REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARIA ROCHA Y TUASON
c/o FERNANDEZ HERMANOS,
INC.,
Petitioner,

versus

Oct. 6, 1967

CTA CASE NO. 1448

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent dated July 22, 1963, holding petitioner liable for 1959 deficiency income tax of ₱66,127.20, computed as follows:

Net Income per return.		₱ 98,224.31
Add: Unallowable deductions:		
(1) The other 50% of Long Term Capital Gain. .	₱42,167.50	
(2) Cost of Real Properties sold	62,215.00	104,382.50
Net income per investigation		₱202,606.81
Less: Personal exemption		1,800.00
Amount subject to tax		₱200,806.81
Tax due thereon		91,332.00
Less: Amount already assessed. . . .		35,292.00
B a l a n c e		₱ 56,040.00
Add: ½% monthly interest from 4-19-60 to 4-19-63		10,087.20
TOTAL AMOUNT DUE & COLLECTIBLE. . . .		₱ 66,127.20

(Exh. E, p. 87 CTA rec.)

Petitioner was also held liable in 1959 for non-payment of the real estate dealer's fixed tax (C-8) of ₱500.00 as provided in Section 182(a) of the

National Internal Revenue Code, in relation to Section 194(s) of the same Code. In addition, respondent suggested to petitioner the payment of ₱50.00 and ₱200.00 as compromise penalty in extra-judicial settlement for late payment of the real estate dealer's fixed tax and for failure to attach to the 1959 income tax return the required financial statements, respectively.

Petitioner was the registered owner of real properties in Manila. In 1959, she sold, through her attorney-in-fact, the real properties located at the corner of Escolta & Nueva and Rosario streets, both in Binondo, Manila, for ₱175,000.00 and ₱28,000.00, respectively, or a total of ₱203,000.00 (p. 1, BIR rec.). From the gross sales of ₱203,000.00, petitioner deducted therefrom, as reflected in her 1959 income tax return and the worksheet of the revenue examiner, the following items:

(a) 50% of the gains from the sale of the aforesaid properties as a long term capital gain . . . . . ₱42,167.50

(b) Acquisition cost of the properties sold (lots only). . . 62,215.00

In the investigation of petitioner's 1959 income tax return, Revenue Examiner Jose L. Dizon disallowed the deduction of ₱42,167.50 representing 50% of the long term capital gain. He claimed that the real properties sold by petitioner in 1959 are ordinary assets and not capital assets because said properties were used in the trade or business of the taxpayer as a real estate dealer. Likewise, the said revenue examiner disallowed the deduction of ₱62,215.00 allegedly representing the acquisition costs of the real properties sold because the taxpayer or her representative could not give any definite information as to how and when the said properties were acquired (Exh. 2, BIR rec., pp. 12 & 14).

During the hearing of the case on the merits, it was proven that petitioner is a Spanish citizen who resided in Spain since 1920. Upon the death of her mother in 1932, petitioner acquired the real properties involved in this case by inheritance. The said properties were administered by Fernandez Hermanos, Inc. on behalf of petitioner after the death of her mother (pp. 32-40, t.s.n.). The aforesaid real properties and other real property of petitioner were leased to different tenants in 1959 and she realized a gross income of ₱72,072.15 as rentals derived therefrom (Exh. 1, pp. 2-3, BIR rec.).

The issues submitted by the opposing parties to the Court for resolution are the following:

> 1. Has the Court acquired jurisdiction over the case, that is, whether or not the appeal from the decision of respondent was seasonably filed by petitioner;

2. Whether or not the real properties sold by petitioner in 1959 were capital assets and, in the affirmative, the gains realized from the sales thereof are taxable only to the extent of 50%; and

3. Whether or not the acquisition costs of the real properties sold by petitioner in 1959 are deductible from the gross selling price thereof in order to determine the net taxable gain.

First Issue

Respondent contends that this Court has not acquired jurisdiction over the case because the petition for review was filed by petitioner only on September 6, 1963 while the decision of respondent appealed from was dated March 26, 1963. Under Section 11 of Republic Act No. 1125, any person adversely affected by a decision or ruling of the Commissioner of Internal Revenue may file an appeal in the Court of Tax Appeals within 30 days after the receipt of such decision or ruling.

The only basis of respondent in claiming that the petition for review was not seasonably filed is found in the pleading of petitioner filed with this Court on September 6, 1963, wherein it was alleged that petitioner is appealing from the decision of respondent embodied in his letter dated March 26, 1963 (See opening paragraph of petition for review, p. 1, CTA rec.). Petitioner, however, contends that the decision of respondent appealed from is dated July 22, 1963 (not March 26, 1963) as evidenced by the original copy of the letter of respondent to petitioner (Exh. E, pp. 87-88, CTA rec.). It is claimed that the erroneous date found in the opening paragraph of the petition for review was a clerical error of the typist of petitioner's counsel who copied the date from the pleading of another case.

A careful examination of the letter-decision of respondent dated July 22, 1963 shows that it was mailed to petitioner on August 9, 1963 and received by Fernandez Hermanos, Inc. on August 21, 1963 (Exh. E, pp. 87-88, CTA rec.). Consequently, petitioner had 30 days from August 21, 1963 within which to appeal to the Court of Tax Appeals from the letter-decision of respondent. As the petition for review was filed with the Court on September 6, 1963, or 16 days from the date of receipt of respondent's decision, we hold that the appeal of petitioner was seasonably filed and that this Court has acquired jurisdiction over the case under the provisions of Section 7(1) of Republic Act No. 1125, in relation to Section 11 of the same Act.

<u>Second Issue</u>

In order to determine whether or not the real properties sold by petitioner in 1959 are capital assets, Section 34 of the National Internal Revenue

Code provides as follows:

> SEC. 34. Gains and losses - (a) Definitions. - As used in this Title -
>
> (1) Capital assets. - The term "capital assets" means property held by the taxpayer (whether or not connected with this trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of section thirty; or real property used in the trade or business of the taxpayer. (Underscoring supplied)

It is clear from the foregoing provisions of law that capital assets include all property held by the taxpayer, but specifically excludes, among others, "real property used in the trade or business of the taxpayer."

The real properties sold by the taxpayer in 1959 are ordinary assets because they were used in the trade or business of petitioner as a real estate dealer. This view is borne out by the 1959 income tax return of petitioner wherein she declared a total rental income of ₱72,072.15 from the lease of real properties including the buildings constructed thereon (Exh. 1, pp. 2-3, BIR rec.). As defined in Section 194(s) of the Revenue Code, as amended, a "real estate dealer" includes "any person engaged in the business of . . . leasing, or renting property as principal and holding himself out as . . . an owner of rental property or properties rented or offered to rent for an aggregate amount of ₱4,000.00 or more a year. Any person shall be considered as engaged in business as a real estate dealer by the mere fact that he is the owner or sublessor of property rented or offered to rent for an aggregate amount of ₱4,000.00 or more a year." We have no doubt, therefore, that the real properties sold by petitioner in 1959 are ordinary assets and the gain derived therefrom are ordinary gain, in line with the decision of our Supreme Court which held as follows: 1

> The Bautistas contend, under their sixth assignment of error, that the aforementioned property in Tabora street was not an ordinary asset, but a capital asset, and that as such, only 50% of the profit derived by Mrs. Bautista from the sale thereof is taxable. x x x
>
> x x x x x
>
> Thus, the issue boils down to whether or not the aforementioned property was "used in the trade or business of the taxpayer." The Court of Tax Appeals answered the question in the affirmative, for the following reasons, which are well taken:
>
> > "The records show that the said property of petitioner was never occupied by petitioners as their residence. It was primarily held for rent. It is apparent that the said property was used in the trade or business of peti-

> tioners and is, therefore, an ordinary asset. It follows that the gain derived from the sale of said property is taxable in full." (Underscoring ours.)
>
> x x x In other words, insofar as the aforementioned property is concerned, the co-owners thereof, including Mrs. Bautista, were engaged in the business of letting it to the public. Accordingly, the sixth assignment of error, as well as the last, which is a consequence of those already disposed of, are untenable. (The Collector of Internal Revenue v. Bautista and Tan, G.R. No. L-12250 and Bautista and Tan v. The Collector of Internal Revenue, G.R. No. L-12259, May 27, 1959.)

Third Issue

Respondent contends that, inasmuch as the real properties sold by petitioner in 1959 were acquired by gratuitous title or inheritance, it was incumbent upon her to show the fair market price or value as of the date of the acquisition of the inherited real properties as required by Section 35(b) of the Revenue Code. It is the stand of respondent that, since the real properties sold by petitioner in 1959 were inherited by her in 1932, the said properties are without value unless the contrary is proven by the petitioner. Moreover, the assessed values in 1936-1938 of the real properties in question, which were submitted to the investigating revenue examiner, do not satisfy the requirement of the law.

In implementing the provisions of Section 34 of the Revenue Code, *supra*, as authorized by Section 338 of the same Code, Section 141 of Revenue Regulations No. 2, otherwise known as the Income Tax Regulations, provides, among others, as follows:

> SEC. 141. Sale of property acquired by devise, bequest, or inheritance. - In computing the gain or loss from the sale or other disposition of property acquired by devise, bequest, or inheritance, the basis shall be the fair market price or value of such property at the time of the death of the decedent. x x x In the case of property acquired by bequest, devise, or inheritance, its value as appraised for the purpose of the inheritance tax shall be deemed to be its fair market value when acquired. (Published in the Official Gazette on February 11, 1941.)

We do not subscribe to the theory of respondent that the real properties inherited by petitioner from her mother in 1932 were without value. Under the provisions of the Revised Administrative Code then prevailing and even under Section 91 of the National Internal Revenue Code, in determining the value of real property, the assessed value as of the time of death as shown by the tax rolls shall be considered as the fair market value of the inherited property, unless the contrary is shown. In other words, the assessed value of real properties transmitted by a decedent is considered the fair market value thereof at the time of his death unless the contrary is proven by the revenue examiner.

In the case at bar, it was incumbent upon the investigating revenue examiner to prove the fair market or assessed value of the real properties inherited by petitioner in 1932. He could have consulted the old file of inheritance tax returns in the Bureau of Internal Revenue which indicates the itemized value of the decedent's estate, or the index cards showing that the said return was filed by the decedent's estate and the value of her estate. In the absence of said records, the revenue examiner, in a fair and just administration of the tax laws, could have consulted the old records of the assessed values of the real properties of the decedent on file with the City Assessor of Manila. But the said examiner chose to ignore those vital sources of information and insisted that the real properties left by petitioner's mother in 1932 were valueless (Examiner's Memo, Exh. 7, p. 40, BIR rec.) notwithstanding the opinion of the Deputy Commissioner of Internal Revenue that "the radical elimination of the alleged cost of property cannot be sustained" (Exh. B, p. 36, BIR rec.).

An examination of the evidence for the petitioner shows that the real properties inherited by her in 1932, particularly the lots located at Rosario and Escolta & Nueva Streets, both in Binondo, Manila, were assessed in 1932 for ₱11,817.00 and ₱54,337.00, respectively, or a total of ₱66,154.00 (Exhs. F and F-1, pp. 26-27, CTA rec.). As the assessed values of real property are generally lower than their fair market value, we hold that the assessed value of the two lots in the total amount of ₱66,154.00, which represent their acquisition costs, should be deducted from the gross selling price of the real properties sold by petitioner in 1959 in order to determine the net taxable gain from the transaction, conformably with the provisions of Section 141 of the Income Tax Regulations, *supra*.

After resolving the issues submitted for our resolution, we find petitioner liable for deficiency income tax in 1959 in the amount of ₱23,545.72, computed as follows:

Net income per return		₱ 98,224.31
Add: Unallowable deduction 50% of long-term capital gain		42,167.50
Total		₱140,391.81
Less: Allowable deduction -		
Assessed value of lots sold	₱66,154.00	
Amount claimed in income tax return	62,215.00	3,939.00
Net income as adjusted		₱136,452.81
Less: Personal exemption . . .		1,800.00
Amount subject to tax		₱134,652.81
Tax due thereon		₱ 55,246.00
Less: Amount already assessed..		₱ 35,292.00
Balance		₱ 19,954.00
Add ½% monthly interest from 4-19-60 to 4-19-63		3,591.72
Total amount due & collectible. .		₱ 23,545.72

With respect to the real estate dealer's fixed tax of ₱500.00, the records of this case undoubtedly show that in 1959 petitioner is liable for the payment thereof.

Moreover, petitioner has not assailed the legality of said assessment.

As to the compromise penalty in the total amount of ₱250.00, it is now a well-settled doctrine that compromise penalty cannot be imposed or collected without the agreement and conformity of the taxpayer (Collector of Internal Revenue v. University of Santo Tomas, et al., G. R. Nos. L-11274 & L-11280, November 28, 1958; The Collector of Internal Revenue v. Bautista, et al., G. R. Nos. L-12250 & L-12259, May 27, 1959; The Philippines International Fair, Inc. v. Collector of Internal Revenue, G. R. Nos. L-12928 & L-12932, March 31, 1962).

WHEREFORE, the decision of respondent appealed from is hereby modified and petitioner is ordered to pay to the respondent or his duly authorized collection agent the real estate dealer's fixed tax (C-8) of ₱500.00 for 1959 and the deficiency income tax of ₱23,545.72 for the same year. If the said sum of ₱23,545.72 is not paid in full within thirty (30) days from the date this decision becomes final and executory, petitioner shall pay the delinquency penalties provided for in Section 51(e) of the Revenue Code. Without pronouncement as to costs.

SO ORDERED.

Quezon City, October 6, 1967.

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

R. M. Umali
ROMAN M. UMALI
Presiding Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge