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Sept. 29, 1959

MARIO F. CLUTARIO,
Petitioner,

- versus -

C.T.A. CASE NO. 432

Sept. 29, 1959

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

Petitioner appeals from respondent's decision, assessing against and demanding from the former the sum of ₱175.00 as occupation tax covering the period from the second semester of 1950 to the year 1953, plus ₱30.00 compromise penalty, and seeks the cancellation of his application for a certificate of indebtedness to respondent or "the certificate of indebtedness issued in accordance with the petitioner's application."

Petitioner was the justice of the peace of Romblon, Romblon from September 8, 1950 to November 8, 1954. While he was occupying said position he appeared, with the requisite permission of the District Judge, as counsel before the Court of First Instance of Romblon in two cases, namely: "NATALIA MAZO vs. ROSALIA GALINDEZ, Civil Case No. 99, Foreclosure of Mortgage," and "PEOPLE OF THE PHILIPPINES vs. JUAN ROJAS, Case No. V-333, Crime - Homicide."

On the strength of such appearances, the Collector of Internal Revenue, on February 11, 1955, assessed against petitioner the sum of ₱225.00, as occupation tax for the period from the second semester of 1950 to the second semester of 1954, plus ₱50.00 compromise penalty. After several requests for reconsideration of said assessment, respondent, on November 12, 1955, demanded from petitioner the amounts of ₱175.00, as occupation tax covering the period from the second semester of 1950 up to the year 1953, and ₱50.00, as compromise penalty. The letter of demand was received by petitioner on November 6, 1956 (see pp. 30-31 t.s.n., Exhibit B-1, p. 11 Petitioner's Exhibits). On November 12, 1956 (Exhibit F, pp. 52-56, BIR rec.), petitioner requested for a reconsideration of this assessment, which request was denied by respondent, in a letter dated February 28, 1957 (Exhibit 13, p. 69 BIR rec.), but which petitioner claims he never received (see t.s.n. pp. 10, 37). A second notice of demand, however, was sent on April 2, 1957 (Exhibit 8, p. 70, BIR rec.). Subsequently, a warrant of distraint and levy, dated April 16, 1957 and served May 9 (see p. 74 BIR rec.), was issued against petitioner. Petitioner, in the meantime, filed under protest, on May 7, 1957, an application for the issuance of a certificate of indebtedness under Republic Act No. 304, the Backpay Law, for the payment of the sum of ₱175.00, as occupation tax, which application was accepted by respondent (Exhibit G, p. 1, Petitioner's Exhibits).

On October 28, 1957, the original petition for review was filed with this Court. Respondent moved to dismiss the case on the ground that the petition was not seasonably filed. However, the Court, on March 5, 1958, denied the motion to dismiss, holding that the petition was timely filed.

During the pendency of the present action, petitioner, on February 10, 1959 (Exhibit A, p. 108, CTA rec.), filed a claim for refund with the respondent, pursuant to Section 306 of the National Internal Revenue Code. And, on February 16, 1959, he filed a motion for admission of an amended petition for review, which motion was granted by this Court.

At the hearing, petitioner testified that his client in the civil case was a relative of his wife who could not afford to hire a lawyer and that he did not receive any payment for appearing in said case (pp. 54, 55, 65 t.s.n.); that he handled the criminal case because his sister requested him to do so; that he received two chickens from the accused, his client, in the criminal case (pp. 59 & 68, t.s.n.); that he did not appear in any other case except these two; and that previous to his appointment as justice of the peace, he never practiced law (see pp. 60, 66, 67 t.s.n.).

The issues involved are:

1. Whether or not petitioner has a valid or sufficient cause of action for refund against respondent; and

2. Whether or not petitioner is liable for occupation tax under Section 201 [now Section 182 (B) (1)] of the Tax Code.

With regards to the first issue, respondent contends that the mere acceptance by him of petitioner's application for the issuance of a certificate of indebtedness did not constitute payment, and therefore, no action for refund could be claimed under Section 306 of the Tax Code. Consequently, it is urged that the amended petition for review be dismissed, there being no valid or sufficient cause of action for refund that could be maintained against respondent. Petitioner, however, denies seeking refund. He insists that what he seeks is the cancellation of his application for a certificate of indebtedness issued with said application, which cancellation is the equivalent of refund.

In default of a showing that the corresponding certificate of indebtedness was issued in pursuance of petitioner's application therefor, we are constrained to agree with respondent that petitioner has no valid or sufficient cause of action in connection with the refund. Until and unless the said certificate of indebtedness is issued may it be said that petitioner has effected the payment of the tax in question so as to entitle him to the refund thereof, in pursuance of Section 306 of the Tax Code.

However, we are not disposed to dismiss the instant amended petition for review because, by it, petitioner likewise disputes the legality of the assessment. This disputation is predicated upon his contention that he did not engaged in the private practice of law.

We now come to the second issue. It is the contention of respondent that under the circumstances heretofore narrated, petitioner engaged in the practice of law during the period from the second semester of 1950 to the year 1953, and therefore, was liable for the payment of the occupation tax. On the other hand, petitioner contends that he is not liable for the payment of the said tax because his appearances in the two cases did not constitute engagement in an occupation subject to tax under Section 201 [now Section 182 (B)] of the Tax Code.

We agree with the petitioner that his appearances in the two cases did not constitute engagement in the practice of law or the pursuit of an occupation within the concept of the law. The word "engage" has been interpreted by the Supreme Court, in connection with privilege taxes on business and occupation, thus:

> "x x x. 'To engage' is to embark in a business or to employ oneself therein (Webster's New International Dictionary). The word 'engage' connotes more than a single act or a single transaction; it involved some continuity of action (Day vs. Equitable Life Assurance Soc. of the United States, 83 F 2d 147, 1948). 'To engage in business' is uniformly construed as signifying to follow the employment or occupation which occupies the time, attention, and labor for the purpose of a livelihood or profit (Semple vs. Schwarz, 109 S.W. 633, 636, citing Seickler vs. Guenther, 96 N.W. 895, 896). x x x" (Domingo Imperial vs. Collector, G. R. No. L-7924, Sept. 30, 1955.)

The terms "practice" and "Occupation" have been defined as:

"Practice consists in frequent or customary actions; a succession of acts of the same kind. A proceeding that never has been taken cannot be said to be in accordance with existing practice. Practice is the form, manner, and order in which proceedings have been, and are accustomed to be, had." (Fellows vs. Heermans N.Y. 13 Abb. Prac., N.S. 1, 8 cited in Volume 33, Words & Phrases, p. 181.)

"'To practice law' is to carry on the business of an attorney at law; to do or practice that which any attorney or counselor at law is authorized to do and practice; to exercise the calling or profession of the law; usually for the purpose of gaining a livelihood or at least for gain; to make it one's business to act for, and by the warrant of others in legal formalities, negotiations, or proceedings." (Fink vs. Peden, Ind. 17 N.E. 2d 95, 96 cited in Volume 33, Words & Phrases, p. 194.)

"By 'occupation', as used with reference to occupational taxes, is meant a calling, trade, or vocation, which one engages in for the purpose of profit or making a living or obtaining wealth." (Shed vs. State, 155 S.W. 524, 526, 70 Tex. Cr. R. 10 cited in Volume 29 Words & Phrases, p. 157.)

"Occupation is defined to be that which occupies or engages the time or attention; the principal business or one's life; vocation; employment; calling; trade." (Union Mut. Acc. Ass'n vs. Frohard 25 N.E. 642, 643, 134 Ill. 228, 10 LRA 383, 23 Am. St. Rep. 664 cited in Volume 29 Words & Phrases, p. 157.)

"The term 'occupation' is defined as that which principally takes up one's time, thought and energies; especially one's regular business or employment; also whatever one follows as the means of making a livelihood." (Dorrell vs. Norida Land & Timber Co. 27 P. 2d 960, 53 Idaho 793, cited in Volume 29 Words & Phrases, p. 160.)

From the afore-quoted definitions, "practice" and "Occupation" denote a certain degree of habituality or regularity. To be engaged in the practice or pursuit of an occupation, acts in connection therewith must be performed frequently and regularly, with a view to gaining a livelihood.

In the case at bar, petitioner's appearances in the two cases cannot be said to have been made frequently and regularly, with a view to gaining a livelihood. They were mere isolated acts performed merely to accommodate a relative of his wife and his sister who requested him to take up the criminal case. These acts do not convey the idea of progression, continuity or sustained activity towards the practice or pursuit of law. Under these circumstances, therefore, petitioner cannot be held as having engaged in the practice or pursuit of law, so as to be made liable for the payment of the occupation tax under Section 201 [now Section 182 (B)] of the Tax Code.

WHEREFORE, the decision of the Collector (now Commissioner) of Internal Revenue appealed from is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Manila, September 29, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge