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SECOND DIVISION

[G. R. No. 68118. October 29, 1985]

JOSE P. OBILLOS, JR., SARAH P. OBILLOS, ROMEO P. OBILLOS and REMEDIOS P. OBILLOS, brothers and sisters, *petitioners, vs.* **COMMISSIONER OF INTERNAL REVENUE and COURT OF TAX APPEALS,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PARTNERSHIP; SHARING OF GROSS RETURNS DOES NOT OF ITSELF ESTABLISH PARTNERSHIP; CASE AT BAR.** — We hold that it is error to consider the petitioners as having formed a partnership under Article 1767 of the Civil Code simply because they allegedly contributed ₱178,708.12 to buy the two lots, resold the same and divided the profit among themselves. Their original purpose was to divide the lots for residential purposes. If later on they found it not feasible to build their residences on the lots because of the high cost of construction, then they had no choice but to resell the same to dissolve the co-ownership. The division of the profit was merely incidental to the dissolution of the co-ownership which was in the nature of things a temporary state. It had to be terminated sooner or later. Article 1769 (3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived." There must be an unmistakable intention to form a partnership or joint venture.

2. **ID.; ID.; ID.; INSTANT CASE DISTINGUISHED FROM CASES WHERE PARTIES ENGAGED IN JOINT VENTURES FOR PROFITS.** — The instant case is distinguishable from the cases where the parties engaged in joint ventures for profit. Thus, in *Oña vs. Commissioner of Internal Revenue*, L-19342, May 25, 1972, 45 SCRA 74, where after an extrajudicial settlement the co-heirs used the inheritance or the incomes derived therefrom as a common fund to produce profits for themselves, it was held that they were taxable as an unregistered partnership.

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It is likewise different from *Reyes vs. Commissioner of Internal Revenue*, 24 SCRA 198 where father and son purchased a lot and building, entrusted the administration of the building to an administrator and divided equally the net income, and from *Evangelista vs. Collector of Internal Revenue*, 102 Phil. 140 where the three Evangelista sisters bought four pieces of real property which they leased to various tenants and derived rentals therefrom. Clearly, the petitioners in these two cases had formed an unregistered partnership.

3. TAXATION; TAXING POWER; DICTUM THAT POWER TO TAX INCLUDES POWER TO DESTROY MUST BE OBVIATED. — To regard the petitioners as having formed a taxable unregistered partnership would result in oppressive taxation and confirm the dictum that the power to tax involves the power to destroy. That eventuality should be obviated.

APPEARANCES OF COUNSEL

Demosthenes B. Gadioma for petitioners.

D E C I S I O N

AQUINO, *J.*:

This case is about the income tax liability of four brothers and sisters who sold two parcels of land which they had acquired from their father.

On March 2, 1973 Jose Obillos, Sr. completed payment to Ortigas & Co., Ltd. on two lots with areas of 1,124 and 963 square meters located at Greenhills, San Juan, Rizal. The next day he transferred his rights to his four children, the petitioners, to enable them to build their residences. The company sold the two lots to petitioners for ₱178,708.12 on March 13 (Exh. A and B, p. 44, *Rollo*). Presumably, the Torrens titles issued to them would show that they were co-owners of the two lots.

In 1974, or after having held the two lots for more than a year, the petitioners resold them to the Walled City Securities Corporation and Olga Cruz Canda for the total sum of ₱313,050

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(Exh. C and D). They derived from the sale a total profit of ₱134,341.88 or ₱33,584 for each of them. They treated the profit as a capital gain and paid an income tax on one-half thereof or on ₱16,792.

In April, 1980, or one day before the expiration of the five year prescriptive period, the Commissioner of Internal Revenue required the four petitioners to pay *corporate income tax* on the total profit of ₱134,336 in addition to individual income tax on their shares thereof. He assessed ₱37,018 as corporate income tax, ₱18,509 as 50% fraud surcharge and ₱15,547.56 as 42% accumulated interest, or a total of *₱71,074.56*.

Not only that. He considered the share of the profits of each petitioner in the sum of ₱33,584 as a "*distributive dividend*" taxable in full (not a mere capital gain of which ½ is taxable) and required them to pay deficiency income taxes aggregating *₱56,707.20* including the 50% fraud surcharge and the accumulated interest.

Thus, the petitioners are being held liable for deficiency income taxes and penalties totalling *₱127,781.76* on their profit of *₱134,336*, in addition to the tax on capital gains already paid by them.

The Commissioner acted on the theory that the four petitioners had formed an unregistered partnership or joint venture within the meaning of Sections 24(a) and 84(b) of the Tax Code (*Collector of Internal Revenue vs. Batangas Trans. Co.*, 102 Phil. 822).

The petitioners contested the assessments. Two Judges of the Tax Court sustained the same. Judge Roaquin dissented. Hence, the instant appeal.

We hold that it is error to consider the petitioners as having formed a partnership under Article 1767 of the Civil Code simply because they allegedly contributed ₱178,708.12 to buy the two lots, resold the same and divided the profit among themselves.

To regard the petitioners as having formed a taxable unregistered partnership would result in oppressive taxation

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and confirm the dictum that the power to tax involves the power to destroy. That eventuality should be obviated.

As testified by Jose Obillos, Jr., they had no such intention. They were co-owners pure and simple. To consider them as partners would obliterate the distinction between a co-ownership and a partnership. The petitioners were not engaged in any joint venture by reason of that isolated transaction.

Their original purpose was to divide the lots for residential purposes. If later on they found it not feasible to build their residences on the lots because of the high cost of construction, then they had no choice but to resell the same to dissolve the co-ownership. The division of the profit was merely incidental to the dissolution of the co-ownership which was in the nature of things a temporary state. It had to be terminated sooner or later. Castan Tobeñas says:

"Còmo establecer el deslinde entre la comunidad ordinaria o copropiedad y la sociedad?

"El criterio diferencial — segùn la doctrina màs generalizada — està: por razòn del origen, en que la sociedad presupone necesariamente la convencion, mientras que la comunidad puede existir y existe ordinariamente sin ella; y por razòn del fin u objeto, en que el objeto de la sociedad es obtener lucro, mientras que el de la indivision es sòlo mantener en su integridad la cosa comun y favorecer su conservaciòn.

"Reflejo de este criterio es la sentencia de 15 de octubre de 1940, en la que se dice que si en nuestro Derecho positivo se ofrecen a veces dificultades al tratar de fijar la lìnea divisoria entre comunidad de bienes y contrato de sociedad, la moderna orientaciòn de la doctrina cientifica señala como nota fundamental de diferenciaciòn, aparte del origen o fuente de que surgen, no siempre uniforme, la finalidad perseguida por los interesados: lucro comùn partible en la sociedad, y mera conservaciòn y aprovechamiento en la comunidad." (Derecho Civil Español, Vol. 2, Part 1, 10th Ed., 1971, 328-329).

Article 1769(3) of the Civil Code provides that "the sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right

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or interest in any property from which the returns are derived." There must be an unmistakable intention to form a partnership or joint venture.*

Such intent was present in *Gatchalian vs. Collector of Internal Revenue*, 67 Phil. 666 where 15 persons contributed small amounts to purchase a two-peso sweepstakes ticket with the agreement that they would divide the prize. The ticket won the third prize of ₱50,000. The 15 persons were held liable for income tax as an unregistered partnership.

The instant case is distinguishable from the cases where the parties engaged in joint ventures for profit. Thus, in *Oña vs. Commissioner of Internal Revenue*, L-19342, May 25, 1972, 45 SCRA 74, where after an extrajudicial settlement the co-heirs used the inheritance or the incomes derived therefrom as a common fund to produce profits for themselves, it was held that they were taxable as an unregistered partnership.

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* This view is supported by the following rulings of respondent Commissioner:

"*Co-ownership distinguished from partnership.* — We find that the case at bar is fundamentally similar to the De Leon case. Thus, like the De Leon heirs, the Longa heirs inherited the '*hacienda*' in question *pro-indiviso* from their deceased parents; they did not contribute or invest additional capital to increase or expand the inherited properties; they merely continued dedicating the property to the use to which it had been put by their forebears; they individually reported in their tax returns their corresponding shares in the income and expenses of the '*hacienda*'; and they continued for many years the status of co-ownership in order, as conceded by respondent, 'to preserve its (the '*hacienda*') value and to continue the existing contractual relations with the Central Azucarera de Bais for milling purposes.'" (*Longa vs. Arañas*, CTA Case No. 653, July 31, 1963).

"*All co-ownerships are not deemed unregistered partnership.* — Co-heirs who own properties which produce income should not automatically be considered partners of an unregistered partnership, or a corporation, within the purview of the income tax law. To hold otherwise, would be to subject the income of *all co-ownerships* of inherited properties to the tax on corporations, inasmuch as if a property does not produce an income at all, it is not subject to any kind of income tax, whether the income tax on individuals or the income tax on corporation." (*De Leon vs. CIR*, CTA Case No. 738, September 11, 1961, cited in Arañas, 1977 Tax Code Annotated, Vol. 1, 1979 Ed., pp. 77-78).

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It is likewise different from *Reyes vs. Commissioner of Internal Revenue*, 24 SCRA 198 where father and son purchased a lot and building, entrusted the administration of the building to an administrator and divided equally the net income, and from *Evangelista vs. Collector of Internal Revenue*, 102 Phil. 140 where the three Evangelista sisters bought four pieces of real property which they leased to various tenants and derived rentals therefrom. Clearly, the petitioners in these two cases had formed an unregistered partnership.

In the instant case, what the Commissioner should have investigated was whether the father *donated* the two lots to the petitioners and whether he paid the donor's tax (See Art. 1448, Civil Code). We are not prejudging this matter. It might have already prescribed.

WHEREFORE, the judgment of the Tax Court is reversed and set aside. The assessments are cancelled. No costs.

SO ORDERED.

Abad Santos, Escolin, Cuevas, and *Alampay, JJ.*, concur.

Concepcion Jr., on leave.