

[G. R. No. L-8840. February 08, 1957]

**THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. JOSE C. ZULUETA
AND THE COURT OF TAX APPEALS, RESPONDENTS.**

D E C I S I O N

FELIX, J.:

This is a petition for certiorari filed by the Collector of Internal Revenue with this Court wherein he prays that the resolution of the Court of Tax Appeals, ordering him to desist from proceeding through the extra-judicial methods of distraint and levy with the collection of the alleged income tax liabilities of Jose C. Zulueta (Annex D), be declared null and void. The facts of the case may be stated as follows:

On February 10, 1954, respondent Jose C. Zulueta (who had not filed his income tax returns for the years 1945 to 1948 and 1950 - Annex N), received a letter from the Collector of Internal Revenue informing him that his income tax deficiency for the years 1945 to 1951, inclusive amounted to P550,527.50 (Annex A). Respondent Zulueta immediately sent a query as to how this amount was arrived at, asking for a particularized statement thereof and at the same time protesting against said assessment on the ground that he had religiously paid his annual income tax liabilities (Annex C). This communication was answered by the Acting Collector of Internal Revenue informing him that the bases of the assessment were embodied in working sheets in his Office which were made available to respondent Zulueta or his duly authorized representative and gave the latter 30 days from receipt of that letter for the purpose of verifying said assessment (Annex D). It appearing that respondent Jose C. Zulueta failed to submit a memorandum in support of his contention that the assessment on his income tax was erroneous, the Collector of Internal Revenue, on June 3, 1954, required said taxpayer to pay the taxes demanded of him amounting to P616,630.81 not later than June 30, 1954 (Annex F). An exchange of communications between them ensued wherein respondent was granted several extensions of time within which to file his said memorandum.

On November 10, 1954, the Collector of Internal Revenue sent to the City Fiscal of Manila papers pertinent to the possible prosecution of Jose C. Zulueta on account of the latter's failure to file his income tax returns in violation of section 45 of the National Internal Revenue Code, if such action was warranted by the circumstances of the case (Annex N). And on *December 29, 1954*, the City Treasurer of Manila placed under distraint and levy certain real properties of the respondent taxpayer described in the warrant (Annex O) to be sold at public auction on February 21, 195U (this must be a clerical error as to the year, which should be 1955 instead of 1954), to meet the amount of P550,326.50 representing deficiency income taxes for 1945 to 1951, plus the corresponding deficiency penalties, which sale was published in the January 24, 1955 issue of the Manila Times.

Thereafter, respondent Jose C. Zulueta filed with the Court of Tax Appeals on January 17, 1955, a petition to review the deficiency income tax assessment made by the Collector of Internal Revenue and on January 26, 1955, filed an urgent petition to enjoin the Collector of Internal Revenue and the City Treasurer of Manila from proceeding with the contemplated sale of his properties, on the ground that the right to collect by summary proceedings his alleged income tax deficiency for 1945 to 1950 had already prescribed; that the extra-judicial methods of collection by distraint and levy contravenes the mandate of section 51 (d) of the Tax Code; that the assessment of his tax liability for 1951 is unwarranted because all his income for that year originated from war damage payments which are not taxable under Republic Act No. 227; that the execution of the warrant of distraint and levy would result in injustice and irreparable injury to him; and that the filing of a bond is not necessary as the interest of the State will not be prejudiced due to the existence of a tax Hen in its favor as provided for by Section 315 of the Tax Code. After proper hearing, the respondent Court declared the order of distraint and levy against the properties of respondent Zulueta to insure the collection of alleged income tax deficiency for 1945, 1946, 1947, 1948 and 1950 null and void but required said respondent to file a bond for P116,000 in favor of the Republic of the Philippines to guarantee the payment of his income tax and surcharges for the year 1951, before issuing the writ of injunction to restrain the herein petitioner from proceeding with the scheduled sale of respondent's properties (Annex B). After the bond in said amount was posted, the Court of Tax Appeals issued its order of February 18, 1955, enjoining the Collector of Internal Revenue and the City Treasurer of Manila from selling any real or personal property of Jose C. Zulueta at public auction pending the outcome of the appeal (Annex E).

The records show that respondent Jose C. Zulueta was able to present evidence to prove that he had filed his income tax returns for the years 1949 and 1951 which he did on May

11, 1950, and May 15, 1952, respectively. However, he failed to present duplicate copies of his income tax returns for the years, 1945, 1946, 1947, 1948 and 1950 although he claimed that they had been already settled. But this fact will not alter the situation for the legal provision that applies in this case is section 51 (d) of the National Internal Revenue Code which reads as follows:

“Sec. 51. Assessment and Payment of Income Tax. -

* * * * *

(d) Refusal or neglect to make return; fraudulent returns, etc.- In cases of refusal or neglect to make a return and in cases 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, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment.”

It will be noted that this section treats not only of cases where false or fraudulent returns are filed, but also where the taxpayer refuses or neglects to file the same. We agree with the lower court when it states that:

“* * * the computation of the three-year prescriptive period provided therein varies, depending on whether or not the taxpayer has filed his income tax return for a particular year. If he has filed one, the running of the prescriptive period of three years commences from the time the return shall have been filed. *In those cases where there has been a neglect or refusal to file one, the period commences from the date when the return is due, which is March 1 of the succeeding year*”

.As construed by this Tribunal in several decisions, the three-year prescriptive period provided for in the afore-quoted section is meant to serve as a limitation on the right of the Government to collect income taxes by the summary methods of distraint and levy, although it could proceed to recover the taxes due by the institution of the corresponding civil action

(Collector of Internal Revenue vs. Villegas, 56 Phil. 554; Collector of Internal Revenue vs. Haygood, 65 Phil. 520; Juan de la Vina vs. El Go-bierno de las Filipinas, G. R. No. 42669, January 29, 1938; Collector of Internal Revenue vs. Jose Avelino et al., *supra*, p. 327 and Collector of Internal Revenue vs. Aurelio P. Reyes et al., *supra*, p. 822).

The Collector of Internal Revenue in the instant case issued the warrant of distraint and levy against certain real properties of the respondent Jose C. Zulueta for the collection of deficiency income taxes for the years 1945, 1946, 1947, 1948 and 1950 only on *December 29, 1954*, or 3 years, 9 months and 28 days from March 1, 1951, when the return for the tax year 1950 should have been due. It is very patent therefore that the order of the Collector of Internal Revenue to effect collection of the alleged deficiency income taxes through summary administrative proceedings, having been issued well beyond the three-year period of limitation, was null and void.

We disagree with the contention of petitioner that the act of the respondent Court in declaring the order of distraint and levy a nullity was done in excess of its jurisdiction, because said pronouncement was made in the lawful exercise of its power to pass upon all matters brought before it and sanctioned by section 7 of Republic Act No. 1125, which reads as follows:

“Sec. 7. *Jurisdiction.*- The Court of Tax Appeals shall exercise exclusive jurisdiction to review by appeal, as herein provided-(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or *other matters arising under the National Internal Revenue Code* or other law or part of law administered by the Bureau of Internal Revenue.

Petitioner likewise asserts that even assuming that the respondent Court of Tax Appeals had jurisdiction to order him to desist from collecting through summary administrative methods the taxes due from respondent Zulueta, yet the Court committed a grave abuse of discretion in its failure to require the filing of a bond or deposit the amount assessed for the tax years 1945, 1946,

1947, 1948 and 1950. This Court had occasion to pass upon this matter squarely in the case of Collector of Internal Revenue vs. Aurelio P. Reyes and Court of Tax Appeals, (*supra*, p. 822) wherein it was held that:

“* * *. At first blush it might be as contended by the Solicitor General, but a careful analysis of the second paragraph of said section 11 will lead Us to the conclusion that the requirement of the bond as a condition precedent to the issuance of a writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with law for such cases provided *and not when said processes are obviously in violation of the law to the extreme that they have to be SUSPENDED for jeopardizing the interests of the taxpayer.*

“Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the *collection by summary proceedings* is by itself in accordance with existing laws; and then what is suspended is the *act of collecting*, whereas, in the case at bar, what the respondent Court suspended was the *use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period*. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. It would certainly be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violativo of the law, and then, on the same breath, require the petitioner to deposit or file a bond as a pre-requisite for the issuance of a writ of injunction. Let us suppose, for the sake of argument, that the Court *a quo* would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court *a quo* be obliged to authorized or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?”

It is for this reason that the respondent Court in the case at bar required respondent Zulueta to post *only a* bond for P116,000 in favor of the Government to guarantee the collection of his income tax deficiency for the year 1951, before the writ of injunction was issued, and declined to order a similar requirement with respect to the income taxes for the years 1945, 1946, 1947, 1948 and 1950.

Wherefore, the petition for certiorari filed by the Collector of Internal Revenue praying that the resolution of the respondent Court of Tax Appeals dated February 17, 1955, restraining

the herein petitioner from selling the Manila properties of Jose C. Zulueta to satisfy his income tax liabilities for the years 1945, 1946, 1947, 1948 and 1950 be declared null and void, is hereby denied, without pronouncements as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador and Endenda, JJ., concur.

Reyes, J. B. L., /., concurring.

I concur, subject to my opinion in Collector of Internal Revenue vs. Jose Avelino and Court of Tax Appeals, (*supra*, p. 327)

Conception, J., concurs. Petition denied.
