

Cesarini v. United States of
America
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF
OHIO, WESTERN DIVISION
296 F. Supp. 3
February 17, 1969

YOUNG, District Judge:

[****] Plaintiffs contend that the amount of \$836.51 was erroneously overpaid by them in 1964 [****]

In 1957, the plaintiffs purchased a used piano at an auction sale for approximately \$15.00, and the piano was used by their daughter for piano lessons. In 1964, while cleaning the piano, plaintiffs discovered the sum of \$4,467.00 in old currency, and since have retained the piano instead of discarding it as previously planned. Being unable to ascertain who put the money there, plaintiffs exchanged the old currency for new at a bank, and reported the sum of \$4,467.00 on their 1964 joint income tax return as ordinary income from other sources. On October 18, 1965, plaintiffs filed an amended return with the District Director of Internal Revenue in Cleveland, Ohio, this second return eliminating the sum of \$4,467.00 from the gross income computation, and requesting a refund in the amount of \$836.51, the amount allegedly overpaid as a result of the former inclusion of \$4,467.00 in the original return for the calendar year of 1964. On January 18, 1966, the Commissioner of Internal Revenue rejected taxpayers' refund claim in its entirety, and plaintiffs filed the instant action in March of 1967.

[****]

The decisions of the United States Supreme Court have frequently stated that this broad all-inclusive language was used by Congress to exert the full measure of its taxing power under the Sixteenth Amendment to the United States Constitution. *Commissioner of Internal Revenue v. Glenshaw Glass Co.*, 348 U.S. 426, 429, 99 L. Ed. 483, 75 S. Ct. 473 (1955); *Helvering v. Clifford*, 309 U.S.

331, 334, 84 L. Ed. 788, 60 S. Ct. 554 (1940); *Helvering v. Midland Mutual Life Ins. Co.*, 300 U.S. 216, 223, 81 L. Ed. 612, 57 S. Ct. 423 (1937); *Douglas v. Willcuts*, 296 U.S. 1, 9, 80 L. Ed. 3, 56 S. Ct. 59 (1935); *Irwin v. Gavit*, 268 U.S. 161, 166, 69 L. Ed. 897, 45 S. Ct. 475 (1925).

In addition, the Government in the instant case cites and relies upon an I.R.S. Revenue Ruling which is undeniably on point:

"The finder of treasure trove is in receipt of taxable income, for Federal income tax purposes, to the extent of its value in United States currency, for the taxable year in which it is reduced to undisputed possession." *Rev. Rul. 61, 1953-1, Cum. Bull. 17.*

[****]

In partial summary, then, the arguments of the taxpayers which attempt to avoid the application of *Rev. Rul. 61, 1953-1* are not well taken. [****] The other branch of their argument, that found money must be construed to be a gift [****] In addition to the numerous cases in the Supreme Court which uphold the broad sweeping construction of Section 61(a) found in *Treas. Reg. § 1.61-1(a)*, other courts and commentators writing at a point in time before the ruling came down took the position that windfalls, including found monies, were properly includable in gross income [****] Comment, "Taxation of Found Property and Other Windfalls," *20 U. Chi. L. Rev. 748, 752 (1953)*.¹ While it is generally true that revenue rulings may be disregarded by the courts if in conflict with the code and the regulations, or with other judicial decisions, plaintiffs in the instant case have been unable to

¹ This article, after stating arguments both ways on the question, and thus suggesting by implication that the area was not clearly defined at that time, went on to state at page 752: "Perhaps a more appropriate interpretation of Section 22(a) would be to hold that all windfalls . . . are taxable income under its sweeping language. * * * Insofar as the policy of Section 22(a) is to impose similar tax burdens on persons in similar circumstances, there is no basis for distinguishing value received as windfall and . . . value received as salary." Footnote 50 of the Comment indicates that the article was in printing when *Rev. Rul. 61-53-1* came out.

point to any inconsistency between the gross income sections of the code, the interpretation of them by the regulations and the courts, and the revenue ruling which they herein attack as inapplicable.

On the other hand, the United States has shown a consistency in letter and spirit between the ruling and the code, regulations, and court decisions.

Although not cited by either party, and noticeably absent from the Government's brief, the following Treasury Regulation appears in the 1964 Regulations, the year of the return in dispute:

"§ 1.61-14 Miscellaneous items of gross income.

"(a) In general. In addition to the items enumerated in section 61(a), there are many other kinds of gross income Treasure trove, to the extent of its value in United States currency, constitutes gross income for the taxable year in which it is reduced to undisputed possession."

Identical language appears in the 1968 Treasury Regulations, and is found in all previous years back to 1958. [****]

This brings the Court to the second contention of the plaintiffs: that if any tax was due, it was in 1957 when the piano was purchased, and by 1964 the Government was blocked from collecting it by reason of the statute of limitations.

[****] Unless there is present a specific state statute to the contrary,² the majority of jurisdictions are in accord with the Ohio rule.

³ Therefore, this Court finds that the \$4,467.00 in old currency was not "reduced to undisputed possession" until its actual

discovery in 1964, and thus the United States was not barred by the statute of limitations from collecting the \$836.51 in tax during that year.

[****]

This is a WHEN question.

² See, for example, *United States v. Peter*, 178 F. Supp. 854 (E.D. La. 1959) where it is held that under the Louisiana Civil Code and the Code D'Napoleon the finder of treasure does not own it, and can only become the owner if no one else can prove that the treasure is his property.

³ See *Weeks v. Hackett*, 104 Me. 264, 71 A. 858, 860 (1908) for a review of the authorities in jurisdictions where the finder is the owner as against all but the true owner. Also, see Section 5, Finding Lost Goods, 36A CJS 422 (1961).