, dated June 30, 1970, for Deficiency Income Tax for the year 1968 were sent to petitioners, on September 21, 1970, demanding payment of the following:

John L. Manning	P4,478,427.29
Ernest E. Simmons	4,699,860.73
William D. MacDonald	4,701,241.72
Total	P13,879,529.74

Petitioners protested the assessments in a letter dated October 19, 1970. In a letter dated October 6, 1972 respondent denied the protest. This was received by petitioners on November 6, 1972. Petitioner filed a petition for review with this Court on November 24, 1972 praying for the cancellation of the assessments issued by respondent.

Petitioners alleged that the credit line extended to petitioners in the amount of P1,500,000.00 by Manila Trading & Supply Co. was subject to an 8% interest rate per annum. Furthermore, petitioners have been paying the income tax in the installment basis every year since 1968. These payments were not even considered by the respondent. Moreover, the 50% surcharge has no basis since the issue is not the amount of the tax but whether the gain realized by petitioners from the sale of the shares of stock is reportable on installment basis or not, therefore there is no intent on the part of petitioners to evade the payment of the tax.

Petitioners offered their evidence which were all admitted by the Court there being no substantial objections raised by respondent. Respondent did not offer any evidence but instead submitted the case based on the pleadings and the BIR records of this case. Both parties submitted their respective memorandums.

The Court in its Resolution dated January 29, 1988, reopened the case on the possibility that the basic tax involved herein might have already been paid in installments. Likewise, supervening events might have transpired, the status of the parties might have changed, or otherwise substantially affect the same which may render this case moot.

Respondent manifested that no supervening events have transpired which would render this case moot and that she is still interested that a decision be rendered affirming the deficiency income tax assessments issued against petitioners. Respondent offered Exh. 1 - Letter dated April 22, 1988 for the Chief of the Litigation Division from the Chief, Doc. Analysis & Control Dept. stating that the income tax returns of the petitioners for the years 1968 to 1975 are no longer available in her office.

However, petitioners' counsel manifested on August 31, 1988 that he was able to get in touch with the relative of John L. Manning but not with the other petitioners. Subsequently, counsel for petitioners submitted to the Court additional documentary evidence consisting of the following:

1) Income Tax Returns:

(a) John L. Manning - for the years 1969-1970 and 1980-1983;

(b) Ernest E. Simmons - for the year 1971;

2) Certifications of the Availment of the Tax Amnesty, dated Nov. 25, 1977, issued by the respondent under P.D. No. 370, dated Jan. 9, 1974.

In a Resolution of this Court dated April 4, 1990, this case was again reset for hearing in view of a reliable information received by the Court that the parties to this case have already died. The Court ordered for the confirmation of such death and submission of the names of their legal representative/s by counsel pursuant to Section 16, Rule 3 of the Rev. Rules of Court so that proper substitution can be made in accordance with Sections 17 and 21 of the same Rules. The same order was reiterated on November 26, 1992.

Counsel for petitioners Manifested on Dec. 29, 1992 and Feb. 5, 1993, that petitioners are already dead (they died sometime 1987 and 1988 when all were citizens of the United States) and he is not aware of any executor, administrator or other legal representative, either here in the Phils. or abroad. However, he will exert all efforts to obtain said information. Then on March 9, 1993, counsel for deceased petitioners filed a Notice of Withdrawal due to the absence of communication from petitioners' legal representatives and counsel of record the latter sought his withdrawal with the approval of the Court.

On March 31, 1993, this case was heard for the last time. One Atty. Belen appeared (without proper entry of appearance) in behalf of the petitioners counsel of record (Attys. Alcantara and Tejada) in order to properly dispense their responsibility as counsels for petitioners. The Court submitted the case for decision.

After careful consideration of the foregoing factual antecedents and pursuant to the provision of Section 3 of Rule 17 of the Revised Rules of Court to wit:

> "Section 3. *Failure to prosecute*. - If plaintiff fails to appear at the time of trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. The dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court. (Underscoring supplied).

this Court, upon its own motion, hereby orders the dismissal of the above-entitled case for lack of interest on the part of the petitioners to prosecute their appeal.

SO ORDERED.

Quezon City, Metro Manila, March 25, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals