

MAMBULAO LUMBER COMPANY, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-37061. September 05, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Petitioner in this appeal by certiorari, seeks the reversal of the decision of the defunct Court of Appeals which affirmed the judgment of the then Court of First Instance of Manila ordering petitioner to pay respondent the amount of P15,739.80 representing its tax liability not secured by any bond, with legal interest thereon from August 25, 1961 until fully paid.

Sometime in 1957 Agent Nestor Banzuela of the Bureau of Internal Revenue, Regional District No. 6, Bicol Region, Naga City, conducted an examination of the books of accounts of herein petitioner Mambulao Lumber Company for the purpose of determining said taxpayer's forest charges and percentage tax liabilities.

On July 31, 1957, Agent Banzuela submitted his report[1] wherein it was stated among others that -

“x x x x x x x x

It can be stated in this connection that sometime in the early part of 1949, the personnel of the local office of the Bureau of Forestry in Daet, Camarines Norte, manifested under the name of the subject taxpayer 2,052.48 cubic meters of timber, with the corresponding forest charges in the total amount of P15,443.55 including surcharges. The Bureau of Forestry then demanded for the payment of said forest charges on January 15, 1949. However, the subject taxpayer, for one reason or the other, contested this assessment until this case reached the hands of the Secretary of Agriculture and Natural Resources, the undersigned cannot therefore include in his assessment this amount in question, hence, due course is given, recommending that this bureau take proper action regarding this case.”

Consequently, on August 29, 1958, the Acting Commissioner of Internal Revenue addressed a letter[2] to petitioner, the pertinent portion of which reads –

"Mambulao Lumber Company
R-406 Samanillo Building
Escolta, Manila
Gentlemen:

x x x x x x x x

It was also ascertained that in 1949 you manifested 2,052.48 cubic meters of timber, the forest charges and surcharges of which in the total amount of P15,443.55 was demanded of you by the Bureau of Forestry on January 15, 1949. x x x x

In view thereof there is due from you the amount of P33,595.26 as deficiency sales tax, forest charges and surcharges, computed as follows:

Sales Tax ----- x x x

Forest Charges

Forest charges and surcharges for the year 1949 appealed to the

Secretary of Agriculture and Natural Resources ----- P15,443.55

x x x x x x x x

Total amount due & payable ----- P33,595.26

Demand is hereby made upon you to pay the aforesaid amount of P33,595.26 to the City Treasurer of Manila or this office within ten (10) days from receipt hereof so that this case may be closed.

x x x x x x x x

Sgd. Melecio Domingo
Acting Commissioner
of Internal Revenue"

The aforesaid letter was acknowledged to have been received by petitioner on September 19, 1958.[3] On October 18, 1958, petitioner requested for a reinvestigation of its tax liability. Subsequently, in a letter dated July 8, 1959, respondent Commissioner of Internal Revenue gave petitioner a period of twenty (20) days from receipt thereof to submit the results of its verification of payments with a warning that failure to comply therewith would be construed as an abandonment of the request for reinvestigation.

For failure of petitioner to comply with the above letter-request and/or to pay its tax liability despite demands for the payment thereof, respondent Commissioner of Internal Revenue filed a complaint for collection in the Court of First Instance of Manila on August 25, 1961.[4]

After trial, judgment was rendered by the trial court, the dispositive portion of which reads –

"WHEREFORE, judgment is rendered –

(a) Ordering both defendants, jointly and severally, to pay plaintiff the amount of P1,219.95 plus legal interest thereon from August 25, 1961, the date of the filing of the original complaint until fully paid, or in case of failure to pay the said amount, ordering the forfeiture of GISCOR Bond NO. 35 to the amount of P1,219.95; and

(b) Ordering defendant Mambulao Lumber Company to pay the plaintiff the amount of P15,739.80 representing its tax liability not secured by any bond, with legal interest thereon from August 25, 1961, until paid.

With costs against defendants."

From the aforesaid decision, petitioner appealed to the Court of Appeals[5] that portion of the trial court's decision ordering it to pay the amount of P15,443.55 representing forest charges and surcharges due for the year 1949.

As herein earlier stated, the then Court of Appeals affirmed the decision of the trial court. Petitioner filed a motion for reconsideration which was denied by the said court in its Resolution dated June 7, 1973. Hence, the instant appeal, petitioner presenting the lone issue of whether or not the right of plaintiff (respondent herein) to file a judicial action for the collection of the amount of P15,443.55 as forest charges and surcharges due from the petitioner Mambulao Lumber Company for the year 1949 has already prescribed.

Relying on the provisions of Section 332 of the National Internal Revenue Code which reads –

"Section 332. Exemptions as to period of limitation of assessment and collection of taxes –

x x x x x x x x

(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."

petitioner argues that counting from January 15, 1949 when the Bureau of Forestry in Daet, Camarines Norte made an assessment and demand for payment of the amount of P15,443.55 as forest charges and surcharges for the year 1949, up to the filing of the complaint for collection before the lower court on August 25, 1961, more than five (5) years had already elapsed, hence, the action had clearly prescribed.

Petitioner's aforesaid argument lacks merit. As correctly observed by the trial court and the Court of Appeals in the appealed decision, the letter of demand of the Acting Commissioner of Internal Revenue dated August 29, 1958 was the basis of respondent's complaint filed in this case and not the demand letter of the Bureau of Forestry dated January 15, 1949. This must be so because forest charges are internal revenue taxes[6] and the sole power and duty to collect the same is lodged with the Bureau of Internal Revenue[7] and not with the Bureau of Forestry. The computation and/or assessment of forest charges made by the Bureau of Forestry may or may not be adopted by the Commissioner of Internal Revenue and such computation made by the Bureau of Forestry is not appealable to the Court of Tax Appeals.[8] Therefore, for the purpose of computing the five-year period within which to file a complaint for collection, the demand or even the assessment made by the Bureau of Forestry is immaterial.

In the case at bar, the commencement of the five-year period should be counted from August 29, 1958, the date of the letter of demand of the Acting Commissioner of Internal Revenue[9] to petitioner Mambulao Lumber Company. It is this demand or assessment that is appealable to the Court of Tax Appeals. The complaint for collection was filed in the Court of First Instance of Manila on August 25, 1961, very much within the five-year period prescribed by Section 332(c) of the Tax Code. Consequently, the right of the Commissioner of Internal Revenue to collect the forest charges and surcharges in the amount of P15,443.55 has not prescribed.

Furthermore, it is not disputed that on October 18, 1958, petitioner requested for a reinvestigation of its tax liability. In reply thereto, respondent in a letter dated July 8, 1959, gave petitioner a period of twenty (20) days from receipt thereof to submit the results of its verification of payments and failure to comply therewith would be construed as abandonment of the request for reinvestigation. Petitioner failed to comply with this requirement. Neither did it appeal to the Court of Tax Appeals within thirty (30) days from receipt of the letter dated July 8, 1959, as prescribed under Section 11 of Republic Act NO. 1125, thus making the assessment final and executory.

"Taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of its tax liability. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense.

In a proceeding like this the taxpayer's defenses are similar to those of the defendant in a case for the enforcement of a judgment by judicial action under Section 6 of Rule 39 of the Rules of Court. No inquiry can

be made therein as to the merits of the original case or the justness of the judgment relied upon, other than by evidence of want of jurisdiction, of collusion between the parties, or of fraud in the party offering the record with respect to the proceedings. As held by this Court in *Insular Government vs. Nico* the taxpayer may raise only the questions whether or not the Collector of Internal Revenue had jurisdiction to do the particular act, and whether any fraud was committed in the doing of the act. In that case, Doroteo Nico was fined by the Collector of Internal Revenue for violation of subparagraphs (d), (e) and (g) of Section 28 as well as Sections 36, 101 and 107 of Act 1189. Under Section 54 of the same Act, the taxpayer was given the right to appeal from the decision of the Collector of Internal Revenue to the Court of First Instance within a period of ten days from notice of imposition of the fine. Nico did not appeal, neither did he pay the fine. Pursuant to Section 33 of the Act, the Collector of Internal Revenue filed an action in the Court of First Instance to enforce his decision and collect the fine. The decision of the Collector of Internal Revenue having become final, this Court, on appeal, allowed no further inquiry into the merits of the same.”[10]

In a suit for collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce a judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon. Petitioner is thus already precluded from raising the defense of prescription.

"Where the taxpayer did not contest the deficiency income tax assessed against him, the same became final and properly collectible by means of an ordinary court action. The taxpayer cannot dispute an assessment which is being enforced by judicial action. He should have disputed it before it was brought to court.”[11]

WHEREFORE, the decision appealed from is hereby **AFFIRMED** and the petition **DISMISSED**. No costs. **SO ORDERED**.

Abad Santos, Escolin, and Gutierrez, Jr.[*], JJ., concur.

Makasiar,(Chairman), and Guerrero, JJ., on official leave.

Aquino, J., see concurrence.

Concepcion, Jr., J., no part.

[1] Exhibit "E"

[2] Exhibit "F"

[3] Exhibit "H", Folder of Exhibits, page 28

[4] Civil Case NO. 47938

[5] CA-G.R. NO. 48709-R

[6] Section 18, Tax Code; *Cordero vs. Gonda*, 18 SCRA 331

[7] Section 3 of the Tax Code

[8] Section 11 of Republic Act NO. 1125

[9] Exhibit "F"

[10] *Republic vs. Lim Tian Teng Sons & Co., Inc.*, 16 SCRA 385

[11] *Republic vs. Ledesma*, 19 SCRA 456

[*] Designated temporarily to sit with the Second Division

CONCURRING OPINION

AQUINO, J.:

I concur. In his letter dated August 29, 1958, the Acting Commissioner of Internal Revenue required the Mambulao Lumber Company to pay P15,443.55 as forest charges on 2,052.48 cubic meters of timber which the company manifested in 1949. That demand letter was an assessment of the forest charges (*Cordero vs. Gonda*, 124 Phil. 926, 930). It was not disputed.

The action for the collection of the forest charges was filed on August 25, 1961 by the Commissioner in the Court of First Instance of Manila. The trial court sustained the Commissioner. Its decision was affirmed by the Court of Appeals. The taxpayer appealed to this Court. It raised the sole issue that the collection of the forest charges had already prescribed.

The taxpayer's contention is devoid of merit. The action to collect the forest charges had not prescribed. It was brought within five years after the assessment as prescribed in section 332(c) of the Tax Code (*Cordero vs. Gonda*, *supra*).

The Tax Court has jurisdiction over disputed assessments (Sec. 7[1], Republic Act No. 1125). If the assessment is not disputed, an ordinary action for the collection of the tax may be filed by the Commissioner (*Republic vs. Ledesma*, 125 Phil. 856, 862-863; *Republic vs. Medrano*, 109 Phil. 762; *Fernandez Hermanos, Inc. vs. Commissioner of Internal Revenue*, L-21551, September 30, 1969, 29 SCRA 552, 567).

Any decision of the trial court, sustaining an undisputed assessment, would be appealable to the Supreme Court, in accordance with Rule 42, now Republic Act No. 5440, or as provided in section 25 of the Interim Rules.

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