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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TOMAS CALASANZ and
URSULA CALASANZ,
Petitioners

versus C. T. A. CASE NO. 1275

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

June 7/66

D E C I S I O N

This is an appeal from a decision of the respondent dated July 21, 1962, imposing upon the petitioners the sum of ₱160.00 as real estate dealer's fixed tax and compromise penalty, and the sum of ₱3,561.24 as deficiency income tax, including interest, for the year 1957.

This case was submitted for decision solely on the basis of the stipulation of facts submitted by the parties, which we quote:

"1. That the petitioners are both of legal age, spouses, and residents of No. 167 Suter, Sta. Ana, Manila; while the respondent Commissioner of Internal Revenue may be served with summons and other process at his office in the Bureau of Internal Revenue, Finance Building, Manila;

"2. That on March 31, 1958, the petitioners filed with the Bureau of Internal Revenue their joint income tax return for the calendar year 1957; copy of the said return is found on pages 2 to 6 of the BIR Records, and is made an integral part hereof;

"3. That in May, 1959, Revenue Examiner Damaso S. Flores recommended approval of the aforesaid returns, with the sole modification of a deficiency assessment of Three Hundred Ten Pesos (₱310.00); copy of said recommendation is found on page 19 of the BIR Records, and is made an integral part hereof;

"4. That the petitioners submitted to the foregoing, as shown by the letter, copy of which is hereto attached and made an integral part hereof as Annex 'A';

"5. That on September 29, 1964 (as shown by the affidavit hereto attached and made an integral part hereof as Annex 'B', as well as the envelope copy of which is attached thereto as Annex 'A', and likewise made an integral part hereof), the petitioners received from the respondent:

'a. Demand No. 90-B-032293-57, in the amount of ₱160.00 as real estate dealers' fixed tax and penalty, copy of which is found on page 39 of the BIR Records and is made an integral part hereof;

'b. Assessment No. 90-5-35699, in the amount of ₱3,561.24 as deficiency income tax on ordinary gain derived from the sale of subdivided lots, copy of which is found on page 40 of the BIR Records and is made an integral part hereof; which assessment was upon recommendation of Examiner Ernesto Nazareno, as shown by his indorsement found on pages 32-35 of the BIR Records and made an integral part hereof;

"6. That the subdivided lots referred to in the next preceeding paragraph hereof are those comprised in Transfer Certificate of Title No. 14035 and PSU-154809 (subsequently OCT No. 1375) as shown in the subdivision plan copy of which is hereto attached and made an integral part hereof as Annex 'C';

"7. That Transfer Certificate of Title No. 14035 was a transfer from Transfer Certificate of Title No. 36334, as shown by a copy of the first mentioned title hereto attached and made an integral part hereof as Annex 'D';

"8. That PSU-154809, (subsequently OCT No. 1375) are those lots covered by Tax Declaration Nos. 6029, 5349 and 5350, as shown by the petition for registration and decision in G.L.R.O. No. ____, Case No. 1336, CFI of Rizal, copies of which are hereto attached and made an integral part hereof as Annexes 'E' and 'E-1';

"9. That the lots covered by TCT No. 36334 and PSU-154809 (subsequently OCT No. 1375) were inherited by the petitioner Ursula Calasanz from her father, as shown by the Estate and Inheritance Tax Return, copy of which is hereto attached and made an integral part hereof as Annex 'F'; as well as Annex 'C', and Annexes 'F-1', 'F-2' & 'F-3';

"10. That the parties reserve the right to present such evidence as they may deem necessary to prove facts not covered by this stipulation."

The issues raised are:

(a) Whether or not petitioners are real estate dealers liable for real estate dealer's fixed tax; and

(b) Whether or not the profits realized by petitioners in the sale of the subdivided lots which petitioner, Ursula Calasanz, inherited from her father, should be treated as ordinary gain and therefore taxable in full.

On the first issue, the assessment of ₱150.00, representing real estate dealer's fixed tax against the petitioners, is well taken. The facts of the case strongly support this conclusion.

The "Don Mariano Subdivision," located in Cainta, Rizal, contains a total area of 1,678,000 sq. meters (See Annex "F-3," p. 53, CTA records) and consists of numerous small lots (Annex "C," p. 48, CTA record) which were subsequently sold to the public. Improvements which are indispensable in a subdivision, such as good roads, concrete gutters, drainage, lighting system, etc. were introduced to make the lots saleable. These improvements necessitated the employment of initial capital. And these numerous lots were sold not in a single isolated transaction, hence the sale could not fall within the doctrine enunciated by the Supreme Court in the case of Imperial vs. Collector of Internal Revenue, G. R. No. L-7924, September 30, 1955. On the contrary, the disposition involved a series of real estate transactions aimed at making profit. In short, petitioner engaged in the business of real estate dealer. Accordingly, petitioners were engaged in business as real estate dealers under Section 182(s) of the Tax Code.

The next issue is whether or not the profits realized by the petitioners in the sale of the subdivided lots are ordinary gains taxable in full, or long term capital gains taxable to the extent of only 50% thereof.

Petitioners contend that inasmuch as the property was acquired by petitioner, Ursula Calasanz, by inheritance from her father, the subdivision lots are capital assets and the profits realized from the sales thereof are capital gains.

On the other hand, respondent claims that the mere fact that the property in question was acquired by inheritance and subsequently disposed of does not prevent it from being converted from an investment property to business property if, as in the present case, the number, continuity and the frequency of the sales of the subdivided lots were such as to constitute engaging in real estate business. Consequently, it is suggested that the gains realized from the sale are ordinary and taxable in full.

Respondent's view is well taken. The subdivision of the property into numerous smaller lots and the sale of these lots had the effect of converting the same into property used in business (Tuazon vs. Lingad, CTA No. 1398, January 16, 1965). It may be true, as petitioners claim, that their intention was to effect liquidation of the property. But to achieve that purpose, they actually engaged in real estate business in order to realize more profits. Accordingly, the profits realized from the sales of said lots are ordinary gains and are taxable in full.

With respect to the imposition of compromise penalty amounting to ₱20.00, it is now well-settled in this jurisdiction that a compromise penalty cannot be collected in the absence of a valid and binding compromise agreement. Hence, that portion of the deficiency assessment regarding the compromise penalty in the sum of ₱20.00 must be reversed.

IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified and petitioner is ordered to pay respondent Commissioner the amounts of ₱3,561.24, as deficiency income tax and interest for 1957, and ₱150.00 as real estate dealer's fixed tax. If the deficiency income tax is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay a surcharge of 5% of the unpaid amount and 1% monthly interest from the date this decision becomes final and executory until paid, subject to the limitation provided in Section 51(e) of the Revenue Code.

SO ORDERED.

Quezon City, June 7, 1966.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon Avanceña
RAMON L. AVANCEÑA
Associate Judge