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FIRST DIVISION

[G.R. No. L-28896. February 17, 1988]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **ALGUE, INC., and THE COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DEFICIENCY INCOME TAXES; PERIOD TO APPEAL ASSESSMENT, SUSPENDED BY FILING OF PROTEST.— According to Rep. Act No. 1125, the appeal may be made within thirty days after receipt of the decision or ruling challenged. It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment" and "renders hopeless a request for reconsideration," being "tantamount to an outright denial thereof and makes the said request deemed rejected." But there is a special circumstance in the case at bar that prevents application of this accepted doctrine. The proven fact is that four days after the private respondent received the petitioner's notice of assessment, it filed its letter of protest. This was apparently not taken into account before the warrant of distraint and levy was issued; indeed, such protest could not be located in the office of the petitioner. It was only after Atty. Guevara gave the BIR a copy of the protest that it was, if at all, considered by the tax authorities. During the intervening period, the warrant was premature and could therefore not be served. As the Court of Tax Appeals correctly noted, the protest filed by private respondent was not *pro forma* and was based on strong legal considerations. It thus had the effect of suspending on January 18, 1965, when it was filed, the reglementary period which started on the date the assessment was received, *viz.*, January 14, 1965. The period started running again only on April 7, 1965, when the private respondent was definitely informed of the implied rejection of the said protest and the warrant was finally served on it. Hence, when the appeal was filed on April 23, 1965, only 20 days of the reglementary period had been consumed.

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2. ID.; ID.; INCOME TAX; DEDUCTION FROM GROSS INCOME; ₱75,000.00 PROMOTIONAL FEES, FOUND NECESSARY AND REASONABLE IN CASE AT BAR.— We agree with the respondent court that the amount of the promotional fees was not excessive. The total commission paid by the Philippine Sugar Estate Development Co. to the private respondent was ₱125,000.00. After deducting the said fees, Algue still had a balance of ₱50,000.00 as clear profit from the transaction. The amount of ₱75,000.00 was 60% of the total commission. This was a reasonable proportion, considering that it was the payees who did practically everything, from the formation of the Vegetable Oil Investment Corporation to the actual purchase by it of the Sugar Estate properties. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos.

DECISION

CRUZ, *J.*:

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

The main issue in this case is whether or not the Collector of Internal Revenue correctly disallowed the ₱75,000.00 deduction claimed by private respondent Algue as legitimate business expenses in its income tax returns. The corollary issue is whether or not the appeal of the private respondent from the decision of the Collector of Internal Revenue was made on time and in accordance with law.

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We deal first with the procedural question.

The record shows that on January 14, 1965, the private respondent, a domestic corporation engaged in engineering, construction and other allied activities, received a letter from the petitioner assessing it in the total amount of ₱83,183.85 as delinquency income taxes for the years 1958 and 1959.[1] On January 18, 1965, Algue filed a letter of protest or request for reconsideration, which letter was stamp-received on the same day in the office of the petitioner.[2] On March 12, 1965, a warrant of distraint and levy was presented to the private respondent, through its counsel, Atty. Alberto Guevara, Jr., who refused to receive it on the ground of the pending protest.[3] A search of the protest in the dockets of the case proved fruitless. Atty. Guevara produced his file copy and gave a photostat to BIR agent Ramon Reyes, who deferred service of the warrant.[4] On April 7, 1965, Atty. Guevara was finally informed that the BIR was not taking any action on the protest and it was only then that he accepted the warrant of distraint and levy earlier sought to be served.[5] Sixteen days later, on April 23, 1965, Algue filed a petition for review of the decision of the Commissioner of Internal Revenue with the Court of Tax Appeals.[6]

The above chronology shows that the petition was filed seasonably. According to Rep. Act No. 1125, the appeal may be made within thirty days after receipt of the decision or ruling challenged.[7] It is true that as a rule the warrant of distraint and levy is "proof of the finality of the assessment"[8] and "renders

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[1] *Rollo*, pp. 28-29.

[2] *Ibid.*, pp. 29; 42.

[3] *Id.*, p. 29.

[4] Respondent's Brief, p. 11.

[5] *Id.*, p. 29.

[6] *Id.*

[7] Sec. 11.

[8] *Phil. Planters Investment Co. Inc. v. Acting Comm. of Internal Revenue*, CTA Case No. 1266, Nov. 11, 1962; *Rollo*, p. 30.

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hopeless a request for reconsideration,"[9] being "tantamount to an outright denial thereof and makes the said request deemed rejected."[10] But there is a special circumstance in the case at bar that prevents application of this accepted doctrine.

The proven fact is that four days after the private respondent received the petitioner's notice of assessment, it filed its letter of protest. This was apparently not taken into account before the warrant of distraint and levy was issued; indeed, such protest could not be located in the office of the petitioner. It was only after Atty. Guevara gave the BIR a copy of the protest that it was, if at all, considered by the tax authorities. During the intervening period, the warrant was premature and could therefore not be served.

As the Court of Tax Appeals correctly noted,[11] the protest filed by private respondent was not *pro forma* and was based on strong legal considerations. It thus had the effect of suspending on January 18, 1965, when it was filed, the reglementary period which started on the date the assessment was received, *viz.*, January 14, 1965. The period started running again only on April 7, 1965, when the private respondent was definitely informed of the implied rejection of the said protest and the warrant was finally served on it. Hence, when the appeal was filed on April 23, 1965, only 20 days of the reglementary period had been consumed.

Now for the substantive question.

The petitioner contends that the claimed deduction of ₱75,000.00 was properly disallowed because it was not an ordinary, reasonable or necessary business expense. The Court of Tax Appeals had seen it differently. Agreeing with Algue, it held that the said amount had been legitimately paid by the

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[9] *Vicente Hilado v. Comm. of Internal Revenue*, CTA Case No. 1256, Oct. 22, 1962; *Rollo*, p. 30.

[10] *Ibid.*

[11] Penned by Associate Judge Estanislao R. Alvarez, concurred by Presiding Judge Ramon M. Umali and Associate Judge Ramon L. Avanceña.

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private respondent for actual services rendered. The payment was in the form of promotional fees. These were collected by the payees for their work in the creation of the Vegetable Oil Investment Corporation of the Philippines and its subsequent purchase of the properties of the Philippine Sugar Estate Development Company.

Parenthetically, it may be observed that the petitioner had originally claimed these promotional fees to be personal holding company income[12] but later conformed to the decision of the respondent court rejecting this assertion.[13] In fact, as the said court found, the amount was earned through the joint efforts of the persons among whom it was distributed. It has been established that the Philippine Sugar Estate Development Company had earlier appointed Algue as its agent, authorizing it to sell its land, factories and oil manufacturing process. Pursuant to such authority, Alberto Guevara, Jr., Eduardo Guevara, Isabel Guevara, Edith O'Farell, and Pablo Sanchez worked for the formation of the Vegetable Oil Investment Corporation, inducing other persons to invest in it.[14] Ultimately, after its incorporation largely through the promotion of the said persons, this new corporation purchased the PSEDC properties.[15] For this sale, Algue received as agent a commission of ₱125,000.00, and it was from this commission that the ₱75,000.00 promotional fees were paid to the aforenamed individuals.[16]

There is no dispute that the payees duly reported their respective shares of the fees in their income tax returns and paid the corresponding taxes thereon.[17] The Court of Tax Appeals also found, after examining the evidence, that no distribution of dividends was involved.[18]

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[12] *Rollo*, p. 33.

[13] *Ibid.*, pp. 7-8; Petition, pp. 2-3.

[14] *Id.*, p. 37.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

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The petitioner claims that these payments are fictitious because most of the payees are members of the same family in control of Algue. It is argued that no indication was made as to how such payments were made, whether by check or in cash, and there is not enough substantiation of such payments. In short, the petitioner suggests a tax dodge, an attempt to evade a legitimate assessment by invoking an imaginary deduction.

We find that these suspicions were adequately met by the private respondent when its President, Alberto Guevara, and the accountant, Cecilia V. de Jesus, testified that the payments were not made in one lump sum but periodically and in different amounts as each payee's need arose.[19] It should be remembered that this was a family corporation where strict business procedures were not applied and immediate issuance of receipts was not required. Even so, at the end of the year, when the books were to be closed, each payee made an accounting of all of the fees received by him or her, to make up the total of ₱75,000.00.[20] Admittedly, everything seemed to be informal. This arrangement was understandable, however, in view of the close relationship among the persons in the family corporation.

We agree with the respondent court that the amount of the promotional fees was not excessive. The total commission paid by the Philippine Sugar Estate Development Co. to the private respondent was ₱125,000.00.[21] After deducting the said fees, Algue still had a balance of ₱50,000.00 as clear profit from the transaction. The amount of ₱75,000.00 was 60% of the total commission. This was a reasonable proportion, considering that it was the payees who did practically everything, from the formation of the Vegetable Oil Investment Corporation to the actual purchase by it of the Sugar Estate properties.

This finding of the respondent court is in accord with the following provision of the Tax Code:

"SEC. 30. *Deductions from gross income.* — In computing net income there shall be allowed as deductions —

[19] Respondent's Brief, pp. 25-32.

[20] *Ibid.*, pp. 30-32.

[21] *Rollo*, p. 37.

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(a) *Expenses*:

(1) *In general.* — All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; xxx"[22]

and Revenue Regulations No. 2, Section 70 (1), reading as follows:

"SEC. 70. *Compensation for personal services.* — Among the ordinary and necessary expenses paid or incurred in carrying on any trade or business may be included a reasonable allowance for salaries or other compensation for personal services actually rendered. The test of deductibility in the case of compensation payments is whether they are reasonable and are, in fact, payments purely for service. This test and its practical application may be further stated and illustrated as follows:

"Any amount paid in the form of compensation, but not in fact as the purchase price of services, is not deductible. (a) An ostensible salary paid by a corporation may be a distribution of a dividend on stock. This is likely to occur in the case of a corporation having few stockholders, practically all of whom draw salaries. If in such a case the salaries are in excess of those ordinarily paid for similar services, and the excessive payment correspond or bear a close relationship to the stockholdings of the officers of employees, it would seem likely that the salaries are not paid wholly for services rendered, but the excessive payments are a distribution of earnings upon the stock. xxx" (Promulgated Feb. 11, 1931, 30 O.G. No. 18, 325.)

It is worth noting at this point that most of the payees were not in the regular employ of Algue nor were they its controlling stockholders.[23]

The Solicitor General is correct when he says that the burden is on the taxpayer to prove the validity of the claimed deduction. In the present case, however, we find that the onus has been discharged satisfactorily. The private respondent has proved that the payment of the fees was necessary and reasonable in the light of the efforts exerted by the payees in inducing investors

[22] Now Sec. 30, (a) (1) — (A), National Internal Revenue Code.

[23] Respondent's Brief, p. 35.

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and prominent businessmen to venture in an experimental enterprise and involve themselves in a new business requiring millions of pesos. This was no mean feat and should be, as it was, sufficiently recompensed.

It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government, for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.

We hold that the appeal of the private respondent from the decision of the petitioner was filed on time with the respondent court in accordance with Rep. Act No. 1125. And we also find that the claimed deduction by the private respondent was permitted under the Internal Revenue Code and should therefore not have been disallowed by the petitioner.

ACCORDINGLY, the appealed decision of the Court of Tax Appeals is AFFIRMED in toto, without costs.

SO ORDERED.

Teehankee, C.J., Narvasa, Gancayco, and *Griño-Aquino, JJ.*, concur.