Supreme Court E-Library

[G.R. No. L-17509. January 30, 1970]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* CARLOS LEDESMA, JULIETA LEDESMA, VICENTE GUSTILO, JR., & AMPARO LEDESMA DE GUSTILO, respondents.

SYLLABUS

1. COMMERCIAL LAW; PARTNERSHIPS; MERCANTILE REGISTRY; REGISTRATION OF PARTNERSHIP, ENCOURAGED.— The policy of the law is to encourage persons doing business under a partnership agreement to have the partnership agreement, or the articles of co-partnership, registered in the mercantile registry, so that the public may know who the real partners of the partnership are, the capital stock of the partnership, the interest or contribution of each partner in the capital stock, the proportionate share of each partner in the profits, and the earnings or salaries of the partner or partners who render service for the partnership.

2. TAXATION; PARTNERSHIPS; DOUBLE ASSESSMENT ON UNREGISTERED PARTNERSHIP.— The government imposes a corporate income tax against an unregistered partnership as an entity, and an individual income tax against the members thereof for the reason that the government may not be able to trace exactly to whom the profits of an unregistered partnership go, nor can the government determine the precise participation of the apparent partners in the profits of the partnership.

3. ID.; REGISTERED PARTNERSHIPS; EXEMPT FROM PAYMENT OF CORPORATE INCOME TAX.— Once a partnership is registered during a taxable year, that partnership should be considered a registered partnership exempt from the payment of corporate income tax during that taxable year, regardless of whether the registration takes place at the middle, or towards the last days, of the taxable year. This is so because the payment of income tax is determined as of the end of the taxable year, and the income tax is collected after the end of the taxable year. Only the partners thereof therefore should be made to pay income tax on the profits of the partnership that were divided among them.

4. ID.; ID.; ADMINISTRATIVE CONSTRUCTION ENTITLED TO WEIGHT AND RESPECT.— When a particular construction has been operative over a long period and has acquired the sanction of usage, as when the Bureau of Internal Revenue as early as 1924 applied

Supreme Court E-Library

the "status-at-the-end-of-the-taxable-year" rule in determining the income tax liability of a partnership, it is entitled to "respectful consideration" specially if rights have been adjusted and determined by it for many years, as a change may result in inequitable treatment of similarly situated taxpayers and may occur after many persons have acted upon the faith of the regulation.

APPEARANCES OF COUNSEL

Asst. Solicitor General Jose P. Alejandro, Sp. Attys. Priscilla R. Gonzales & Librado del Rosario-Natividad for petitioner.

Angel S. Gamboa for respondents.

DECISION

ZALDIVAR, *J.*:

Appeal by petitioner Commissioner of Internal Revenue -- hereinafter referred to as Commissioner -- from the decision of the Court of Tax Appeals, in its CTA Case No. 226, declaring as not in accordance with law the assessment of corporate income tax made by said Commissioner in the sum of ₱15,777.26 on the income of the co-partnership named "Hacienda Fortuna" during the period from January 1 to July 13, 1949, of which co-partnership herein respondents Carlos Ledesma, Julieta Ledesma, Amparo Ledesma de Gustilo and Vicente Gustilo, Jr. are its members.[1]

The undisputed facts, as shown in the record, are as follows:

On July 9, 1949 herein respondents, Carlos Ledesma, Julieta Ledesma and the spouses Amparo Ledesma and Vicente Gustilo Jr., purchased from their parents, Julio Ledesma and Florentina de Ledesma, the sugar plantation known as "Hacienda Fortuna," consisting of 36 parcels of land, situated in the municipality of San Carlos, province of Negros Occidental, with an area of approximately 1,202 hectares and with a sugar quota of 79,211.17 piculs, which sugar quota was included in the sale. By virtue of

[1] When the assessment was first made on March 22, 1950 the head of the Bureau of Internal Revenue was then called the Collector of Internal Revenue, who is now called Commissioner of Internal Revenue.

Supreme Court E-Library

the purchase, Carlos Ledesma acquired the one-third undivided portion of the plantation for the price of ₱144,043.00; Julieta Ledesma acquired another one-third undivided portion of the plantation for the same price; and respondents Amparo Ledesma de Gustilo and Vicente Gustilo, Jr. acquired the remaining one-third undivided portion also for the same price. Prior to the purchase, the sugar quota of 79,211.17 piculs was registered in the names of the vendors, Julio Ledesma and Florentina de Ledesma, under Plantation Audit No. 38-101 of the milling district of San Carlos Milling Co., Ltd. By virtue of the purchase Plantation Audit No. 58-101 was cancelled, and during the sugar crop year 1948-1949 the said sugar quota of 79,211.17 piculs was transferred to, apportioned among, and separately registered in the names of, the respondents, as follows: one-third to Vicente Gustilo, Jr. and Amparo Ledesma de Gustilo, under Plantation Audit No. 38-246; one-third to Carlos Ledesma, under Plantation Audit No. 38-247; and one-third to Julieta Ledesma under Plantation Audit No. 38-248.

After their purchase of the plantation, herein respondents took over the sugar cane farming on the plantation beginning with the crop year 1948-1949. For the crop year 1948-1949 the San Carlos Milling Co. Ltd. credited the respondents with their shares in the gross sugar production, as follows:

Gross Production:

Amparo Ledesma and Vicente Gustilo, Jr.	21,308.30 piculs
Carlos Ledesma	21,308.30 piculs
Julieta Ledesma	21,308.30 piculs
TOTAL	63,924.90 piculs

Planters' Share:

Amparo Ledesma and Vicente Gustilo, Jr.	13,317.70 piculs
Carlos Ledesma	13,317.70 piculs
Julieta Ledesma	13,317.70 piculs
TOTAL	39,953.10 piculs

Supreme Court E-Library

The respondents shared equally the expenses of production, on the basis of their respective one-third undivided portion of the plantation. The San Carlos Milling Co., Ltd. issued to respondents separate quedans for the sugar produced, based on the quota under the plantation audits respectively issued to them. In their individual income tax returns for the year 1949 the respondents included as part of their income their respective net profit derived from their individual sugar production from the "Hacienda Fortuna," as herein-above stated.

On July 11, 1949, the respondents organized themselves into a general co-partnership, under the firm name "Hacienda Fortuna," for the "production of sugar cane for conversion into sugar, palay and corn and such other products as may profitably be produced on said hacienda, which products shall be sold or otherwise disposed of for the purpose of realizing profit for the partnership."[2]The articles of general co-partnership were registered in the commercial register of the office of the Register of Deeds in Bacolod City, Negros Occidental, on July 14, 1949. Paragraph 14 of the articles of general co-partnership provides that the agreement shall have retroactive effect as of January 1, 1949.

On March 22, 1959 the Commissioner assessed against the partnership "Hacienda Fortuna" corporate income tax for the calendar year 1949, under Section 24 of the National Internal Revenue Code, in the sum of ₱23,704.22. The respondents contested the assessment upon the ground that the "Hacienda Fortuna" was a registered general co-partnership, and requested for the cancellation of the assessment. In a letter, dated March 12, 1955, the Commissioner advised respondents that inasmuch as the articles of general co-partnership of the "Hacienda Fortuna" were registered on July 14, 1949, the income realized by the partnership prior to the registration can not be exempt from the payment of corporate income tax. In a letter, also dated March 12, 1955, the Commissioner instructed the provincial

[2] Paragraph 2 of the articles of general co-partnership.

Supreme Court E-Library

revenue agent of Negros Occidental to investigate the income of "Hacienda Fortuna" for the period from January 1, 1949 to July 13, 1949, being the portion of the year 1949 which was prior to July 14, 1949, the date of the registration of the articles of general co-partnership of "Hacienda Fortuna." The provincial revenue agent reported that during the period from January 1 to July 13, 1949 the "Hacienda Fortuna" had a net profit amounting to ₱131,477.20, and that the income tax due on said net profit, at the rate of 12%, was ₱15,777.26. It thus resulted that the original assessment of ₱23,704.22, as corporate income tax on the income for the entire calendar year 1949, was reduced to ₱15,777.26 after deducting the corporate income tax due on the net profits derived by the "Hacienda Fortuna" for the period from July 14 to December 31, 1949, based on the theory that the co-partnership "Hacienda Fortuna" was exempt from the payment of corporate income tax on its income from the day its articles of general co-partnership were registered in the mercantile registry. Herein respondents accepted the correctness of the figures contained in the report of the provincial revenue agent, but denied their liability to pay the corporate income tax of ₱15,777.26 assessed against the "Hacienda Fortuna" as a general co-partnership.

On April 2, 1955 the respondents, through counsel, wrote a letter to the Commissioner asking for the reconsideration of his ruling of March 12, 1955, upon the ground that during the period from January 1 to July 13, 1949 the respondents were operating merely as co-owners of the plantation known as "Hacienda Fortuna," so that the case of the "Hacienda Fortuna" was really one of co-ownership and not that of an unregistered co-partnership which was subject to corporate tax. That request for reconsideration was denied by the Commissioner on October 25, 1955. The respondents filed a second request for reconsideration, dated November 4, 1955, but the Commissioner in a letter dated December 6, 1955, which was received by respondents on December 20, 1955, denied said second request for reconsideration. Thereupon, respondents, on January 3, 1956, filed a petition for review with the Court of Tax Appeals, by way of an appeal from the ruling of the Commissioner of March 12,

Supreme Court E-Library

1955 and from the denial of the requests for reconsideration of said ruling. The case was docketed in the Court of Tax Appeals as CTA Case No. 226.

In the meantime, on March 22, 1955, exactly 5 years from and after the date of the assessment on March 22, 1950, and before the expiration of the thirty-day period within which the respondents could ask for a reconsideration of the ruling of the Commissioner of March 12, 1955, or appeal to the Court of Tax Appeals, the Provincial Fiscal of Negros Occidental, upon the request of the Commissioner, filed a complaint against herein respondents for the collection of the alleged income tax assessed against the "Hacienda Fortuna." The said action, entitled "The Collector of Internal Revenue *vs.* Carlos Ledesma, Julieta Ledesma, Vicente Gustilo, Jr. and Amparo Ledesma de Gustilo" was docketed in the Court of First Instance of Negros Occidental as Civil Case No. 3373.

It happened, therefore, that before respondents could bring the case on appeal to the Court of Tax Appeals a complaint for the collection of the alleged income tax due on the "Hacienda Fortuna" was filed against them in the Court of First Instance of Negros Occidental. Upon motion of the Commissioner, in CTA Case No. 226, the Court of Tax Appeals, on July 31, 1956, dismissed the petition for review upon the ground that the Court of First Instance of Negros Occidental had already acquired jurisdiction over the controverted assessment prior to the institution of the appeal, and the judgment in Civil Case No. 3373 of the Court of First Instance of Negros Occidental would constitute *res adjudicata* between the same parties. Herein respondents filed in the Supreme Court a petition for mandamus to compel the Court of Tax Appeals to annul the resolution of July 31, 1956 dismissing the petition in CTA Case No. 226 and to proceed with the case. The Supreme Court set aside the resolution of the Court of Tax Appeals of July 31, 1956 and directed said court to proceed with the determination of the appeal

Supreme Court E-Library

of herein respondents in CTA Case No. 226.[3] This Court held that the Court of Tax Appeals had exclusive jurisdiction over the disputed assessment, to the exclusion of the Court of First Instance of Negros Occidental. Subsequently, the Court of First Instance of Negros Occidental dismissed Civil Case No. 3373.

After the dismissal of Civil Case No. 3373 of the Court of First Instance of Negros Occidental, and before the hearing of CTA Case No. 226 in the Court of Tax Appeals, herein respondents filed a supplemental petition for review alleging, as an additional ground for appeal, that the action of the Government to collect the tax assessed against the "Hacienda Fortuna" had prescribed. During the hearing before the Court of Tax Appeals, the parties submitted a stipulation of facts and their respective documentary evidence.

Two issues were raised before the Court of Tax Appeals, to wit: (1) whether or not the right of the Government to collect the income tax against the "Hacienda Fortuna" as an unregistered general co-partnership, for the year 1949, had prescribed; and (2) whether or not the income tax in question was validly assessed against the "Hacienda Fortuna."

The Court of Tax Appeals, on August 15, 1960, rendered a decision, declaring that the right of the Government to collect the income tax in question had not prescribed, but holding that the assessment of the corporate income tax against the "Hacienda Fortuna" is not in accordance with law. The Court of Tax Appeals, therefore, reversed the rulings of the Commissioner of Internal Revenue, appealed from.

Herein respondents did not appeal from the decision of the Court of Tax Appeals, but in the brief that they filed before this Court, as appellees, they claim that the Court of Tax Appeals erred in holding that prior to the execution of the articles of general co-partnership on July 11, 1949 the respondents had operated the "Hacienda Fortuna" as a general partnership; and that the

---

[3] Carlos Ledesma, et al., *vs.* Court of Tax Appeals, G. R. No. L-11343, January 29, 1958.

Supreme Court E-Library

Court of Tax Appeals erred in not holding that the right of the Government to collect the income tax in question had prescribed. In this connection, suffice it to say that the conclusion of the Court of Tax Appeals that the respondents operated the "Hacienda Fortuna" as a partnership prior to the execution of the articles of general co-partnership is based on findings of fact, and We find no reason in the record to disturb the findings of the tax court on this matter. On the contrary, the intention of the respondents to operate the "Hacienda Fortuna" as a partnership, before July 11, 1949, is clearly shown in paragraph 14 of the articles of general co-partnership which provides that the partnership agreement "shall be retroactive as of January 1, 1949." We also find no merit in the contention of the respondents that the Court of Tax Appeals erred in not holding that the right of the Government to collect the income tax in question had prescribed.

We shall now occupy ourselves with the errors assigned by the Commissioner, as follows:

(1) "The Court of Tax Appeals erred in holding that herein respondents, as partners of the general co-partnership 'Hacienda Fortuna,' are not subject to corporate income tax prior to its registration or for the period from January 1 to July 13, 1949."

(2) "The Court of Tax Appeals erred in holding that the registration of the articles of general co-partnership of the 'Hacienda Fortuna' on July 14, 1949 operated to exempt said partnership from the corporate income tax for the year 1949 and not only for the period from July 14, 1949 to December 31, 1949."

The Solicitor General, as counsel for the Commissioner, considers these two assigned errors as interrelated and discusses them together.

The sole question to be decided in this appeal is whether or not the partnership known as "Hacienda Fortuna" which was organized by respondents on July 11, 1949, whose articles of general co-partnership provided that the partnership agreement should retroact as of January 1, 1949, and which articles of general co-partnership were registered on July 14, 1949, should pay

Supreme Court E-Library

corporate income tax as an unregistered partnership on its net income received during the period from January 1, 1949 to July 13, 1949, the period in the year 1949 prior to the date of said registration.

The provision of law that is relevant to this question is that portion of Section 24 of the National Internal Revenue Code which reads as follows:

"Sec. 24. *Rate of tax on corporation.*— (a) *Tax on domestic corporations.*— In general, there shall be levied, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of, the Philippines, no matter how created or organized, *but not including duly registered general co-partnerships (compañias colectivas),* domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following:" (Italics supplied.)

. . . . . .

It is the contention of the Commissioner that it is only from the date of the registration of the articles of general co-partnership in the mercantile register when a co-partnership is exempt from the payment of corporate income tax under Section 24 of the Tax Code. It is the position of the Commissioner, in the present case, that the partnership known as "Hacienda Fortuna" is exempt from the payment of corporate income tax due only on income received from July 14, 1949, the date of the registration of its articles of general co-partnership. In other words, from January 1 to July 13, 1949 the partnership "Hacienda Fortuna" should be considered still an unregistered co-partnership for the purposes of the assessment of the corporate income tax, notwithstanding the fact that paragraph 14 of its articles of co-partnership provides that the partnership agreement should retroact to January 1, 1949. Thus, as stated at the earlier part of this decision, the Commissioner instructed the provincial revenue agent in Negros Occidental to determine the net income of the "Hacienda Fortuna" for the period from January 1 to July 13, 1949, said agent having reported that the net income of the partnership during that period amounted to ₱131,477.20, and that the

Supreme Court E-Library

corporate income tax due on that net income was ₱15,777.26. It is this amount of ₱15,777.26 which the Commissioner insists in collecting from the respondents.

On the other hand, the respondents contend that prior to July 14, 1949 they were operating the sugar plantation that they bought from their parents under a system of co-ownership, and not as a partnership, so that they were not under obligation to pay the corporate income tax assessed by the Commissioner on the alleged income of the partnership "Hacienda Fortuna" from January 1 to July 13, 1949. The respondents further contend that even assuming that they were operating the sugar plantation as a partnership the registration of the articles of general co-partnership on July 14, 1949 had operated to exempt said partnership from corporate income tax on its net income during the entire taxable year, from January 1 to December 31, 1949.

The Court of Tax Appeals made a finding that the respondents had actually operated the "Hacienda Fortuna" as a general partnership from January 1, 1949, and that when its articles of general co-partnership were registered on July 14, 1949 that registration had the effect of giving the partnership the status of a registered co-partnership which places it under the purview of Section 24 of the Tax Code as exempt from the payment of corporate income tax during the entire taxable year of 1949. The pertinent portion of the decision of the Court of Tax Appeals reads as follows:

"Although petitioners acquired undivided shares in the Hacienda Fortuna, from the evidence of record it appears to us that the intention of the parties was to form, and that they did operate the hacienda as, a general partnership. That this was their intention is confirmed by the fact that they actually organized a general co-partnership on July 11, 1949. And the Articles of General Co-partnership which was registered on July 14, 1949 provides that the agreement shall be retroactive as of January 1, 1949. The sole question to be decided is, therefore, whether the partnership is entitled to exemption for the entire year of 1949, or whether it is taxable as an unregistered partnership before its articles of partnership was actually registered.

Supreme Court E-Library

"Section 24 of the Revenue Code imposes an income tax on corporations. The term 'corporation' includes unregistered general co-partnerships (Sec. 84 (b). Section 26 provides that persons carrying on business in general co-partnership duly registered in the mercantile registry shall be liable for income tax only in their individual capacity. There is no specific provision of law or regulations as to the date of commencement of the exemption of a registered general co-partnership. We find, however, that the Bureau of Internal Revenue as far back as 1924, issued a ruling which was published in the Official Gazette to the effect that 'the status or form of organization of a partnership at the end of the taxable year will determine its income tax liability for that year.' We quote:

> 'A & S Co. had been paying income tax for years as nonregistered partnership. On July, 1922, it registered its partnership agreement. Should it file a return for the period from January to July of the year of its registration?
>
> 'HOLD: That it need not do so. For purposes of the Income Tax Law, the status or form of organization of a partnership at the end of the taxable year will determine its income tax liability for that year. (September 4, 1924,)' Ruling No. 30, 22 O. G. 3451."[4]

"Ruling No. 30 of the Bureau of Internal Revenue, dated September 4, 1924, does not appear to have been revoked or even revised or amended. In fact, the same opinion was reiterated in a ruling dated November 4, 1948. Again, we quote:

> 'In answer to your letter dated October 15, 1948, requesting opinion whether or not a commercial partnership, intended to be registered as evidenced by the partnership agreement formally executed by the parties at the time it commenced to do business, but which was not registered until after the lapse of several months, should be required to file two (2) separate returns - one corresponding to the unregistered period and another for the period after its registration, you are informed that, if a general partnership registers its articles of partnership within the same taxable year, which may either be calendar or fiscal year, in which it commenced business, it is required to file only one income tax return covering its income for the period from the date of its business operation to the end of the taxable year. However, where the registration takes place after the end of the taxable year in which the partnership commenced business, separate returns should be filed, one corresponding to the taxable year in which the

---

[4] Official Gazette, Vol. XXII, No. 149, page 3451, December 11, 1924.

Supreme Court E-Library

partnership did business as an unregistered partnership, and another covering the taxable year in which it operated as a registered partnership' (B. I. R. ruling, dated November 5, 1948, contained in a letter addressed to Provincial Examiner Amante Astudillo, Surigao, Surigao).

"The rule enunciated above that the status of a general partnership as a registered or unregistered general co-partnership at the end of the taxable year determines its liability or exemption from income tax for the entire taxable year is a sound rule. It does not run counter to any specific provision of law or regulation. On the other hand, it appears to us to be in harmony with the intent and purpose of the law to grant exemption to registered general co-partnership and to tax the partners only in their individual capacity. We note that when the attention of respondent was called to the existence of the Bureau's ruling of November 5, 1948, he merely stated that he was not inclined to reconsider his decision and would prefer 'to have a judicial pronouncement on the matter' (See p. 222, B. I. R. records).

"Moreover, the old Income Tax Law (Act No. 2833, as amended) contained the same provisions regarding the exemption from income tax of registered general co-partnerships as the present law. The practice of the Bureau of Internal Revenue exempting general co-partnerships from income tax for the entire year so long as it was registered within that year continued to be the prevailing rule in 1939, when the National Internal Revenue Code, Commonwealth Act No. 466, was enacted. The law governing general co-partnership contained in the old law was merely reenacted in the new Code. It is reasonable to suppose that a long standing administrative practice, if contrary to the intention of the legislature, would be specifically corrected by it (1 USTC, Par. 259; see also 1 USTC, Par. 293). That Congress merely reenacted the old law in the face of the long continued practice of the Bureau of Internal Revenue which it published in the Official Gazette is a strong indication that such practice has received congressional approval. We find no justification to deviate from the rule."

We are in accord with the views expressed by the Court of Tax Appeals in the afore-quoted portion of its decision. The Bureau of Internal Revenue, in the exercise of its powers relative to the collection of internal revenue taxes, fees and charges, may make, and has in fact issued, administrative rules and rulings in connection with the enforcement of the provisions of the National Internal Revenue Code. There are rulings of the Bureau of Internal Revenue where the "status-at-the-end-of-the-taxable-year" rule

Supreme Court E-Library

has been applied in determining the taxpayer's income tax liability during the taxable year. In the book, "Rules and Rulings on the Philippine Income Tax," a compilation by Francisco Tantuico, Sr. and Francisco Tantuico, Jr. of the rulings of the Bureau of Internal Revenue, We read:[5]

"A child born or adopted during the first fifteen days of October, if wholly dependent upon the head of the family for support on December 31 of the year, entitles the latter to an additional exemption of ₱600.00 (amount amended) in accordance with subsections (c) and (d) of section 23 of the National Internal Revenue Code (Ruling of February 8, 1952)." [p. 65]

"A child who becomes 21 years of age during the last 15 days of June, unless incapable of support for being mentally or physically defective, does not entitle his parents to any additional exemption (Rule of February 8, 1952)." [pages 65-66]

"A father is entitled to ₱600.00 (amount amended) additional exemption for his child born on December 31 of the taxable year, but not for a child who became of age on September 15, unless the latter is incapable of self-support because he is physically or mentally defective. (Ruling of July 29, 1948)." [page 66]

"A person who married during the first fifteen days of July, if not legally separated from his spouse on December 31 of that year is granted the full exemption of ₱3,000 for said year. (Ruling of February 8, 1952)." [page 58]

"Under Section 23 of the National Internal Revenue Code, as amended by Republic Act 590, a person who marries on December 31 is entitled to the full exemption of ₱3,000.00 for said calendar year; and a child born or legally adopted on December 31, wholly dependent upon the taxpayer can be claimed as an additional exemption of ₱600 (amount amended) for the said year (BIR Ruling of June 19, 1952, p. 58)." [page 58]

The Court of Tax Appeals, in its decision, has pointed out that as early as 1924 the Bureau of Intenal Revenue had applied the "status-at-the-end-of-the-taxable-year" rule in determining the income tax liability of a partnership, such that a partnership is considered a registered partnership for the entire taxable year even

---

[5] Mr. Francisco Tantuico, Sr. is a former Revenue Regional Director, Regional District No. 10, Bureau of Internal Revenue; and Mr. Francisco Tantuico, Jr. is presently a Judge of the Court of First Instance of Cebu.

Supreme Court E-Library

if its articles of co-partnership is registered only at the middle of the taxable year, or in the last month of the taxable year. We agree with the Court of Tax Appeals that the ruling is a sound one, and it is in consonance with the purpose of the law in requiring the registration of partnerships. The policy of the law is to encourage persons doing business under a partnership agreement to have the partnership agreement, or the articles of co-partnership, registered in the mercantile registry, so that the public may know who the real partners of the partnership are, the capital stock of the partnership, the interest or contribution of each partner in the capital stock, the proportiorate share of each partner in the profits, and the earnings or salaries of the partner or partners who render service for the partnership.[6] It is precisely in the share of the profits and the salaries or wages that the partners would receive that the government is interested in, because it is on these incomes that the assessment of the income tax is based. It can happen that the profits realized by an unregistered partnership may be distributed to other persons in addition to those who appear to the public as the partners. The government may not be able to trace exactly to whom the profits of an unregistered partnership go, nor can the government determine the precise participation of the apparent partners in the profits of the partnership. It is for this reason that the government imposes a corporate income tax against an unregistered partnership as an entity, and an individual income tax against the apparent members thereof. But once the partnership is duly registered the names of all the partners are known, the proportional interest of the partners in the business of the partnership is known, and the government can very well assess the income tax on the respective income of the partners whose names appear in the articles of co-partnership. Once the partnership is registered its operation during the taxable year may be ascertained in all matters regarding its management, its expenditures, its earnings, and the participation of the partners

[6] Tan Senguan & Co. *vs.* Collector of Internal Revenue, 55 Phil. 439, 445; Collector of Internal Revenue *vs.* Isasi, 101 Phil. 257.

Supreme Court E-Library

in the net profits. If it can be ascertained that the profits of the partnership have actually been given, or credited, to the partners, then there is no reason why the partnership should be made to pay a corporate income tax on the profits realized by the partnership, and at the same time assess an income tax on the income that the partners had received from the partnership. And so, We believe that it is a fair and sound application of Section 24 of the tax code that once a partnership is registered during a taxable year that partnership should be considered a registered partnership exempt from the payment of corporate income tax during that taxable year, and only the partners thereof should be made to pay income tax on the profits of the partnership that were divided among them. Section 26 of the tax code provides as follows:

"Sec. 26 - *Tax liability of members of duly registered co-partnership.*- Persons carrying on business in general co-partnership (compañia colectiva) duly registered in the mercantile registry, or those exercising a common profession in general partnership, shall be liable for income tax only in their individual capacity, and the share in the profits of the registered general co-partnership (compañia colectiva) or in the general professional partnership to which any taxable partner should be entitled, whether distributed or otherwise shall be returned for taxation and the tax paid in accordance with the provisions of this title."

It may thus be said that a premium is given to a partnership that is registered by exempting it from the payment of corporate income tax, and making only the individual partners pay income tax on the basis of their respective shares in the partnership profits. On the other hand, the partnership that is not registered is being penalized by making it pay corporate income tax on the profits it realizes during a taxable year and at the same time making the partners thereof pay their individual income tax based on their respective shares in the profits of the partnership. In other words, there is double assessment of income tax against the partners of the unregistered partnership, but only one assessment against the partners of registered partnership.

The exclusion of a registered partnership from the entities subject to the payment of corporate income tax under Section

Supreme Court E-Library

24 of the tax code should be made to cover the entire taxable year, regardless of whether the registration takes place at the middle, or towards the last days, of the taxable year. This is so because, after all, the taxable status of the taxpayer, for the purposes of the payment of income tax, is determined as of the end of the taxable year, and the income tax is collected after the end of the taxable year. Since it is the policy of the government to encourage a partnership to register its articles of co-partnership in order that the government can better ascertain the profits of the partnership and the distribution of said profits among the partners, this benefit of exclusion from paying corporate income tax arising from registration should be liberally extended to registered, or registering, partnerships in order that the purpose of the government may be attained. The provision of Section 24 of the tax code excluding "registered general co-partnership" from the payment of corporate income tax is not an exemption clause but a classification clause which must be construed liberally in favor of the taxpayer.

"A classification statute, or one which specifies the persons or property subject and not subject to a tax, is not an exemption statute and the general rule . . . . that a tax statute will be construed in favor of the taxpayer applies. (84 C. J. S., Section 277, page 443)

"Any doubt as to the person or property intended to be included in a tax statute will be resolved in favor of the taxpayer. (51 Am. Jur., Section 409, page 433).

Once the articles of co-partnership is registered, the collecting agents of the government can very well trace the operations of the partnership during the period of the taxable year prior to the date of registration - that is, if the partnership had operated as an unregistered partnership prior to the date of its registration, and require the partners to declare the true income that they derived from the operations of the partnership during the period prior to the date of registration and after the date of registration.

We hold that the administrative construction of Section 24 of the tax code made by the Bureau of Internal Revenue as early as 1924, reiterated in 1948, as pointed out by the Court of Tax

Supreme Court E-Library

Appeals, being of long standing, not shown to be contrary to law, and not having been modified up to the time when the case at bar came up, should be upheld. Considering that most of our tax laws are patterned after the tax laws of the United States of America, the following authority is pertinent:

"Considerable weight is given to the Treasury Department's administrative construction of a tax provision and to its regulations. The Supreme Court at one time said: 'Treasury regulations and interpretations long continued without substantial change, applied to unamended or substantially re-enacted statutes are deemed to have received congressional approval and have the effect of law'. . . ."

"Treasury Department rules and regulations will not be disturbed except for cogent reasons or unless contrary to the statute or exceeding departmental authority, and they are binding on the Commissioner and taxpayer alike. When a particular construction has been operative over a long period and has acquired the sanction of usage it is entitled to 'respectful consideration' specially if rights have been adjusted and determined by it for many years, as a change may result in inequitable treatment of similarly situated taxpayers and may occur after many persons have acted upon the faith of the regulation. The rule is also, perhaps, particularly applicable where a change in the administrative construction would produce great administrative inconvenience or irregularity. Particular weight will be given to an administrative construction where much latitude for discretion has been given to the Treasury. Where the basic provision of the Code is couched in general language an interpretative regulation is appropriate. Where the statutory provision is ambiguous the Supreme Court has sustained the administrative construction particularly where the Congress did not interfere with the interpretation claimed by the administrative agency." ("The Law of Federal Income Taxation" by Jacob Mertens, Jr., Volume 1, 1962 Revision, Section 320, pages 32-35).

WHEREFORE, the decision of the Court of Tax Appeals appealed from is affirmed. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Fernando and *Teehankee, JJ.*, concur.
Barredo and *Villamor, JJ.*, did not take part.

Decision affirmed.