

the importance of the place for expression. Of course, the community center is a place for social education, not a flat, free market which any contents circulate. For example, the Social Education Act provides the restriction of services concerned with interests of certain political parties. But it is significant that the court provided the logic, not that the public character of community center demands the restriction of private expression (Kawagishi Norikazu). It is exactly the public character that prohibits the easy restraint of expression.

Second, both the district and high court reject the claim of the right to publish. Both recognize that the purpose of the proposal is to make the bulletin diverse and various and not authorize the access by the circle. But given that the community center plays the role of the social education, it should involve the publication of the result of education. Under the circumstances of this case, there should be room for access (Hitomi Takeshi).

2. Administrative Law

X v. Japan

Supreme Court 3rd P.B., September 25, 2018

Case No. (*Gyo-Hi*) 209 of 2017

72(4) MINSHU 317; 1456 HANREI TAIMUZU 46

Summary:

The Supreme Court held that it cannot be said it is not permitted to dispute the legitimacy of a tax notice disposition against a withholding tax related to salary income, claiming that the act causing the payment which determined the tax duty of the said withholding tax is invalid due to a mistake, simply because the claim was done after the statutory payment due date.

Reference:

Income Tax Act, Article 183, Paragraph 1; Act on General Rules for National Taxes, Article 36, Paragraph 1; Civil Code, Article 95.

Facts:

X (the appellant, the appellee of the second instance) is an unincorporated association of which the principal business is the purchase of agricultural products such as vegetables and processed food, and has an obligation to withhold taxes provided at the Income Tax Act, Art.6. A assumed office as a managing director of X around 1981, then became the president of X from March 17, 1994 to June 17, 2010.

A repeatedly borrowed money from X and some other financial institutions from around 1981, investing them in securities and the like. However, after the collapse of the bubble economy, A came to be unable to repay those debts. A requested reduction or release of debts of X for it was difficult to clear those debts, however, X did not accept his request especially of a reduction or release of reimbursement of the principal, although X often reduced and released the interest from December 26, 1990.

A was exempted from his debts which A owed to B corporation, which is a collection agency, on July 31, 2005 (hereinafter these economic earnings are referred to as the "Income from the discharge of indebtedness in 2005"). After that, the assets of A did not increase until December 2007 when the discharge described below was carried out. After the above exemption, A received a Reassessment disposition of income tax concerning 2003, 2004 and 2005, and an Assessment and Determination disposition of additional tax for understatement, so A filed an objection against these dispositions.

The competent district director of the tax office made a decision against the above objection on August 6, 2007 (hereinafter this decision is referred to as the "Decision in 2007"). Among the reasons for this decision, the conclusion that the former Fundamental Directives of Income Tax, 36-17 (hereinafter referred as to the "Former directives") was to be applied to the Income from the discharge of indebtedness in 2005 was indicated. The Former directives provided that the income from the discharge of indebtedness which accrued from a discharge made when the debtor finds it extremely difficult to pay the debt due to one's loss of funds is not included in the income amount or gross income when calculating the amount of various kinds of income.

On December 9, 2007, X made a resolution at the board of directors to buy the real property owned or shared by A and his ex-wife, who is a surety jointly and severally liable for the above debts, to offset the amount of the charge debt for the property and the equivalent amount of the debts of A, then to exempt the indebtedness remained after the above setoff, concerning the request of discharge from A. On December 10, 2007, X executed the resolution of the previous day, and discharged A from the debt amount of 4,836,821,235yen (hereinafter this discharge is referred as to the “Discharge” and the economic earnings that A has gained from this discharge is referred as to the “Income from the discharge of indebtedness”).

The competent district director of the tax office made against X a tax notice disposition as to a withholding tax of December, 2007, concerning the Discharge and an additional tax for nonpayment, with the understanding that the Income from the discharge of indebtedness should be included in the salary income of A (hereinafter referred as to the “Dispositions”). X filed this suit because of disapproval of the Dispositions, having passed through a legitimate procedure.

At the court of this suit, X asserted that the Discharge was to be invalid because of a mistake, for X thought that the Discharge will not be taxed as applying to the Former directives, which was applied at the Decision in 2007. As X exempted A from debts, confirming with A that the Income from the discharge of indebtedness would not be taxed, a serious mistake was made in the precondition which X and A had confirmed.

The second instance (judgement of Hiroshima High Court, February 8, 2017, 72(4) MINSHU 353) held that the Income from the discharge of indebtedness should fall within the scope of salary income, so that under the financial conditions of A, it would be perceived that the assets of A after the Discharge are far in excess of the debts of A and the amount of the excess should be counted as the economic earnings of A, according which it cannot be said that it is extremely difficult for A to pay the debt. In addition, the court found that the Dispositions concerning the earnings of A are legitimate, as stated below;

“Under the self-assessment system, it is thought to be impermissible to claim that the act accruing the tax duty is invalid after the statutory tax return due date, for it would disturb impartial taxation and make a legal

relationship in tax unstable to allow easily to claim invalidity of the act accruing the tax duty due to a mistake, and to avoid tax duty after the tax duty is determined in the self-assessment system. Under the withholding tax system, it is the same as the self-assessment system that withholding agents are to pay a withholding tax until the statutory due date for payment on a voluntary basis, and furthermore the withholding tax system is thought to be a system where the earlier settlement is expected than other debts and credits relationship in tax. Therefore, it should not be allowed to claim the invalidity of the act causing tax duty due to a mistake after the statutory due date for payment.”

X made an appeal to the Supreme Court.

Opinion:

Dismissed.

1. In case that an act causing the payment which determined the tax duty of the withholding tax related to salary income is invalid and economic earnings accrued from that act are lost because of the invalidity of it, the district director of the tax office should not give notice of tax due on the premise of the said payment after the loss of economic earnings. And then there is no enactment that provides that it should be allowed only in a specific duration to claim the invalidity of the said act due to a mistake, nor the duty of withholding tax would be determined when the statutory due date for payment elapses. Therefore, there is said to be no reason why it is not permitted to dispute the legitimacy of a tax notice disposition against a withholding tax related to salary income, claiming that the act causing the payment which determined the tax duty of the said withholding tax is invalid due to a mistake, simply because the claim was done after the statutory payment due date.

2. It should be said that the judgement of the second instance, which, unlike the above opinion, said that it should not be allowed to claim the invalidity of the Discharge due to a mistake after the statutory due date for payment, should be illegal in misunderstanding the interpretation of law. However, although X claimed the invalidity of the discharge because of a mistake, There was no assertion that the economic earnings which had been accrued from the Discharge had been lost due to the said invalidity

until the time when the tax notice disposition was given. Therefore, it cannot be said that the Dispositions is illegal according to the claim of X. Having done that, the judgement of the second instance which held that the Dispositions should be legitimate could be approved in the result.

Editorial Note:

1. Under the tax law, taxation is aimed at various economic activities and economic phenomena, which are primarily regulated by civil law, so that the taxation is thought to be executed generally in accordance with the legal relationship based on the civil law as well. Based on this view, in the case that the target of taxation is economic earnings accrued from the act under private law other than the act itself, when the economic earnings aimed at by the taxation have been lost because the act accruing the earnings has a deficiency such as a mistake provided at the Civil Code, Article 95, it is thought to be unable to tax in general. However, it is said that it should be considered as fulfilling the requirement of taxation as long as the economic earnings remain.

On the other hand, under the self-assessment system where the amount of tax due is determined by the tax return of a taxpayer, it is tend to be unacceptable at the lower courts to allow a taxpayer easily to claim the invalidity of the act accruing the tax duty due to a mistake and to avoid tax duty after the tax duty is determined, for it would disturb impartial taxation and make the legal relationship in tax unstable. The second instance also denied the claim of X, stating that it should be unacceptable for a taxpayer to claim the invalidity after the statutory tax return due date for the same reasons as above, then holding that, under the withholding tax system, it should not be allowed to claim the invalidity of the act due to a mistake after the statutory due date for payment as well.

2. This Case is the first judgement of the Supreme Court as to whether or not it could be accepted to claim that an act causing a tax duty of a withholding tax is invalid due to a mistake after the statutory payment due date. Furthermore, unlike the second instance which denied the claim after the statutory payment due date, the court held that it is said to be no reason why it is not permitted to dispute the legitimacy of a tax notice disposition, claiming that the said act is invalid due to a mistake, simply

because the claim was done after the statutory payment due date.

It is said that the judgement of this court would consider the points of view below, in addition to the points mentioned at above 1.

- a. The opinion that denied the claim of the invalidity of the act after the statutory payment due date is thought to be less convincing.
- b. There is no enactment that provides it should be allowed only in a specific duration to claim the invalidity of the act causing the payment which determined the tax duty of the withholding tax related to salary income, due to a mistake.
- c. Unlike the effect of the tax return to determine the tax amount under the self-assessment system, the tax duty at withholding tax is to be determined automatically when the requirements are fulfilled; in addition, a tax note disposition itself is not to determine the tax amount. Therefore, the passing of the statutory payment due date in such a situation like this has no effect on the determination of the tax duty.

3. This judgement concluded that it cannot be said that the Dispositions is illegal according to the claim of X, who did not assert that the economic earnings which had been accrued from the Discharge were lost due to the said invalidity until the time when the tax notice disposition was given, while it held the claim after the statutory payment due date could be accepted. In this point, when an act claimed as invalid involving a provision such as money, property, and so on, is disputed, it can be asserted that the economic earnings have been lost by returning the provision if the said act is invalid due to a mistake. However, it might be difficult to assert the loss of some economic earnings such as the Income from the discharge of indebtedness.

In that sense, although this judgement held that the timing of a claim of invalidity due to a mistake is not to be restricted by the statutory payment due date, considering that it also found to what extent the taxpayer should assert in order for the assertion of invalidity of the act to be accepted, it is thought to be said that this judgement indicated the difficulty of claiming the invalidity due to a mistake at the tax suits.