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SECOND DIVISION

[G.R. No. L-33115. June 29, 1979]

MISAEL P. VERA, as Commissioner of Internal Revenue, et al., *petitioners, vs.* **HON. VICENTE N. CUSI, JR., Judge of the Court of First Instance of Davao and SARMIENTO ENTERPRISES, INC.,** *respondents.*

SYLLABUS

TAXATION; BUREAU OF INTERNAL REVENUE; RULES AND REGULATIONS; CONFIDENTIAL NATURE OF THE INCOME OF A TAXPAYER; EXCEPTION.— It is true that, as a rule, the Bureau of Internal Revenue cannot divulge the income of a taxpayer because of its confidential nature. However, the BIR itself has regulations issued pursuant to the Tax Code indicating the instances when the income of a taxpayer may be made public. One such instance is provided in Sec. 4(b) of the Regulations, whereby the return of an individual shall be open to inspection "*by the person who made the return, or by his duly constituted attorney-in-fact.*"

AQUINO, *J.*, *dissenting:*

1. **TAXATION; BUREAU OF INTERNAL REVENUE; RULES AND REGULATIONS; REGULATIONS NO. 33; SECTION 4 THEREOF CANNOT BE INVOKED WHEN THE TAXPAYER IS NOT WILLING TO ALLOW THE INSPECTION OF HIS INCOME TAX RETURNS IN COURT; CASE AT BAR.**— Section 4 of Regulations No. 33 allows the individual taxpayer or his duly constituted attorney-in-fact to inspect his return. Section 4 cannot be invoked in this case because Chu Tiong had changed his mind and was no longer willing to allow the inspection in court of his income tax returns.

2. **ID.; ID.; ID.; PRODUCTION IN COURT OF INCOME TAX RETURNS; RULE.**— The production in court of income tax returns is governed by Section 11 of Regulations No. 33. It provides that the original income tax return may be furnished by the Commissioner of Internal Revenue "for use as evidence

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in litigation in any court, where the Government" "is interested in the result, or for use in the preparation for such litigation, to provincial or city fiscal or any attorney connected with the Bureau of Justice designated to handle such matters, upon written request of the Solicitor General, or an assistant attorney acting on his behalf." Section 11 further provides that "neither the original nor a copy of an income tax return, desired for use in litigation in court where the Government" "is not interested in the result and where such use might result in making public the information contained therein, will be furnished, except as" provided in Section 12 of Regulations No. 33, which refers to the furnishing of copies of the income tax returns to the taxpayer. As a rule, a litigant may not be compelled through subpoena *duces tecum* to produce the original income tax returns filed by him in the Bureau of Internal Revenue. He may not be compelled to ask the Commissioner of Internal Revenue for said originals.

3. **ID.; ID.; ID.; ID.; EXCEPTION.**— An example of a case where the income tax returns may be produced in court upon the request of the Solicitor General is a criminal case for estafa through falsification. The prosecution may require the Commissioner of Internal Revenue or his representative to produce in court the income tax returns of the accused since the Government is interested in the result of the said case.

APPEARANCES OF COUNSEL

Leonor T. Sumcad and *Roberto M. Sarenas* for private respondent Sarmiento Enterprises, Inc.

Office of the Solicitor General for petitioners.

D E C I S I O N

ABAD SANTOS, *J.*:

In Civil Case No. 4613 of the Court of First Instance of Davao (Branch I), entitled *Sarmiento Enterprises, Inc. v. Chu Tiong alias Te Liong,* the decision was adverse to the defendant.

The execution of the judgment having been returned unsatisfied, Chu Tiong was examined concerning his income

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and properties. In the course thereof, he manifested before the respondent judge his willingness to produce copies of his income tax returns for the years 1964, 1965, 1966, 1967 and 1968. But having been unable to produce said copies, he wrote a letter addressed to the local Bureau of Internal Revenue, upon request of the judgment creditor, in the following tenor:

"Care of CFI, Branch I
Davao City
September 27, 1969

The Bureau of Internal Revenue
Davao City

Re: Civil Case No. 4613 *Sarmiento Enterprises v. Chu Tiong alias Te Liong*

Sir:

The undersigned judgment-debtor in the above-entitled case hereby requests for copies of his income tax returns for 1964, 1965, 1966, 1967 and 1968. Same were filed in Sta. Cruz, Davao del Sur or Davao City.

Please deliver said copies to Mr. Alfonso Atilano, Deputy Clerk of Court, CFI, Branch I, or Atty. Leonor T. Sumcad or Atty. Roberto M. Sarenas.*

Hoping for your early action on this request, the undersigned remains.

Very respectfully,

(SGD) CHU TIONG *alias*
TE LIONG"

"The above request includes a release to the above persons of all the appendices to and other documents supporting all the above income returns.

(SGD) CHU TIONG *alias* TE LIONG"

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* Attys. Sumcad and Sarenas are the lawyers for Sarmiento Enterprises, Inc.

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Twice, the judgment-creditor's counsels were refused copies of said tax returns by the local Bureau of Internal Revenue Office. In the first attempt, though, armed with the above-quoted letter, they were advised by the local BIR authorities that Chu Tiong himself should personally be present to request said copies after payment of the requisite fees. In the second attempt, pursuant to the advice, they brought Chu Tiong together with his counsel to the BIR office. But Chu Tiong, then declared that he was compelled to sign said letter of request.

The judgment creditor, then, applied for a subpoena *duces tecum* on the strength of said letter, and the same was granted by the court in an Order dated October 31, 1969, directing the local BIR office to produce copies of the desired tax returns.

The local BIR authorities, after consultation with the BIR Commissioner, moved to quash the subpoena *duces tecum*, which however was denied by the respondent judge in his Order dated September 23, 1970. A motion for reconsideration of the order was also denied by an order dated October 3, 1970.

Petitioners who are the Commissioner of Internal Revenue and the Director of Region No. 18 of the BIR, have come to this Court to assail the validity of the orders of September 23, 1970, and October 3, 1970, issued by the respondent judge. They invoke provisions of the (old) National Internal Revenue Code and the Regulations Relating To Inspection of Income Tax Returns. The provisions relied upon are the following:

"Sec. 347. *Unlawful divulgence of trade secrets.* — Except as provided in Section 81 any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income, or inheritance of any taxpayer, the secrets, operation, style of work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall be fined in a sum of not more than two thousand pesos or imprisoned for a term of not less than six months nor more than five years, or both." (Tax Code)

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"Sec. 349. *Procuring unlawful divulgence of trade secrets.* — Any person who causes or procures an officer or employee of the Bureau of Internal Revenue to divulge any confidential information regarding the business, income, or inheritance of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, and which it is unlawful for him to reveal, and any person who publishes or prints in any manner whatever, not provided by law, any income, profits, losses, or expenditures appearing in any income tax return shall be fined in a sum of not more than two thousand pesos or imprisoned for a term of not less than six months nor more than five years, or both." (Tax Code)

"Sec. 81. *Disposition of income tax returns; publication of lists of persons filing returns and paying taxes.* — After the assessment shall have been made, as provided in this Title, the returns, together with any corrections thereof which may have been made by the Commissioner, shall be filed in the Office of the Commissioner of Internal Revenue and shall constitute public records and be open to inspection as such upon the order of the President of the Philippines under rules and regulations to be prescribed by the Secretary of Finance.

Subject to the approval of the Secretary of Finance, the Commissioner of Internal Revenue may in each year cause to be prepared and published in any newspaper or made available to public inspection in such manner as he may determine, lists containing the names and addresses of person who have filed income tax return and/or paid income taxes." (Tax Code)

"Sec. 3. *Application for permission to inspect returns.* — Except as hereinafter specifically provided, the Collector of Internal Revenue may, in his discretion upon written application setting forth fully the reasons for the request, grant permission for the inspection of returns in accordance with these regulations. The application will be considered by the Collector and a decision reached by him whether the applicant has met the conditions imposed by these regulations and whether the reasons advanced for permission to inspect are sufficient to permit the inspection. Such written application is not required of the officers and employees of the Bureau of Internal Revenue whose official duties require inspection of the return." (Regulations)

"Sec. 4. *Inspection of returns of individual.* — The return of an individual shall be open to inspection as follows:

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(a) By the officers and employees of the Bureau of Internal Revenue whose official duties require such inspection; (b) by the person who made the return, or by his duly constituted attorney in fact; (c) by the administrator, executor, or trustee of the taxpayer's estate or by the duly constituted attorney in fact of such administrator, executor, or trustee, where the maker of the return has died; and (d) in the discretion of the Collector of Internal Revenue, by one of the heirs of law or next of kin of such deceased person upon showing that he has a material interest which will be affected by the information contained in the return." (Regulations)

The position taken by the petitioners is based on the letter of the Commissioner of Internal Revenue, dated November 17, 1969, addressed to the Regional Director of Revenue Region No. 18 which states in part:

"This refers to your letter dated November 5, 1969, requesting for a ruling on the following query:

> '"May copies of the income tax returns from 1964 to 1968 of Chu Tiong *alias* Te Liong be produced in Court in order that the same could be examined by Sarmiento Enterprises in connection with his income and properties, based on the letter which he signed, even if the taxpayer vehemently opposed such production of the Bureau of Internal Revenue?"'

"In reply thereto, please be informed that this Office approved of the stand taken by your Office that the production of the original copies of the income tax returns of Chu Tiong for the years 1964 to 1963 is contrary to Sections 347 and 349 of the Tax Code, as stated in your *Motion to Quash Subpoena Duces Tecum*. The fact that Chu Tiong verbally objected against the furnishing of copies of his income tax returns for the aforesaid years, in favor of his judgment-creditor, the Sarmiento Enterprises, before internal revenue officers of the Legal Branch of that Office on October 30, 1969, casts doubt on the validity of the letter of the taxpayer Chu Tiong dated September 27, 1969, upon which letter a subpoena *duces tecum* was issued against the Bureau of Internal Revenue."

The issue then is whether or not, under the factual circumstances narrated above, the income tax returns of Chu

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Tiong should be produced by the Bureau of Internal Revenue before the Court of First Instance of Davao.

It is true that, as a rule, the Bureau of Internal Revenue cannot divulge the income of a taxpayer because of its confidential nature. However, the BIR itself has regulations issued pursuant to the Tax Code indicating the instances when the income of a taxpayer may be made public. One such instance is provided in Sec. 4(b) of the Regulations, *supra*, whereby the return of an individual shall be open to inspection "*by the person who made the return, or by his duly constituted attorney-in-fact.*"

In this case Chu Tiong not only expressed his willingness to produce before the respondent court copies of his income tax returns for the years 1964 to 1968 but he even wrote the letter above-quoted asking the BIR to deliver the returns to "Mr. Alfonso Atilano, Deputy Clerk of Court, CFI, Branch I, or Atty. Leonor T. Sumcad or Atty. Roberto M. Sarenas" who were then his attorneys-in-fact.

It is not true that Chu Tiong wrote his letter of September 27, 1969, because he was compelled to do so. As narrated by the respondent judge in his orders dated January 24 and October 3, 1970:

". . . 1. That in the course of the examination of the judgment debtor-defendant concerning his income and properties in order that the same may be applied to satisfy the judgment rendered in the above-entitled case, defendant — impeded, and degraded the administration of justice and the dignity of this Honorable Court;

"2. That the contemptuous acts of defendant Chu Tiong which merits his punishment for contempt pursuant to the provisions of par. (d) Sec. 3, Rule 71 of the Rules of Court consist of the following:

> "'a) During the course of the examination, Chu Tiong *alias* Te Liong, testifying under oath, voluntarily and willingly offered to show to plaintiff copies of his income tax returns for the year 1964, 1965, 1966, 1967 and 1968 in order to support his claim that he had no money or income sufficient to satisfy the judgment rendered in the above-entitled case (pp. 42, t.s.n., Sept. 9, 1969);

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"'b) The succeeding hearings revealed the intention of defendant to delay the proceeding for examination as he repeatedly failed to produce his income tax returns and gave diverse reasons for his failure such as his inability to locate them or his bookkeeper whose name sounded like Floren Condia (pp. 64, t.s.n, Sept. 10, 1969), or after locating his bookkeeper, the latter could not find the income tax returns (pp. 6, 7, t.s.n., Sept. 27, 1969);

"'c) To show defendant Chu Tiong's clear attempt to thwart and trifle with the proceedings of this Honorable Court, at the hearing of September 27, 1969, defendant Chu Tiong voluntarily issued an authority for the court commissioner or plaintiff to secure from the office of the Bureau of Internal Revenue copies of his income tax returns (p. 32, t.s.n, Sept. 27, 1969) in spite of his counsel's vigorous objection (pp. 24, 25, 26, 27, 28, 29 and 30, t.s.n, Sept. 27, 1969). Said authorization was in writing, prepared and signed by defendant in Court in the presence of the Court Commissioner and its other personnel as well as defendant's counsel Atty. Regino Unson (p. 32, t.s.n., Sept. 27, 1969);

"'On the bases of the foregoing authorization, herein plaintiff attempted to secure copies of defendant's income tax returns from the BIR but each time was unsuccessful as the office of the BIR at First required a written court order, which was promptly secured by plaintiff on October 18, 1969, and later on, the personal presence of Chu Tiong at the Office of the BIR.

"'On October 30, 1969, Chu Tiong, accompanied by his counsel, Atty. Regino Unson and Attys. Roberto A. Sarenas and Leonor Sumcad of the plaintiff, voluntarily went to the office of the BIR with the sole purpose of securing copies of his income tax returns.

"'However, before the legal officer of the BIR, defendant Chu Tiong, now in the threshold of complying with a promised act which he never really intended to perform, told a lie to the legal officer that he was only being forced to submit the written authority and does not want his income tax returns released. This lie of defendant is borned by the records in the statement of Atty. Perido on the hearing of November 20, 1969, and in

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the communication of the BIR to the commissioner dated November 8, 1969.

"'This complete and despicable turn-about made by defendant in lying that he was forced to sign the written authority resulting in the refusal of the BIR to release his income tax returns is a master stroke of deception designed and perpetuated by him because he evidently has no respect for the law, the courts and its processes.

"'The proceeding at hand would not have been unduly prolong and the interest of justice fully served had defendant not misled the Honorable Court and plaintiff that he was ready and willing to submit said documents;

"'The court requiring of its citizens respect for it, its processes and proceeding, and an alien, such as defendant Chu Tiong *alias* Te Liong, should do no less, if not more'";

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"After hearing, judgment was rendered on August 31, 1970, in which Chu Tiong was found to have told a lie to the Regional Office of the Bureau of Internal Revenue when he informed said office that he was forced to sign the letter of September 27, 1969, and guilty of contempt of court and sentenced accordingly.

Subsequently, on September 23, 1970, the Court denied the motion of Atty. Perido* to quash the subpoena *duces tecum* requiring the production of the income tax returns of Chu Tiong for the years 1964, 1965, 1966, 1967 and 1968, mentioned elsewhere in this order, because of its findings in the contempt proceedings that Chu Tiong *alias* Te Liong willingly and voluntarily consented to their production, because of its findings that Chu Tiong waived his right against the disclosure of said income tax returns. The Court could have directed the imprisonment or detention of Chu Tiong until he produced his income tax returns in the contempt proceedings against him but did not and instead gave due course to the subpoena *duces tecum* previously issued by denying the motion to quash filed by Atty. Perido."

In view of the foregoing, we are not prepared to rule that the respondent judge exceeded his jurisdiction or committed a grave abuse of discretion in issuing the questioned orders.

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* Atty. Dominador D. Perido, Special Attorney, BIR, Davao City.

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WHEREFORE, the petition is hereby dismissed and the preliminary injunction lifted. No costs.

SO ORDERED.

Concepcion Jr., Santos, and *De Castro,*** *JJ* ., concur.

Barredo, J., concurs because the attitude of Chu Tiong justifies the conclusion that his withdrawal of his consent should be ignored.

Aquino, J., see attached dissent.

Antonio, J., is disqualified.

AQUINO, *J.*, *dissenting*:

I dissent from the well-written opinion of Justice Abad Santos.

The petitioners question the issuance to the administrative officer or "record custodian" of the Revenue Regional Office at Davao City of a subpoena *duces tecum* in Civil Case No. 4613, "*Sarmiento Enterprises, Inc. vs. Chu Tiong,*" for the production in court of defendant Chu Tiong's income tax returns for the years 1964 to 1968.

The production of those returns was required in connection with the examination of Chu Tiong as a judgment-debtor since the execution of the judgment against him in that case was returned unsatisfied (Sec. 38, Rule 39, Rules of Court).

Chu Tiong at first expressed willingness during the hearing and even in writing to produce his income tax returns. He authorized the Revenue Regional Director to deliver copies of his income tax returns to the deputy clerk of court or to the lawyers of the judgment-creditor.

But when he was required personally to appear in the Revenue Regional Office to confirm that he authorized the production of his income tax returns, he changed his mind, presumably upon the advice of his counsel. He refused to allow the issuance

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** Justice Pacifico de Castro designated to sit with the Second Division.

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of certified copies of his income tax returns for production in court.

Hence, the lower court had to issue the subpoena *duces tecum*. It denied the motion of the revenue lawyer to quash the subpoena.

The subpoena was assailed by the Commissioner of Internal Revenue in the instant *certiorari* and prohibition case. No restraining order or preliminary injunction was issued herein. The record does not show whether this case has become moot and academic.

The issues are whether Chu Tiong's income tax returns can be used against him over his objection and whether the Bureau of Internal Revenue can be compelled to produce the said returns in the execution proceeding in the said civil case.

I am of the opinion that the subpoena *duces tecum* was erroneously issued because the production of Chu Tiong's income tax returns is not warranted under Revenue Regulations No. 33, relating to the inspection of income tax returns, which were promulgated by the Secretary of Finance and approved by the Governor-General on October 13, 1922, 21 O. G. 1246 and which are still in force and are good under Section 81 of the National Internal Revenue Code.

Section 4 of Regulations No. 33 allows the individual taxpayer or his duly constituted attorney-in-fact to inspect his return. Section 4 cannot be invoked in this case because Chu Tiong had changed his mind and was no longer willing to allow the inspection in court of his income tax returns.

The production in court of income tax returns is governed by Section 11 of Regulations No. 33. It provides that the original income tax return may be furnished by the Commissioner of Internal Revenue "for use as evidence in litigation in any court, where the Government" "is interested in the result, or for use in the preparation for such litigation, to provincial or city fiscal or any attorney connected with the Bureau of Justice designated to handle such matters, upon written request of the Solicitor General, or an assistant attorney acting on his behalf."

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Section 11 further provides that "neither the original nor a copy of an income tax return, desired for use in litigation in court where the Government" "is not interested in the result and where such use might result in making public the information contained therein, will be furnished, except as" provided in Section 12 of Regulations No. 33, which refers to the furnishing of copies of the income tax returns to the taxpayer. (As to text of Regulations No. 33, see 1 Dalupan, Tax Code Annotated, 1946, pp. 424-430.)

An example of a case where the income tax returns may be produced in court upon the request of the Solicitor General is a criminal case for estafa through falsification. The prosecution may require the Commissioner of Internal Revenue or his representative to produce in court the income tax returns of the accused since the Government is interested in the result of the said case (*Cu Unjieng vs. Posadas*, 58 Phil. 360).

As a rule, a litigant may not be compelled through subpoena *duces tecum* to produce the original income tax returns filed by him in the Bureau of Internal Revenue. He may not be compelled to ask the Commissioner of Internal Revenue for said originals (*Sarayba de Arnaldo vs. Locsin*, 69 Phil. 113, 119).

The accused in a criminal case does not have the unqualified right to ask for the issuance of a subpoena *duces tecum* for the production in court of the income tax returns of certain persons (*People vs. Topacio and Santiago*, 59 Phil. 356, 367).

Since the production in court of Chu Tiong's income tax returns is not authorized under Regulations No. 33, I vote for the quashing of the subpoena *duces tecum* and the granting of the writs of *certiorari* and prohibition.