

100 Phil. 327

[G.R. No. L-9202. November 19, 1956]

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. JOSE AVELINO AND COURT OF TAX APPEALS, RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

Jose Avelino filed his income tax returns for 1946 and 1948 on February 28, 1947 and April 20; 1949, respectively as required by law. A verification of said returns made by the examiners of the Collector of Internal Revenue revealed that there was due from the taxpayer on the basis of his increase in net worth every year, or under the inventory method, deficiency income taxes covering the years 1946 and 1948 in the amount of P83,212.63.

On May 24, 1954, or exactly five years and thirty-five days after the last of the two returns was filed, the Collector of Internal Revenue demanded from Jose Avelino the payment of the above taxes. Upon his failure to pay them, the Collector issued on September 23, 1954, a warrant of garnishment. This was followed by another warrant of distraint, and levy. As a result, the properties of Avelino, real and personal, including those of his wife, were seized and their sale at public auction was set on May 25, 1955, whereupon, on April 28, 1955, Jose Avelino filed an urgent petition with the Court of Tax Appeals praying that the Collector of Internal Revenue be enjoined from proceeding with the sale of his properties and that the assessment made by him be reviewed.

On May 20, 1955, the Court issued a resolution declaring the warrants of garnishment, as well as of distraint and levy, including the seizure and notice of sale of the properties of Jose Avelino, null and void, and ordering the Collector of Internal Revenue to desist from collecting "through summary administrative methods" the deficiency income taxes which were assessed for the years 1946 and 1948. To secure a reversal of this resolution, the Collector of Internal Revenue interposed the present petition for review.

Petitioner assigns in this appeal two errors, to wit:

(1) that the Court of Tax Appeals “*Erred in applying section 51 (d) of the National Internal Revenue Code and holding that thereunder petitioner is barred from collecting through summary administrative methods of distraint and levy the deficiency income taxes in question*”; and (2) that said court “*Erred in restraining petitioner from collecting through summary administrative methods the deficiency income taxes, and without requiring a bond in accordance with section 11 of Republic Act No. 1125.*” We will discuss this issue separately.

There is no dispute that the deficiency income taxes in question were assessed against petitioner more than three years after the income tax returns covering them were filed. It is likewise clear that the warrants of garnishment and distraint and levy issued to enforce the collection of said taxes were issued also after more than three years from the filing of said returns. On the other hand, section 51 (d) of the National Internal Revenue Code provides that “In cases of refusal or neglect to make a return and in case of erroneous, false, or fraudulent returns,, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, * * *.” And interpreting this provision, which formerly was embodied in section 9 (a) of the former Income Tax Law, Act No. 2833, this Court, in a long line of decisions, has expressed the view that the government loses its rights to collect the income tax by summary proceedings after three years have elapsed from the time the income tax return is filed, although it may still collect the tax by judicial action.^[1] Thus, in the case of Philippine Sugar Estate Development Co., Inc. m. Juan Posadas, 68 Phil., 216, this Court stated the doctrine as follows:

” It is therefore a matter established by the American jurisprudence that the three-year prescription refers to the discovery of erroneous, false, or fraudulent returns, and to tax assessments and their summary collection, but not to their collection through judicial channels. * * * *

“According, to the doctrine above-cited, after three years have elapsed from the date on which income tax returns which have been found to be false, fraudulent or erroneous, may have been made, the Collector of Internal Revenue cannot make any summary collection through administrative methods, but must do so through judicial proceedings.”

It therefore appears that when it refers to the collection of income tax it is mandatory that the right of the Collector of Internal Revenue to collect it by the summary methods of distraint and levy be exercised within the period of three years from the time the income tax return is filed, otherwise the right can only be enforced by judicial action. Since, admittedly, the deficiency taxes in question were assessed and the warrants for their collection by distraint and levy were issued after the period of three years from the filing of the returns, it is evident that said warrants, as well as the steps taken in connection with the sale of the properties of the taxpayer, were issued without authority of law and hence, the Court of Tax Appeals acted properly in enjoining their enforcement as prayed for by petitioner.

It is true that under sections 331 and 332 of the National Internal Revenue Code, the Collector of Internal Revenue may assess an internal revenue tax within live years after the return was filed, and in case of false or fraudulent return he may also assess such tax as may be found to be due at any time within ten years after the discovery of the falsity, fraud or omission, and their collection may be enforced either by distraint or levy or by a proceeding in court; but said sections merely apply to internal revenue taxes in general and not to income taxes the collection of which is specifically provided for under a different title of the same law. Thus, when the National Internal Revenue Code was codified and enacted in 1939, the whole Act No. 2833, commonly known as the Income Tax Law, was incorporated therein and became Title II thereof, which is exclusively devoted to income tax, section 51 (*d*) of said Code, which refers to the assessment and payment of income tax, being merely a reproduction of section 9 (*a*) of the former Income Tax Law, but there is nothing provided in the new Code from which it may be inferred that the provisions of said section 51 (*d*) were deemed repealed or modified by the provisions of sections 331 and 332 thereof. Since, repeals by implication are not favored, unless the contrary clearly appears, and it is well known rule that conflicting provisions should be harmonized and reconciled so that both may be given force and validity, it is our duty to harmonize and reconcile them if only to give effect to the clear intent of our legislative body. A cursory reading of the provisions of our National Internal Revenue Code regarding the collection of income tax as distinguished from internal revenue taxes in general clearly reveals the intention of our legislative body to preserve in toto the procedure and method of collection originally adopted with regard to the former considering its nature and peculiarities inspite of the adoption of a similar method of collection with some variation with regard to the latter. And because of this manifest intent of Congress, we have no other eourse of action than to hold the two provisions are valid and binding, one being special, particularly applicable to income tax, and the other general, applicable to other kinds of internal revenue taxes. To

hold otherwise would be to render nugatory and meaningless section 51 (d) of our National Internal Revenue Code, a conclusion not warranted by the circumstances, since it cannot be presumed that Congress has adopted it merely through an oversight. We find no sufficient justification for such conclusion.

It is next contended that the Court of Tax Appeals erred in restraining the Collector of Internal Revenue from collecting through summary administrative methods the deficiency income taxes in question and, in any event, in not requiring petitioner to put up a bond as a justification thereof in accordance with section 11 of Republic Act No. 1125. In other words, it is the theory of the Solicitor General that the Court of Tax Appeals has no power to restrain the Collector from proceedings with the distraint and levy to enforce their collection for that would be a violation of the principle that the collection of taxes cannot be restrained by injunction, and assuming that it can do so it can only hold the collection after requiring the taxpayer either to deposit the amount claimed or to file a bond for not more than double that amount.

While the law is that "No court shall have authority to grant an injunction to restrain the collection of any national internal revenue tax, fee, or charge imposed by this code" (Section 305 of the National Internal Revenue Code), and it is a ruling laid down in this jurisdiction, that the authority to issue injunction is "*limited, as in other cases where equitable relief is sought, to those cases where there is no 'plain, adequate, and complete remedy at law'*", which will not be granted while the rights between the parties are undetermined, *except in extraordinary cases where material and irreparable injury will be done*", which cannot be compensated in damages * * * (Churchill and Tait vs. Rafferty, 32 Phil., 580, 591, Sarasola vs. Trinidad, 40 Phil., 252), however, these authorities are not here controlling, for we are not here concerned with an injunction to restrain the collection of tax but with one to restrain the exercise of the right to collect it by distraint and levy. What is prohibited is the injunction against judicial collection which is not the case here, for what the court merely enjoined is the enforcement by distraint and levy which was found to be in violation of the law. In any event, even if it refers to a collection of by court action, we find the action of the court justified under section 11 of Republic Act No. 1125, which provides:

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however,* That when in the opinion

of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.”

It therefore appears from the above that when in the opinion of the court the collection of the tax by the Collector of Internal Revenue may jeopardize the interest of the taxpayer it may, at any stage of the proceeding, suspend the collection and require the taxpayer either to deposit the amount claimed or file a surety bond for not more than double the amount with the court. This section must be deemed to have modified section 305 of the National Internal Revenue Code in view of the repealing clause contained in said Act to the effect that “Any law or part of law, or any executive order, rule or regulations or part thereof, inconsistent with the provisions of this Act is hereby repealed” (section 21).

It is true that the court did not require the taxpayer to deposit the amount claimed or to file a bond as required by law before granting the relief, but such action is justified considering that the court found the action of the Collector to be contrary to law. To require a bond under such a situation would indeed be illogical and improper. The following observations made by the Court of Tax Appeals are correct:

” The facts and the questions of law involved in this incident are no different from those involved in the petition for injunction in the case of A. P. Reyes (C. T. A., Case No. 42). In both cases, the Collector of Internal Revenue employed summary methods of collection beyond the three year period of limitation fixed in the aforesaid, section of the National Internal Revenue Code. It will be noted in our resolution granting the injunction prayed for in the A. P. Reyes case that no bond was required of the petitioner to guarantee the payment of the deficiency income tax demanded by the respondent. We refrained from requiring of the” petitioner A. P. Reyes the filing of any bond as a condition precedent to the granting of the preliminary injunction on good grounds. Having held in said case as we are holding in the case at bar that the Collector of Internal Revenue cannot, after three years from the time the taxpayer has filed his income tax returns or from thfe time when he should have filed the same, make any summary collection of the deficiency income taxes demanded thru

administrative methods and that the warrant of distraint and levy as well as the contemplated sale at public auction of the properties of the taxpayer are null and void being as they are in violation of section 51 (d) of the National Internal Revenue Code, it would seem illogical and inconsistent on our part on the other hand to require the filing of a bond as a condition precedent to the enjoining of such act or acts by the Collector of Internal Revenue which we have held to be illegal. Moreover, supposing that under those circumstances in the Reyes case as well as in the present one, the taxpayer for one reason or another fails or refuses to file the bond fixed by this Court? Are we to allow then the Collector of Internal Revenue after such failure on the part of the taxpayer to file the required bond, to go on with the summary collection of the assessment thru administrative methods which methods we have held to be in violation of the provisions of the National Internal Revenue Code? We believe and so hold that under section 11 of Republic Act No. 1125, we may in the sound use of our discretion suspend by injunction the collection of taxes by the Collector of Internal Revenue and at the same time not require the taxpayer to file a bond if the method employed by the Collector of Internal Revenue in the collection of the tax is not sanctioned by law"

Wherefore, the resolution appealed from is affirmed, without pronouncement as to costs.

Bengzon, Padilla, Labrador, Endencia, and Felix, JJ., concur.

Paras, C. J., concurs in the result.

^[1] Collector of Internal Revenue vs. Villegas, 56 Phil. 554-559; Collector of Internal Revenue vs. Haygood, 65 Phil. 520; and Juan de la Viña vs. El Gobierno de las Filipinas, G. R. No. 42669, January 29, 1938.

CONCURRING AND DISSENTING:

REYES, J. B. L.,

I concur with the decision in so far as it holds that after the lapse of three years the Collector of Internal Revenue may not enforce collection of deficiency income taxes by extra-judicial distraint and levy. But I disagree from the proposition that the Court of Tax Appeals may suspend the collection of taxes without requiring the taxpayer to post a bond or deposit the amount of the taxes claimed. It seems to me that section 11 of Republic Act 1125 gives the Court of Tax Appeals no discretion in the matter. It says:

“No appeal taken to the Court of Tax Appeals from the decision of the Collector of internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: *Provided, however,* That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.”

It is very obvious that the law permits the suspension of the tax collection only upon deposit or bond, as an assurance that the tax-payer would not become insolvent and the taxes becomes uncollectible during the pendency of the proceedings. Being an exception to the general rule that collection of taxes should not be interfered with, section 11 should be given strict interpretation.

Montemayor and Concepcion, JJ., concur.