101 Phil. 1026

[G.R. No. L-9899. August 13, 1957]

THE COLLECTOR OF INTERNAL REVENUE, THE PROVINCIAL TREASURER OF RIZAL, AND THE MUNICIPAL TREASURER OF MARIKINA, RIZAL, PETITIONERS VS. SERVANDO DE LOS ANGELES AND THE COURT OF TAX APPEALS, RESPONDENTS.

REYES, A., J.:

Marta Dizon died in 1928,. leaving real and personal. properties to four of her cousins, one of them being the herein respondent Servando de los Angeles. The administrator of the estate of the deceased having in March, 1935, filed a return showing that the heirs had an inheritance tax liability of P185.94 each, the Collector of Internal Revenue, some time in August of that year, sent assessment notice to each heir requiring payment of that amount on or before the 25th of that month. All the heirs paid except the said respondent, who refused the demand on the grounds that he had not yet received his share of the inheritance and that there were still questions pending in court relative to the distribution of the estate.

Subsequent attempts to make the respondent pay proved futile; while, on the other hand, instructions repeatedly sent to the deputy provincial treasurer of Rizal to have' the tax collected through distraint and levy were apparently ignored.

On January 28, 1955, that is, some 20 years after the assessment, a warrant of distraint and levy was issued and sent to the deputy provincial treasurer of Rizal for execution. Served with the warrant, the respondent taxpayer, without disputing the legality of the assessment, protested the distraint and levy on the ground of prescription and then petitioned the Court of Tax Appeals to declare the warrant illegal and enjoin its enforcement.

The Court of Tax Appeals having, after trial, upheld the taxpayer's contention, the Collector of Internal Revenue and the provincial and municipal treasurers concerned brought the case here for review.

The question for determination is whether an internal revenue tax that was assessed in 1935 could, some 20 years thereafter, still be collected by distraint and levy.

The National Internal Revenue Code, which was approved in 1939, has set definite periods for the assessment and collection of internal revenue taxes. Those periods are fixed in its sections 331 and 332.

The section first mentioned reads:

> "Sec. 381. *Period of limitation- upon assessment and collection.*— Except as provided in the succeeding section, internal revenue taxes shall be assessed within live years alter the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section a return filed before the last day prescribed by law for the filing thereof shall be 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."

As will be noted, this section limits the time for assessing the tax to five years after the return is filed. And it also sets the same limitation upon the time for collecting the tax by proceeding in court without assessment.

The limitation is, however, in both cases made subject to the exceptions provided for in section 332. That section reads:

> "Sec. 332. *Exception as to Us period of limitation of assessment and collection of taxes.*— (*a*) In the case of a false or fraudulent return with intent to evade tax or failure to file s. return, the tax may be assessed, or a proceeding1 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 omission.
>
> "(*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 the 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 writing made before the expiration of the period previously agreed upon."

We are not concerned here with the exception embodied in subdivision (*a*) of the section, because this is not a case of a false or fraudulent return or of a failure to file a return. Neither are we concerned with the exception contained in subdivision (*b*), it not appearing that a different period for the assessment of the tax has been consented to by both the Collector of Internal Revenue and the taxpayer. But the exception prescribed in subdivision (*c*) applies to the present case, because the tax now sought to be collected appears to have been assessed within five years after the return in accordance with section 331.

Having been assessed within the time fixed by law, the tax in question could, pursuant to subdivision (c) of section 332, be collected by distraint or levy or by court proceeding, but, as specifically provided in that same subdivision, "only if begun (1) within five years after the assessment of the tax." After the expiration of that period of limitation, collection of the tax by any of those methods would be without the authority of law.

It is contended, however, that the prescriptive period of five years fixed in subdivision (*c*) of section 332 cannot be applied to the present case because of the proviso to section 331, which says that the limitation provided in that section shall not apply to cases already investigated prior to the approval of the Code. We find the contention untenable. As the Court of Tax Appeals says, the "limitation" mentioned in the proviso to section 331 can refer only to the limitation established in that section, and not to the limitation of period prescribed in section 332 (*c*).

This must be so because the natural and appropriate office of a proviso to a statute or to a section thereof is to restrict or qualify the provisions immediately preceding it. Hence, it has been made a rule of construction that a proviso shall be confined to that which

directly precedes it, or to the section to which it has been appended, unless it clearly appears that the legislature intended it to have a wider scope. (Black on Interpretation of Laws, p. 432). Had Congress, therefore, intended the proviso in section 331 to restrict or qualify section 332, the same would have been also embodied in the latter section or wordy would have been inserted therein to make that intention clear. Taxing acts, including provisions as to limitations on assessment and collection of taxes, should be construed liberally in favor of the taxpayer. (Bowers *vs.* N. Y. & Albany Co., 273 U.S. 346, 1 USTC, Par. 218, cited in Vol; 4 CCH (1954), Par. 1443, 119).

In view of the foregoing, the decision below is affirmed. Without special pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Endencia and *Felix, JJ.,* concur.

Date created: January 30, 2015