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WONG BAN KEE, CHUA YU
HIAN, and CO CAN,
Petitioners,

versus

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 2321

6/6/75

x x

DECISION

This is a joint appeal from the decision of respondent Commissioner of Internal Revenue holding each of the petitioners liable for deficiency income tax for 1963, inclusive of surcharges, interests and compromise penalty, as follows:

Wong Ban Kee	₱ 102,748.98
Chua Yu Hian	100,919.32
Co Can	108,756.94

Petitioners and a certain Chua Ki Lin, all Chinese citizens, are partners of the C & O Import & Export Co., a registered partnership in business as manufacturers, importers and exporters of goods and merchandise.

In September 1964, the office of the partnership at Room 707, Pacific Bank Building, Rosario, Manila, was raided by a team of revenue examiners armed with two search warrants issued by the Court of First Instance of Manila. As a result of said raid, several documents and accounting records were seized by the examiners, including one hundred sixty-one (161) unnumbered and unsigned receipts contained in five (5) folders which showed various cash disbursements to several firms in 1963, amounting to a total of ₱529,520.52.

Subsequently, the examiners verified that the disbursements were in effect made by the partnership and the receipts were issued by the firms concerned. This was done by referring the receipts to the various recipients appearing in the receipts. However, the disbursements were not recorded in the books of accounts of the partnership and the source or sources of the funds disbursed were not divulged or explained to the revenue agents by the partners.

On June 30, 1965, on the theory that the partnership had an undeclared income of ₱529,520.52 in 1963 and that the same is taxable to the individual partners in proportion to their shares and participation therein, to wit:

Wong Ban Kee	(25%)	₱ 132,380.13
Chua Yu Hian	(25%)	132,380.13
Co Can	(25%)	132,380.13
Chua Ki Lin	(25%)	132,380.13

separate assessments for deficiency income tax, surcharges and interests were issued by respondent against the individual partners as follows:

Wong Ban Kee	₱ 86,934.85
Chua Yu Hian	85,386.04
Co Can	92,012.13
Chua Ki Lin	89,713.28

In July 1965, Chua Ki Lin protested the assessment against him but his protest was denied by respondent.

Thereafter, he appealed to this Court in C.T.A. Case No. 1802 but his appeal was likewise adversely decided on October 8, 1972 and he was ordered to pay the deficiency income tax, plus interests and penalties. Later he appealed by certiorari to the Supreme Court in G.R. No. L-36433 but said Court dismissed his appeal for lack of merit. In fairness to the petitioners it should be stated at this juncture that the legality of the search was not raised before the Court of First Instance of Manila as in this case and the documents in question were thus admitted as evidence therein.

For their part, petitioners Wong Ban Kee, Chua Yu Hian and Co Can, in a letter of their counsel dated July 27, 1965, protested the assessments against them, respectively, alleging that the same were baseless, confiscatory and without due process.

On January 24, 1966, in a letter to each of the petitioners, the Regional Director of Region No. 5 of the Bureau of Internal Revenue demanded that their respective tax liabilities be paid and settled.

In a reply dated February 4, 1966, petitioners' counsel explained that he had disputed and contested the respective assessments against petitioners in his letter of July 27, 1965 and that said protest had not yet been answered or resolved by the respondent.

On August 30, 1966, separate letters were again issued by respondent Commissioner further increasing the previous assessments against petitioners, thus:

Wong Ban Kee	₱ 102,748.98
Chua Yu Hian	100,919.32
Co Can	108,876.94

and demanding that the same be paid on or before September 30, 1966, "otherwise, collection thereof, plus the statutory penalties, will have to be enforced by means of the remedies provided by law".

On June 6, 1967, warrants of distraint and levy were issued against the petitioners to collect the amounts assessed in respondent's letters of August 30, 1966 and served on August 10, 1967, on the petitioners respectively.

In the meantime, on August 7, 1967, petitioner's counsel filed another letter requesting reinvestigation and stating that he was appealing his clients' case to the Appellate Division of the Bureau of Internal Revenue in order to prove their ground and, in two subsequent letters dated August 17, 1967 and September 6, 1967, petitioners' counsel insisted on a reinvestigation and a re-hearing by the Appellate Division, and furthermore requested that the execution of the warrant of distraint and levy be held in abeyance.

In a reply dated September 13, 1967, respondent granted petitioners' request for a re-hearing of their case by the Appellate Division and requested them to execute a waiver of the statute of limitations under the Tax Code. On September 15, 1967, petitioners heeded the request of respondent by executing their respective waivers on December 31, 1972 as the date of expiry.

On April 19, 1968, after several postponements, petitioners' counsel manifested during the hearing that he was going to file a written motion to dismiss the assessments because the seizure of the five (5) folders of receipts on which respondent's deficiency assessments were based had been declared illegal and ordered returned to petitioners in an order of the Court of First Instance dated February 15, 1968. In effect, on July 2, 1968, petitioners' counsel filed a letter requesting dismissal and cancellation of the assessments alleging principally that since the seizure of the five (5) folders of receipts had been declared illegal by the Court of First Instance, said assessments against petitioners have no legal basis.

In his answer dated March 1, 1971, which was received by petitioners' counsel on April 1, 1971 respondent denied petitioners' request for cancellation of the assessments on the ground, among others, that illegally seized documents may still be used as basis of tax assessments, and warned petitioners to pay their respective tax liabilities plus delinquency penalties "within fifteen (15) days from receipt hereof; otherwise, collection thereof will be enforced thru the summary remedies provided by law." In this same letter respondent states:

> With reference to your protest against our three (3) assessments all dated August 30, 1966 requiring your clients, Messrs. Wong Ban Kee, Chua Yu Hian and Co Can, to pay the amounts of ₱86,934.85, ₱85,386.04 and ₱92,012.13, respectively, as deficiency income tax, surcharge and interest for 1963, exclusive of the penalties incident to delinquency, I have the honor to inform you that after a review of the facts of the case and the law applicable thereto, this Office finds no justifiable grounds to cancel and/or alter the aforesaid assessments.
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> In your request for the cancellation of the said assessment, you contended that this Bureau is barred from utilizing the documents seized by our agents from your clients as basis for the assessment in question, invoking the exclusionary rule elucidated in the case of Harry Stonehill vs. Jose Diokno, G.R. No. L-19550, June 19, 1967. It should be pointed out, however, that while it may be true that the seized documents cannot, under the exclusionary rule, be presented as evidence in criminal cases, they may, however, be used as basis for tax assessments because in the case of tax assessments, no right of self-incrimination is involved. Moreover, in the case of Republic of the Philippines vs. Patanao, G.R. No. L-22356, July 21, 1967, our Supreme Court ruled that acquittal in a criminal action does not necessarily entail exoneration from the taxpayer's civil liability to pay the tax. Consequently, the mere fact that the seized documents or receipts were released to the taxpayers on orders of the court cannot be considered as prohibiting the issuance of tax assessments on the basis of information gathered from the seized documents.

In another letter dated April 14, 1971, petitioners' counsel again requested reconsideration contending that the Stonehill case did not exclude tax cases from the ambit of its doctrine and further cited the case of Bache & Co. (Phil.) and Frederick E. Seggerman v. Hon. Vivencio M. Ruiz, et al., G.R. No. L-32409, Feb. 27, 1971 applying the Stonehill doctrine to tax cases.

On May 26, 1971, respondent issued a Memorandum to the Revenue Operations Head directing him to proceed with the execution of the warrants of distraint and levy previously served on the petitioners but said warrants could not immediately be located or enforced by the agents responsible thereof.

On July 22, 1971, another set of warrants of distraint and levy were issued by respondent to collect the deficiency taxes and delinquency penalties against each of the petitioners.

On August 18, 1971, another request for reconsideration was filed by petitioners' counsel reiterating the grounds alleged in his letter of April 14, 1971.

On August 19, 1971, respondent's representative went to petitioners to enforce the warrants of distraint and levy on their properties, respectively.

On September 1, 1971, petitioners filed their joint appeal to this Court.

Respondent contends that this Court is without jurisdiction over the present appeal because it was filed beyond the thirty-day period prescribed in Section 11 of Republic Act No. 1125. He anchors his contention on the theory that the final and appealable decision was his letter dated March 1, 1971, and that petitioners' request for reconsideration of April 14, 1971, being merely pro-forma did not stop the running of the statutory period from receipt of said decision on April 1, 1971.

Petitioners agree that the final and appealable decision was respondent's letter of March 1, 1971 but contend that their request for reconsideration of April 14, 1971 is not pro-forma and, hence, it suspended the running of the period for appeal from April 14, 1971, the date on which petitioners filed their second request for reconsideration, to August 19, 1971, the date respondent impliedly denied their second and third requests for reconsideration through the enforcement of the warrants of distraint and levy. Thus, when they filed their appeal on September 1, 1971, only a period of 25 days had elapsed.

The decision of the Commissioner which is appealable to this Court within thirty days from receipt thereof is that which has the tenor of finality, and in this case that decision is the letter of respondent dated March 1, 1971. Both parties also take this position. The tenor of finality can be clearly gleaned from the demand of payment within 15 days from notice of the decision, otherwise collection would be made through summary remedies.

The request for reconsideration of April 14, 1971 does not seem to be *pro forma*. The main issue between the parties in this aspect of the case was the admissibility as evidence of the documents obtained through an illegal seizure. Respondent, in his letter of March 1, 1973 asserted that the doctrine in the Stonehill case applies only to criminal cases and not to a civil case for collection of taxes. Surely a request for reconsideration calling the attention of respondent that the decision of the Bache case which he obviously overlooked, perhaps because the same was promulgated only two days before respondent rendered his decision of March 1, squarely refutes his interpretation of the Stonehill doctrine, is not *pro forma*. Petitioners had every reason to expect that respondent would respect a ruling of the Highest Tribunal in this jurisdiction, and it may not be amiss to say at this juncture that the rule on *pro forma* motions should not be strictly interpreted in cases before the Court of Tax Appeals because the rules of court is only suppletory in character in said Court. (Collector of Internal Revenue v. Court of Tax Appeals, 109 Phil. 1027.) Needless to say, if the request for reconsideration of April 14 was not *pro forma* as we hold here, this petition for review was filed on time.

The controverted assessments are admittedly based on information gathered from the documents aforementioned declared illegally seized by the Court of

First Instance of Manila because they were not among the documents mentioned in a search warrant. Despite the illegality of the seizure we think that the facts gathered from said documents can be used as bases of the assessment.

The doctrine in the Stonehill case is stated as follows:

> Thus, the documents, papers, and things seized under the alleged authority of the warrants in question may be split into two (2) major groups, namely: (a) those found and seized in the offices of the aforementioned corporations, and (b) those found and seized in the residences of petitioners herein.
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> As regards the first group, we hold that petitioners herein have no cause of action to assail the legality of the contested warrants and of the seizures made in pursuance thereof, for the simple reason that said corporations have their respective personalities, separate and distinct from the personality of herein petitioners, regardless of the amount of shares of stock or of the interest of each of them in said corporations, and whatever the offices they hold therein may be. Indeed, it is well settled that the legality of a seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties. Consequently, petitioners herein may not validly object to the use in evidence against them of the documents, papers and things seized from the offices and premises of the corporations adverted to above, since the right to object to the admission of said papers in evidence belongs exclusively to the corporations, to whom the seized effects belong, and may not be invoked by the corporate officers in proceedings against them in their individual capacity. Indeed, it has been held:
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> > "x x x that the Government's action in gaining posses-

sion of papers belonging to the corporation did not relate to nor did it affect the personal defendants. If these papers were unlawfully seized and thereby the constitutional rights of or any one were invaded, they were the rights of the corporation and not the rights of the other defendants. Next, it is clear that a question of the lawfulness of a seizure can be raised only by one whose rights have been invaded. Certainly, such a seizure, if unlawful, could not affect the constitutional rights of defendants whose property had not been seized or the privacy of whose homes had not been disturbed; nor could they claim for themselves the benefits of the Fourth Amendment, when its violation, if any, was with reference to the rights of another. Remus vs. United States (C.C.A.) 291 F. 501, 511. It follows, therefore, that the question of the admissibility of the evidence based on an alleged unlawful search and seizure does not extend to the personal defendants but embraces only the corporation whose property was taken. x x x" (A. Guckenheimer & Bros. Co. vs. United States [1925] 3 F. 2d, 786, 789, underscoring supplied.) (Stonehill vs. Diokno, G.R. L-19550, June 19, 1967.)

In the Bache case the Supreme Court said:

. . . In the Stonehill case only the officers of the various corporations in whose offices documents, papers and effects were searched and seized were the petitioners. In the case at bar, the corporation to whom the seized documents belong, and whose rights have thereby been impaired, is itself a petitioner. On that score, petitioner corporation here stands on a different footing from the corporations in Stonehill. (Bache & Co. [Phil.] and Frederick E. Seggerman v. Hon. Vivencio M. Ruiz, et al., G.R. No. L-32409, Feb. 27, 1971.)

We gather from the foregoing that the illegality of a search and seizure can be raised as a defense only by one whose rights have been invaded or whose property has been seized or the privacy of whose homes has been disturbed and that the right to object is purely personal. Under Article 1768 of the Civil Code the partnership has a juridical personality separate from that of each of the partners and, in the instant case, the documents were documents of the partnership and they were seized in the office of the partnership. It is not a case between the government and the partnership but the government and the individual partners and it would seem that following the Stonehill and Bache doctrine the partners can not use the illegality of the search and seizure as a defense, this being personal to the partnership. It is well to recall that the controverted documents were returned upon petition of the partnership and not by the petitioners.

Petitioners next contend that the documentary evidence adduced by respondent are hearsay because the receipts and the recipients of the disbursements were not presented in this Court nor was the BIR examiner called to testify to substantiate his report and recommendation. Moreover, petitioners allege that there is no evidence independent from or unconnected with the illegally seized document presented by respondent.

It is a legal truism that all presumptions are in favor of the correctness of the assessments and the burden of proof is on the taxpayer to show the contrary and upon failure of the petitioners to comply with this burden the Court renders judgment sustaining the assessment. (Inter-Provincial Bus Co., Inc. v. Coll. of Int. Rev., G.R. No. L-6741, Jan. 31, 1956; Perez v. Court of Tax Appeals, et al., G.R. No. L-10507, May 30, 1958; Coll. of Int. Rev. v. Bohol Land Transportation Co., G.R. No. L-13099, April 29, 1960.)

It appears that petitioners vigorously maintain that the assessment is solely based on facts gathered from the documents found in the office of the C. C. Import and Export Co. which is true. With this in mind, petitioners adduced no evidence to disprove the correctness of the assessment in the belief that the illegality of the seizure of the aforesaid documents is enough defense. Since this Court finds this defense as personal to the partnership and cannot be used by the individual partners, the presumption of correctness of the assessment obviously remains intact and it is not necessary for respondent to present evidence sustaining his assessment to obtain an affirmance thereof.

In claiming that the documentary evidence consisting of B.I.R. records presented by respondent in this Court are hearsay and of no value petitioners apparently consider the administrative and the judicial proceedings herein as one proceeding when in law they are two separate proceedings. As far as the administrative proceeding in the Bureau of Internal Revenue is concerned, the evidence used by the examiner there was not hearsay because he did examine the books and receipts of the partnership and questioned the signers of said receipts. With respect to the proceeding in this Court, evidence on the part of the respondent is a superfluity adverted to above because the presumption of correctness of the assessment is unrebutted.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the petitioners.

SO ORDERED.

Quezon City, June 6, 1975.

RAMON L. AVANCEÑA
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

ESTANISLAO R. ALVAREZ
Associate Judge

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