

101 Phil. 1

[G. R. No. L-8652. March 30, 1957]**SANTIAGO SAMBRANO, PETITIONER, VS. COURT OF TAX APPEALS AND COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.****D E C I S I O N****FELIX, J.:**

This is a petition for certiorari filed by Santiago Sambrano, praying for the reversal of a resolution of the Court of Tax Appeals dated January 4, 1955, denying his petition to enjoin the Collector of Internal Revenue from proceeding with the sale of his properties at public auction, and to declare the sale of his house and lot located at Vigan, Ilocos Sur, null and void. This Court gave due course to the petition as an ordinary appeal and at the same time denied the prayer for the issuance of a writ of preliminary injunction. The facts of the case may be summarized as follows:

On February 23, 1950, Santiago Sambrano, the owner and operator of a fleet of passenger and freight trucks with lines between Manila and the northern provinces of Luzon, received from the Collector of Internal Revenue a demand for the payment of his income tax liabilities. This was followed by another letter dated January 6, 1951, assessing Sambrano's tax deficiencies at P188,741.07 (which was later reduced to P184,241.07 on April 28, 1951), itemized as follows:non:

INCOME TAX

	Tax	50% Surcharge	Total	
1945	P7,668.81	P3,784.41	P11,853.22	
1946	108,946.67	54,473.84	163,420.01	
1948	314.49	157.25	471.74	P175,244.97

PERCENTAGE TAX

	Tax	75% Surcharge	Total	
1945	P1,336.36	P1,000.27	P2,338.63	
1946	2,369.82	1,777.37	4,147.19	
Penalty .			300.00	6,785.82

RESIDENCE TAX

1945		P36.00		
1946		126.00		
1947		137.00		
1948		<u>183.00</u>	-	
	Total	P482.00		
	25% Surcharge	120.50		602.50
			

Percentage tax on sales of gravel for .78939-41				1,607
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P184,241.07

and demanding that same be paid to the Deputy Provincial Treasurer of Ilocos Sur. Petitioner Sambrano was not assessed of his income tax for 1947, it appearing that he had a decrease in net worth for that period.

As early as January 29, 1951, petitioner already signified his intention to file a surety bond to guarantee the payment of his tax liability and on May 3, 1951, executed a chattel mortgage on 67 of his TPU buses in favor of the Government. Said mortgage was duly approved by the Public Service Commission as required by law and registered with the Register of Deeds of Manila on November 7, 1951. Petitioner likewise undertook to settle his tax obligations in 24 monthly installments of P7,676.71 each, payable within the first 10 days of the month, starting from August, 1951. In virtue of said mortgage, a corresponding notice of tax lien upon the property and property rights of the taxpayer was sent by the Collector of Internal Revenue to the Register of Deeds of Ilocos Sur on December 27, 1951, for registration.

The records show that petitioner was able to pay only the amount of P1,792.40 on different dates, and as it was disclosed in a report of an examiner of the Bureau of Internal Revenue dated May 31, 1952, that of the 67 auto buses mortgaged, only 47 units were in actual operation, a supplementary chattel mortgage covering 20 buses more was executed by

petitioner on July 12, 1952, but same was disapproved by the Public Service Commission and the Collector of Internal Revenue. As of June 29, 1953, only 12 buses were available for inspection at "Vigan, Ilocos Sur, 4 of which were even undergoing repairs at the time.

On account of petitioner's failure to comply with the terms and conditions of the mortgage, the respondent Collector of Internal Revenue issued on September 27, 1952, warrants of distraint and levy covering the taxpayer's properties in Aparri, Cagayan; Bangued, Abra; San Fernando, La Union; and Vigan, Ilocos Sur, and on January 26, 1953, another warrant was issued by respondent but was not executed because no property belonging to petitioner could be found in Manila. As a consequence thereof and upon respondent's instruction, the Deputy Provincial Treasurer of Vigan, Ilocos Sur, seized 63 auto buses of petitioner on April 16, 1958, but the sale of said vehicles at public auction scheduled for March 23, 1954, was suspended because of Sambrano's proposal to make substantial payment not later than March 30, 1954. It could be presumed that petitioner again did not make good his promise because by letter of April 7, 1954, petitioner's counsel offered, by way of compromise, the payment of P70,000 in cash and P10,000 payable within 30 days from the date of payment of the P70,000 for the settlement of his entire obligations. This offer was referred *en consulta* by the Collector of Internal Revenue to the Secretary of Finance in his 1st Indorsement dated May 19, 1954, inquiring whether same could be treated as an exception to the policy against acceptance of compromises in view of the circumstances surrounding the case. On July 9, 1954, the Secretary of Finance recommended acceptance of the same, subject to the terms and conditions set forth in the letter of petitioner's counsel. By a letter dated September 9, 1954, the Collector of Internal Revenue informed said counsel of the acceptance, but apparently unaware of the acceptance of his oiler, Sambrano's counsel withdrew the same on September 24, 1954, on the ground that respondent failed to act on it notwithstanding the lapse of more than 4 months, at the same time withdrawing his appearance on the matter. Being appraised of this move, the Secretary of Finance on September 25, 1954, revoked his previous favorable recommendation and ordered the respondent Collector of Internal Revenue to take appropriate action to effect the collection of the entire tax liability of said taxpayer. Pursuant thereto, respondent set the sale of petitioner's residential house and lot in Vigan, Ilocos Sur, for December 20, 1954 (though it seems that this sale was not consummated for lack of bidders); distrained all the rolling stocks of petitioner consisting of 87 passenger trucks, impounded all of them and advertised them for sale on January 5 and 14, 1955, and on other dates.

Confronted with this state of affairs, petitioner, assisted by a new counsel, promptly filed a petition for certiorari before the Court of Tax Appeals on December 23, 1954, praying that

the respondent Collector of Internal Revenue be enjoined from proceeding with the contemplated public sale of his properties; that the sale of petitioner's properties made on December 20, 1954, or any sale to be made pending the final determination of that petition be declared null and void, and for such other remedy that may be just and equitable in the premises.

After due hearing, the Court issued a resolution denying the petition on the ground that the interest of the Government would be jeopardized if the public sale scheduled for January 5 and 14, 1955, would be suspended; that petitioner, in executing the chattel mortgages in favor of the Government and in offering a compromise had admitted that he was indebted to the Government; that petitioner's failure to pay the taxes from the date the notice of assessment was served on him showed utter lack of good faith on his part in settling his tax case. Petitioner, therefore, elevated the case to this Court and in this instance maintained that the Collector of Internal Revenue erred in enforcing, by distraint and levy, the collection of his deficiency income tax assessment which was made after the lapse of 3 years in contravention with the provisions of section 51- (d) of the National Internal Revenue Code; and that the Court of Tax Appeals erred in denying the prayer for the issuance of a writ of preliminary injunction.

There is no dispute that on April 28, 1951, the respondent Collector of Internal Revenue served on petitioner Santiago Sambrano a revised assessment of his alleged income, percentage and 'residence tax liabilities for the tax years 1945 to 1948 and percentage tax on the sales of gravel in 1939 to 1941, together with the surcharges and penalties thereon, amounting to P184,241.07; that out of that amount only P17,929.40 was actually paid; that petitioner Sambrano executed a chattel mortgage on 67 of his TPU buses to secure the payment of his tax obligations, and later tried to execute another mortgage to cover 20 buses more but same was not approved by the Public Service Commission. It is likewise admitted by both parties that respondent issued warrants of distraint and levy on petitioner's properties in the provinces on September 27, 1952, and consequently scheduled the sale of said properties at public auction for December 20, 1954, January 5 and 14, 1955, and other dates.

Without touching on the accuracy or legality of the tax assessment, the questions left to Our determination are: (a) whether the Collector of Internal Revenue could, in 1952, effect collection of income, percentage and residence taxes for the years 1945, 1946, 1947 and 1948 by the summary methods of distraint and levy; and (6) the effect of the mortgages executed by petitioner and the offer to compromise made by him on his tax obligations

taking into consideration petitioner's defense of prescription.

It appears from the records that petitioner Sambrano filed his income tax returns for the tax years 1945, 1946 and 1948 and that 50 per cent surcharge was imposed on him because of the great disparity between the returns he filed and the assessment arrived at by the Bureau of Internal Revenue through the use of the increase-in-net-worth or inventory method. It is apparent that this is a case where inaccurate, false or fraudulent income tax returns were filed; it, therefore, comes within the scope of section 51 (d) of the National Internal Revenue Code. We have lengthily discussed this point on previous occasions and have already construed the provisions of the said paragraph and section of the Tax Code, which reads as follows:

“(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 discovery thereof, at any time within three -yearn 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 thereof shall be paid by such person or corporation immediately upon notification of the amount of such assessment.”
(Section 51, National Internal Revenue Code).

As may be seen, the aforequoted provision prohibits the use of the extra-judicial methods of distraint and levy for the collection of *income taxes* after the lapse of 3 years from the time the return has been filed or is due. As we have no record of the dates when petitioner Sambrano actually filed his income tax returns for the tax years in question, We will consider the same as having been made not later than March 1 of the year following that for which the return is filed. There is no question that as the warrants of distraint and levy were issued by respondent on September 27, 1952, and as computations will show that said warrants were issued after 3 years, 6 months and 26 days from March 1, 1949, the date when the last income tax return for 1948 should have been submitted, the Collector of Internal Revenue was divested of the right to effect collection of petitioner's income tax liabilities by administrative methods and the only recourse left to him for said purpose was to institute the corresponding civil action (Collector of Internal Revenue vs. Avelino et al., 100 Phil., 327, 53 Off. Gaz., 645; Collector of Internal Revenue vs. Aurelio P. Reyes et al.,

100 Phil., 822, and Collector of Internal Revenue vs. Zulueta et al., 100 Phil., 872, 53 Off. Gaz., [19] 6532).

Anent the other tax liabilities of the petitioner, respondent contends in his brief that in the light of the provisions of section 316 in relation to sections 331 and 332 of the Tax Code and after applying the amount of P17,929.40, already paid,- to petitioner's income tax deficiencies, he was possessed with authority to enforce collection of the percentage tax, additional residence tax and the balance of the income tax liabilities by administrative methods within 5 years from the date of assessment. Section 316 provides for the civil remedies available to the Government to effect collection of delinquent taxes, either by distraint and levy or by judicial action, whereas sections 331 and 332 of the Tax Code read as follows:

"Sec. 331. Period of limitation upon assessment and collection.— Except as provided in the succeeding section, internal revenue taxes shall be assessed within iive years after the return was filed, and no proceeding in court without assessment for the collection of xuch taxes shall be begiui. after the expiration of suck period. For the purposes of this section a return filed before the last day prescribed by law for the liling thereof shall he considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

"Sec. 332. Exceptions as to period of limitation of assessment and collections of taxes.— (tt) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or comission.

(b) Where before the expiration of the time prescribed in the preceding* section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing- to its assessment after such time, the tax may be assessed at any time prior to the expiration of tile period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or

levy or by a proceeding" in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing¹ made before the expiration of the period previously agreed upon."

As it is not claimed by respondent that petitioner has ever filed fraudulent or false returns as regards the percentage tax for the sales of gravel in 1939 to 1941, this case falls within the scope of the just quoted provisions of sections 331 and 332 of the Tax Code.

Petitioner, on the other hand, claims to have raised the question of prescription in the Court of Tax Appeals which was not passed upon by said Court in its resolution subject of the present action. It is to be noted, however, that petitioner's tax liabilities were reassessed only on April 28, 1951 and the assessment of taxes accrued from 1939-1941 was clearly beyond the 5-year prescriptive period provided for by said section 331 of the Tax Code.

The chattel mortgage executed by petitioner in favor of the Government on Mag 3, 1951, contains the following statements:

"Whereas, the Mortgagor is obligated to the Mortgagee by way of income, percentage and residence tax for the years 1945 to 1958, inclusive, amounting to P184,241.07 itemized as follows:

Income tax—1945	P11,388.22	
Income tax—1946	163,420.01	
Income tax—1948	471.74	P175,244.97

Percentage tax:		
1945	P2,338.63	
1946	4,147.19	
Penalty	300.00	6,785.82
Residence tax		602.50

Percentage tax and surcharge on sales of gravel for 1939-1941		1,607.78

		P184,241.07

“Whereas, the Mortgagor shall pay in addition to the tax proper, the corresponding delinquency penalties thereon;

* * * * *

“This mortgage is given as security for the payment to the said Mortgagee of the tax liabilities of the mortgagor, as outlined above, in monthly installments of P7,676.71 each, and payable within the first ten (10) days of each calendar month;

* * * * *

By virtue of this instrument, petitioner in fact acknowledged the existence of the tax liabilities itemized in the assessment of April 28, 1951, and assumed the obligation to settle the same. Although the percentage taxes for the years 1939-1941 and 1945 may have been extinguished by prescription on account of the mandate of sections 331 and 332, yet in the case at bar, petitioner’s obligation to pay the percentage taxes for the years 1939-1941 and 1945, assessed on January 6, 1951, and re-assessed on April 28, 1951, as well as other tax deficiencies, was acknowledged by means of the chattel mortgage of May 3, 1951, an act which amounts to a renewal (renovacion) of the obligation or a waiver of the benefit granted by law to the petitioner who is estopped from raising the question of prescription after having waived such defense by the execution of said mortgage.

In the case of Estrada vs. Villareal, 40 Oft. Gaz. (5 Suppl.), No. 9, p. 201, it was enunciated that a prescribed debt may be novated and We find no reason to alter said ruling, especially if We take into consideration that a similar provision about prescription is embodied in the new Civil Code, as follows:

“Art. 6. Rights may be waived unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a third person whose Right is Recognized by law”.

Although taxes already due have not, strictly speaking, the same concept as debts, they are, however, obligations that may be considered as such.

The term "debt" is properly used in a comprehensive sense as embracing not merely money due by contract, but whatever one is bound to render to another, either for contract or the requirements of the law (Camden -ys. Fink Coule and Coke Co., 61 ALB 584).

Where statutes imposes a personal liability for a tax, the tax becomes, at least in a broad sense, a debt (Idem,).

A tax is a debt for which a creditor's bill may be brought in a proper case (State vs. Georgia Co., 19 LRA 485).

Some American authorities hold that, especially for remedial purposes, Federal taxes are debts (Tax Commission vs. National Malleable Castings Co., 35 ALR 1448).

It may also be advanced that the 5-year prescriptive period set by section 331 of the Tax Code is a limitation of action established by law and, therefore, should be given strict adherence. Article 112 of the Civil Code, however, provides the following:

"Art. 112. Persons with capacity to alienate property may renounce prescription already obtained, but not the right to prescribe in the future.

Prescription is deemed to have been tacitly renounced when the renunciation remits from acts which imply the abandonment of the right acquired."

In the case at bar, although petitioner could have been benefited by the aforementioned provision of section 331 of the Tax Code, his subsequent acknowledgment of the obligation amounted to a waiver and prescription, in the same manner as any other right is waivable.

We need not discuss the effect of the offer to compromise on petitioner's obligations because it appears that there had really been no meeting of the minds between the parties. Even before the offeror acquired knowledge that his offer was accepted, same was withdrawn, whereupon the other party revoked the acceptance previously issued.

Although the respondent had no right to use the summary methods of distraint and levy in collecting the income tax deficiencies for having been made beyond the 3-year period, and therefore the warrants issued therein were null and void, yet We have to take cognizance of

the fact that petitioner executed a chattel mortgage in favor of the Government to guarantee the settlement of his tax obligations, and the records show that upon petitioner's failure to comply with its terms, the vehicles covered by said mortgage were regularly distrained and sold at public auction. The respondent under the law had the remedy of foreclosing the mortgage to realize collection of the entire tax liabilities then amounting to P184,241.07. The sale of the vehicles in so far as those covered by the mortgage is concerned, was practically similar to the sale in foreclosure proceedings and petitioner could not claim to have suffered damages by the sale of the mortgaged vehicles. However, as regards the sale of the rest of the vehicles seized and of the other properties of petitioner disposed of at public auction by virtue of the warrants of distraint and levy, same was not sanctioned by law.

The respondent Court of Tax Appeals arrived at the conclusion that petitioner's failure to pay the taxes after the date of notice of assessment was served on him, showed utter lack of good faith on his part in settling his tax case, and probably because of such conclusion, the Court *a quo* denied Santiago Sambrano's petition to enjoin the Collector of Internal Revenue from proceeding with the sale of the former's properties at public auction notwithstanding the fact that the first warrant of distraint and levy was issued on September 27, 1952, or after 3 years, 6 months and 26 days from the date the income tax return for 1948 should have been submitted (March 1, 1949), and beyond the 5-year period provided in section 331 of the Tax Code prescribing that "no proceeding in court without assessment for the collection of such (internal revenue) taxes shall be begun after the expiration of such period". And it may be said in this connection that the records hereof fail to show the alleged lack of good faith on the part of petitioner in settling his tax case. On the contrary, immediately upon being required to pay his deficiency taxes, petitioner mortgaged 67 of his passenger and freight trucks in favor of the government and was willing to execute, as he did execute, another mortgage on his properties which unfortunately was not approved by the Public Service Commission. Certainly, petitioner cannot be blamed if after the terms of said mortgage were violated, the Collector of Internal Revenue did not take any step to foreclose the same.

The records also fail to show what were the other unmortgaged properties of petitioner that were sold at public auction by reason of the warrants of distraint and levy issued by the respondent Collector of Internal Revenue. We do not know either what were the proceeds of the sale of the same, nor the amount of the damage suffered by said petitioner, if any, by reason of their undue and extra-judicial sale.

Wherefore, on the strength of the foregoing and inasmuch as petitioner has acknowledged his aforementioned liabilities amounting to $\text{P}184,241.07$, an obligation which We assume the respondent Collector of Internal Revenue will be able to establish at the resumption of this case in the court *a quo*, We hereby AFFIRM the resolution of the Court of Tax Appeals dated January 4, 1955, in so far as it denies petitioner's prayer to enjoin the respondent Collector of Internal Revenue from proceeding with the sale at public auction of petitioner's 67 TPU passenger buses covered by the mortgage executed by him' in favor of the Government, and reverse the same in so far as it affects petitioner's properties not covered by said mortgage.

After this decision becomes final, the Court of Tax Appeals shall proceed to determine, after due hearing, what other unmortgaged properties of petitioner had been sold by the respondent Collector of Internal Revenue, what were the proceeds thereof and the amount of damages suffered by petitioner, if any, on account of said undue sale, and the proceeds of the sale of the properties not covered by the mortgage plus the amount of damages suffered by petitioner on account of the warrant of distraint and levy issued by the Collector of Internal Revenue in connection herewith, if any is proven, and the sum of $\text{P}17,929.40$ already paid shall be added to the proceeds of the sale of the 67 mortgaged trucks, and any amount in excess of the tax liabilities of $\text{P}184,241.07$, if there be any, shall be returned to petitioner. Without pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Battista Angelo, Labrador, and Endencia., JJ., concur.

Conception, J., concurs.

DISSENTING OPINION

Reyes, J. B. L.,

I concur in the findings contained in the opinion of Mr. Justice Alfonso Felix, but desire to reaffirm my opinion (expressed in the cases of Collector vs. Avelino and Court of Tax Appeals, 100 Phil., 327; 53 Off. Gaz., No. 3, 645, and Collector vs. Reyes and Court of Tax Appeals, 100 Phil., 822; that the Court of Tax Appeals can not, under section 11 of Republic Act 1125, enjoin the proceedings for collection of taxes except upon the taxpayer's making the deposit or filing the bond required in said section'.

Date created: October 13, 2014