

RAFAEL MORALES, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-16759. August 31, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of the Court of Tax Appeals dismissing appellant's petition for review of the decision of respondent Collector (now Commissioner) of Internal Revenue.

In compliance with Section 92 of the National Internal Revenue Code petitioner, on December 27, 1950, informed respondent that his wife Belen Lansangan had died the previous November 1, leaving real and personal properties. On April 28, 1951 petitioner filed with the Bureau of Internal Revenue a copy of the deed of extrajudicial partition which he and his two daughters had executed. On April 20, 1951 respondent issued a notice tentatively assessing the estate tax at P1,272.53 and the inheritance tax at P1,404.85. Said sums were paid by petitioner.

On May 14, 1956 respondent issued a new assessment for P641.39 and P631.60 as deficiency estate and inheritance taxes, respectively, with interest in both instances, or a total of P1,272.99; and on October 11, 1956 respondent asked petitioner to pay the amount within ten days. On October 15, 1956 petitioner addressed a letter to respondent, contending that under Section 331 of the Internal Revenue Code reassessment of the taxes had already prescribed, because more than five years had elapsed since the submission of the deed of extrajudicial partition on which the original assessments were based.

On December 28, 1956 respondent rejected the claim of prescription and reiterated his demand for payment. A reminder was sent to petitioner on March 26, 1958, with the warning that after five days summary remedies provided by law for the collection of the taxes would be resorted to.

On October 14, 1958 respondent served on petitioner a warrant of distraint and levy, with the corresponding notices of seizure and sale. The sale of the distrained properties was scheduled to be held on December 15, 1958.

On November 17, 1958 petitioner requested the cancellation of the warrant of distraint and levy, but respondent denied the request on December 5, 1958.

On December 8, 1958 petitioner filed with the Court of Tax Appeals a "petition for review," stating therein that it was "an appeal from the decision of the Respondent, as contained in his letter dated December 5, 1958."

On December 18, 1959 the Tax Court, finding that what was properly appealable to it was respondent's letter-decision of December 28, 1956 and not that of December 5, 1958, ruled that the appeal was filed out of time and so dismissed the petition *motu proprio*. This is the ruling that is now before Us for review.

Petitioner assails the ruling as erroneous and points out that in his petition for review before the Court of Tax Appeals he specifically stated that respondent's letter of December 5, 1958 was the decision he was appealing from, and therefore his petition, filed only three days later, was timely.

We do not consider said statement made by petitioner in his petition as decisive. The pivotal question is, on what particular issue decided by respondent did petitioner seek a review in the Court of Tax Appeals?

The allegations in the petition filed in said Court are clear: that the warrant of distraint and levy as well as the notices of seizure and sale issued by respondent were null and void because the deficiency estate and inheritance tax assessments on which they were based, both dated May 14, 1956, were issued more than five years after petitioner filed his tax return on April 28, 1951 (presumably referring to the deed of extrajudicial partition on which the original assessments were based).

This question of prescription was the same one raised by petitioner in his letter to respondent of October 15, 1956, wherein he said that a reassessment of his tax liability was no longer feasible by reason of the lapse of the five-year period. It was the question that respondent decided in his reply-letter to petitioner dated December 28, 1956, rejecting the latter's plea on the ground that the law applicable was not Section 331 but rather Section 332 (a) of the Tax Code, [1] which fixes a ten-year prescriptive period, no tax return having been filed by petitioner in this case. In other words, it was the very question decided by respondent on December 28, 1956 that petitioner sought to present to the Court of Tax Appeals in his petition for review, the decision being then properly appealable because it was on a "disputed assessment" within the meaning of Section 7 (par. 1) of Republic Act No. 1125 (creating the Court of Tax Appeals), which states that this Court "shall exercise exclusive appellate jurisdiction to review by appeal x x x: (1) decisions of the Collector of Internal Revenue in cases involving disputed assessments x x x."

The Tax Court cited the case of *St. Stephen's Association, et al. vs. The Collector of Internal Revenue* (G. R. No. L-11258, August 21, 1958), where We held that "when a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide." The citation, We believe, is apropos: it is from such a decision of the Collector, which in this case was rendered on December 28, 1956, that petitioner had the right to appeal, within 30 days after notice (Sec. 11, Republic Act No. 1125).

Petitioner claims that the *St. Stephen's Association* case does not apply here, because precisely it was there held that of the two letters sent by the Collector of Internal Revenue to the taxpayer denying cancellation of the disputed assessment it was the second letter which was considered by this Court as the "appealable decision." But it should be noted that the ruling was based on a statement in that second letter that "this decision becomes final thirty days after your receipt hereof unless an appeal is taken to the Court of Tax Appeals within the same period, in accordance with the provisions of Republic Act 1125." In other words, the Collector himself indicated to the taxpayer what he considered as his final decision, prior to which, in the language of this Court, he "must have held the matter under advisement and considered his preceding rulings as merely tentative in character, pending his final determination and resolution of the merits of the arguments of fact and law submitted by petitioners in support of their requests for the cancellation and withdrawal of the assessment."

In the present case, the letter of December 28, 1956 had the tenor of finality. After disposing of petitioner's claim of prescription, it required him to pay not later than January 19, 1957. This insistence on payment indicated unequivocally a denial of the plea for cancellation of the assessment (*Republic v. Lim Tian Teng Sons & Co., Inc.*, L-21731, March 31, 1966). Thus when respondent subsequently wrote to petitioner again on March 25, 1958, he was already threatening to employ summary methods of collection, as in fact he did later on. Respondent's letter of December 5, 1958 was not a decision on a disputed assessment but referred merely to the manner of its collection, that is, by distraint and levy, as to which the question of prescription is not at all relevant.

Petitioner says there is no proof as to when he received the letter-decision of December 28, 1956. But it cannot be

denied that he did receive it. While in his memorandum he raises a doubt on the point, in his brief he impliedly admits such receipt by alleging that he chose to ignore said letter and "to treat it as an innocuous demand." At any rate, on March 25, 1958 petitioner personally received respondent's letter of the same date, making reference to the demand for payment contained in the letter of December 28, 1956. Consequently, even if only the receipt of the second letter be considered as notice of the decision, the petition for review filed in the Court of Tax Appeals on December 8, 1958 was still out of time.

Finally, since petitioner insists that he is not appealing from the decision of December 28, 1956, the same has become final and unappealable (*Uy Ham v. Republic*, L-13809, October 20, 1959; *Republic v. Del Rosario*, L-10460, March 11, 1959; *Republic v. Manila Port Service*, L-18028, November 27, 1964) and the matter resolved therein, that is, whether or not the deficiency assessments against him were barred by prescription, could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy.

The decision of the Court of Tax Appeals is affirmed, with costs against petitioner.

Concepcion, C.J., Reyes, JBL, Barrera, Dizon, Bengzon, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., no part.

[1] SEC. 332. Exceptions as to 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 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 omission." (Underscoring supplied.)

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