Lang Vs. Commissioner

Lang Vs. Commissioner

SooperKanoon Citation : sooperkanoon.com/95787

Court : US Supreme Court

Decided On : Apr-10-1933

Appeal No. : 289 U.S. 109

Appellant : Lang

Respondent : Commissioner

Judgement :

Lang v. Commissioner - 289 U.S. 109 (1933)
U.S. Supreme Court Lang v. Commissioner, 289 U.S. 109 (1933)

Lang v. Commissioner of Internal Revenue

No. 595

Argued March 22, 1933

Decided April 10, 1933

289 U.S. 109

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

SYLLABUS

1. Section 204(a) of the Revenue Act of 1926 provides:

"The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; except that --"

" * * * *"

"(5) If the property was acquired by bequest, devise, or inheritance, the basis shall be the fair market value of such property at the time of such acquisition."

HELD

(1) That, upon the termination of an estate by the entirety through the death of one spouse, the survivor does not succeed to anything by "inheritance" within the meaning of this exception, but holds the estate under the original limitation, it being merely freed from participation by the other tenant. *Tyler v. United States,* 281 U. S. 497 , distinguished. P. 289 U. S. 110 .

(2) Therefore, upon a sale of the property by the survivor, the gain was properly determined on the basis of what the two tenants paid for the property when acquired, and not upon the basis of the part of that payment that was contributed by the survivor added to a part of the value of the property at the time of the other spouse's death proportionate to his contribution to the purchase. *Id.*

2. This construction is confirmed by the fact that the statute expressly declares the exception applicable to certain of the interests that are listed in 302 as embraced in decedents estates, but significantly omits from the declaration the interest of a tenant by the entirety, although it also is listed in that section. P. 289 U. S. 111 .

3. Unless there is a violation of the Constitution, Congress may select the subjects of taxation and tax them differently as it sees fit, and, if it does so in plain words, the courts are not at liberty to modify the Act by construction in order to avoid special hardship. P. 289 U. S. 113 .

61 F.2d 280 affirmed.

Certiorari, 288 U.S. 596, to review the affirmance of a decision of the Board of Tax Appeals, 23 B.T.A. 854, sustaining a deficiency assessment of income taxes.

Page 289 U. S. 110

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

In 1915, petitioner and her husband purchased certain real property at a cost of $13,000, title being vested in them as tenants by the entirety. Of this amount, petitioner contributed $1,560 (12 percent), and her husband the remaining 88 percent The husband died in 1924, the property at that time having a market value of $40,000, and 88 percent of that amount was included in the value of the decedent's gross estate for the purposes of the federal estate tax. In 1925, the property was sold for the sum last named. Petitioner, in her income tax return for that year, computed the profit on the basis of the market value of the property at the time of her husband's death, with the exception of 12 percent, representing the sum which she had contributed to the purchase price of $13,000. The Commissioner determined a deficiency, using the entire 1915 cost as the basis for computing the amount of profit realized. The Commissioner's ruling was affirmed by a decision of the Board of Tax Appeals (23 B.T.A. 854), and that, in turn, was affirmed by the court below. 61 F.2d 280.

The question to be determined, therefore, is whether cost of the property in 1915, or its market value at the time of decedent's death (with allowable deductions), is the proper basis for determining the gain from the sale in 1925.

The solution of the problem depends upon the meaning of the provision contained in 204(a) of the Revenue Act of 1926, c. 27, 44 Stat. 9, 14, which reads:

Page 289 U. S. 111

"The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; except that --"

" * * * *"

"5. If the property was acquired by bequest, devise, or inheritance, the basis shall be the fair market value of such property at the time of such acquisition."

An estate by the entirety is held by the husband and wife in single ownership, by a single title. They do not take by moieties, but both and each take the whole estate -- that is to say, the entirety. The tenancy results from the common law principle of marital unity, and is said to be *sui generis.* Upon the death of one of the tenants "the survivor does not take as a new acquisition, but under the original limitation, his estate being simply freed from participation by the other. . . ." 1 Washburn, Real Property (6th Ed.) 912. In the present case, therefore, when the husband died, the wife, in respect of this estate, did not succeed to anything. She simply continued, in virtue of the nature of the tenancy, to possess and own what she already had. Giving the words of the statute their natural and ordinary meaning, as must be done, it is obvious that nothing passed to her by bequest, devise, or inheritance.

The foregoing view is confirmed, if that be necessary, by a consideration of the language immediately following the quotation from paragraph (5), 204(a), *supra,* namely:

"The provisions of this paragraph shall apply to the acquisition of such property interests as are specified in subdivision . . . (c) or (f) of 1094(302) of this title."

Subdivision (c), 302, deals with transfers by the decedent made in contemplation of or intended to take effect in possession or enjoyment at or after his death, and subdivision (f), 302, has reference to property passing under a general power of appointment, exercised by the decedent

by will or deed in like contemplation or with like intention. Chapter 27, 44 Stat. 70, 71. The significant circumstance is that subdivision (e), 302, which relates to interests held as joint tenants by the decedent and any other person, or as tenants by the entirety by the decedent and spouse, is not included in the enumeration. The result is that the interest held by a joint tenant or tenants by the entirety is expressly included in determining the value of the gross estate for purposes of the estate tax, but not so included as a basis for determining gain or loss under 204(a). The express inclusion of the subdivision in the former case and its omission in the latter persuasively suggests that Congress did not intent to include estates by the entirety under the phrase "by bequest, devise, or inheritance." If Congress did so intend, it is hard to understand why subdivision (e) of 302 was not expressly adopted, as were (c) and (f). *Compare* *38 U. S.* *Jesse Hoyt,* 13 Pet. 263, 38 U. S. 272 -273.

It is said that the decision of this Court in *Tyler v. United States,* 281 U. S. 497 , requires a different conclusion. But that case does not decide that property held by tenants by the entirety is inherited by the survivor or passes from the dead to the living by right of succession. The decision rests alone upon the fact that Congress had provided in express words (202(c), Revenue Act of 1916, c. 463, 39 Stat. 756, 777-778) that the value of such property, to the extent designated in subdivision (c), should be included for the purpose of determining the value or the gross estate. And the tax was upheld not upon the theory that there was a "transfer" of the property by the death of decedent, or a receipt of it by right of succession, but upon the ground that death had resulted in such an accession of rights in respect of the control of the property as to make appropriate the imposition of a tax upon that result. In other words, the death of the husband had the effect of freeing the estate

Page 289 U. S. 113

from his equal right of participation in its possession, use, and disposition, which, while he lived, stood in the way of the wife's exclusive enjoyment of those rights which ordinarily flow from ownership, and this expansion of her power of control, and consequent enlargement of its value, furnished a sufficient occasion for the

imposition of an excise tax, which Congress might denominate a death tax, or a transfer tax, or anything else it saw fit, although, in the absence of an expression of the legislative will, it properly could not thus be characterized. *Tyler v. United States, supra* at pp. 281 U. S. 502 -503.

If the legislation here under review results in imposing an unfair burden upon the taxpayer, the remedy is with Congress, and not with the courts. Unless there is a violation of the Constitution, Congress may select the subjects of taxation and tax them differently as it sees fit, and, if it does so in plain words, as it has done here, the courts are not at liberty to modify the act by construction in order to avoid special hardship. *Crooks v. Harrelson,* 282 U. S. 55 , 282 U. S. 61 .

Judgment affirmed.