REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOVITO SUAREZ,
Petitioner,

- versus -   C.T.A. CASE NO. 994

COMMISSIONER OF INTERNAL
REVENUE MELECIO R. DOMINGO,
Respondent.

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D E C I S I O N

This is a petition for review of a decision of the respondent Commissioner of Internal Revenue holding that petitioner Jovito Suarez is an independent labor contractor within the purview of Section 191 of the Tax Code, and therefore liable for the payment of the total amount of ₱995.92, as fixed and percentage taxes, inclusive of surcharges and compromise penalties for the years 1956 and 1957. (Exh. 3, p. 4, CTA rec.)

The petitioner herein, Jovito Suarez, is a member of a group of laborers contracted by Central Santos-Lopez Co., Inc., for the unloading and loading of sugar at its warehouse in Muelle Loney, Iloilo City. For reasons of convenience and expediency so as not to deal individually with each of the laborers, Central Santos-Lopez Co., Inc. requested its laborers to name one person from among themselves to be their representative in the signing of contracts and other business transactions related to the unloading and loading of sugar at the warehouse of their employer. In compliance with said request, the laborers appointed petitioner Jovito Suarez as their representative. (Exhs. D & E, pp. 34-36, CTA rec.; Exh. 2, p. 11-13, BIR rec.)

Pursuant to the above mentioned arrangement, the petitioner, on September 6, 1955, entered into a contract with Central Santos-Lopez Co., Inc., wherein the latter agreed to pay seven centavos (₱0.07) for each sack of sugar unloaded or loaded at its warehouse in Muelle Loney, Iloilo City. (Exhs. A & A-1, p. 7, BIR rec.; p. 31, CTA rec.) It may also be stated here that in the performance of their work, the laborers were not allowed to loiter inside the warehouse, and were to get orders from and cooperate with Fernando Abilo, the warehouseman of Central Santos-Lopez Co., Inc., but petitioner Jovito Suarez was to supervise the work of the laborers. (Exh. B, p. 32, CTA rec.)

For the work done, the laborers were paid weekly, through the petitioner. Central Santos-Lopez Co., Inc., prepared and issued the pay checks in the name of the petitioner, who submitted the statements attesting to the number of sacks loaded or unloaded, signed the corresponding vouchers, cashed the checks and distributed equally the weekly payments among the laborers. As his compensation, the petitioner received only an amount equal to the share of one laborer. (pp. 14-17, t.s.n.)

For the years 1956 and 1957, Central Santos-Lopez Co., Inc., paid to said laborers the amounts of ₱8,275.80 and ₱12,255.31, respectively, for the unloading and loading of sugar at its warehouse. (par. 2, Partial Stipulation of Facts, herein after referred to as Stifacts, pp. 29-30, CTA rec.) Inasmuch as the petitioner did not return for taxation purposes the said amounts, the respondent, thru the BIR Regional Director of Iloilo City, on February 7, 1958, assessed against and demanded from him the total sum of ₱995.92, as fixed and percentage taxes, inclusive of surcharge and compromise penalties. (par. 3, Stifacts; Exh. 3, p. 4, CTA rec.)

On February 27, 1958, the petitioner protested against the assessment and requested for its reconsideration. (Exh. C, p. 33, CTA rec.) However, instead of acting favorably on the request for reconsideration and reinvestigation, the respondent, on December 5, 1960, reiterated his demand for the payment of the total amount of ₱995.92. (p. 4, Stifacts; Exh. 4, p. 6, CTA rec.) Hence, this appeal.

The only issue to be decided in this case is whether or not the petitioner is an independent labor contractor within the **purview** of Section 191 of the Tax Code, and therefore liable for the payment of the contractor's fixed and percentage taxes.

The petitioner maintains that he is not and should not be classified as a <u>contractor</u> because his job was simply to represent his group of laborers when he signed the contract of September 6, 1955 per arrangement with Central Santos-Lopez Co., Inc., and that he did not act nor derive benefits or profits as would a real contractor, being just a mere member of the group participating equally with his fellow laborers in the payments made by Central Santos-Lopez Co., Inc. for their loading and unloading job. (p. 3, Memorandum for Petitioner, pp. 38-43, CTA rec.) The respondent on the other hand avers that the petitioner is an independent contractor so that the gross receipts he realized from the performance of the terms of the contract between him and the Central Santos-Lopez Co., Inc., is subject to the contractor's fixed and percentage taxes prescribed in the Tax Code. (pp. 3-4, Memorandum for Respondent, pp. 56-66, CTA rec.)

We agree with the contention of the petitioner that he is not an independent labor contractor, but merely a laborer or employee. While it appears on the contract, Exhibit A-1 (p. 31 CTA rec.) of September 6, 1955, between Central Santos-Lopez Co., Inc. and the petitioner that he is referred to and designated as "contractor", however, at the hearing of this case, the petitioner was able to prove to the satisfaction of the Court that in truth and in fact he is just an ordinary laborer and that when he signed the contract in question, he did so as a member and representative of a group of laborers which was contracted by Central Santos-Lopez Co., Inc. to load and unload sugar. The joint affidavit, Exhibit E (pp. 35-36, CTA rec.) of the forty-nine (49) laborers as well as the Certification, Exhibit D (p. 34 CTA rec.) of the Assistant Manager of the Central Santos-Lopez Co., Inc. attest to this fact. This kind of arrangement between a company and its laborers whereby the company deals with only one of the laborers is a perfectly legal set up as correctly argued by the petitioner, and is often resorted to by companies and their laborers. (Bermiso vs. Hijos de F. Escano, Inc., G.R. No. L-11606, Feb. 28, 1959; 56 O.G. 5296.)

Moreover, not every person who enters into a contract of whatever nature or character is a contractor within the purview of Section 191 of the Tax Code. And there can be no doubt that common laborers who work by the day or piece work under a contract cannot be considered contractors so as to hold them liable for the payment of the contractor's fixed and percentages taxes prescribed in the National Internal Revenue Code. (Luzon Stevedoring Co. vs. Trinidad, 43 Phil. 803; La Carlota Sugar Central vs. Trinidad, 43 Phil. 816.)

One of the main characteristics of a contract involving independent contractors, which distinguishes it from the relation of master and servant or employer and employee, is that while the servant or employee is under the control and supervision of the master and employer, respectively, the independent contractor acts independently of his employer being responsible only to the latter for the result of the work or undertaking. (Fressel vs. Mariano Uy Chaco Sons & Co. 34 Phil. 122; p. 15 Javier on the Law on Agency.)

In the present case, the petitioner Jovito Suarez is not allowed to act independently, as would an independent contractor, as clearly stated in the memorandum, Exhibit B (p. 32 CTA rec.) dated December 4, 1955 of Carlos Lopez, General Manager of the Central Santos-Lopez

Co., Inc. to their warehouseman, Fernando Abilo, which memorandum in part reads as follows:

> "4. You are the one solely responsible of the bodega. See to it that nobody is allowed to loiter inside and that the contractor and his men are not to be allowed to interfere with your assigned responsibilities. The <u>contractor is only there to supervise his men and that they are to cooperate and get orders from you in the performance of your duties by virtue of his contract</u>." (Underscoring supplied.)

We note that the alleged tax liability of the petitioner was first brought to the attention of the respondent through an anonymous letter. (Exh. 1, p. 4, BIR rec.) In the ensuing investigation conducted by BIR Agent Nicanor E. Segara, the latter reported to his superiors that petitioner Jovito Suarez "acts as a <u>representative</u> of the laborers in transacting business with the management" of Central Santos-Lopez Co., Inc. (Exh. 2, pp. 11-13, BIR rec.) This is another clear indication that the petitioner is only one of the laborers contracted by Central Santos-Lopez Co., Inc., and therefore is not liable to pay the contractor's fixed and percentage taxes which the respondent seeks to collect from him.

WHEREFORE, finding petitioner Jovito Suarez to be a laborer and not an indepandent labor contractor, the decision appealed from is hereby reversed, without pronouncement as to costs.

SO ORDERED.

Manila, December 20, 1961.

AUGUSTO M. LUCIANO
Associate Judge

We concur:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

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