

**THE ACTING COMMISSIONER OF INTERNAL REVENUE, PETITIONER,
VS. LAZARUS JOSEPH, ET AL., RESPONDENTS.***G.R. No. L-14034. August 30, 1962*

Ponente: BENGZON, C.J.

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It appears that after submission of their corresponding income tax returns, the herein respondents—all surnamed Joseph—received in August 1947, official letters of the Commissioner of Internal Revenue assessing against them, income tax deficiencies for the years 1945 and 1946. The next month, they were granted, at their request, a re-investigation. Afterwards, early in October, 1951, the Commissioner reiterated, by letter, the same assessments and directed that payment thereof, plus interest, be made on or before October 15, 1951. At the same time, he issued warrants of distraint and levy against respondents' properties. In view thereof, respondents pleaded for suspension of the summary proceedings to collect their deficiencies, pointing out that the matter was still pending investigation. And then, to procure such suspension, they made representations of solvency, mentioning their ownership of shares of stock in the corporation Joseph Bros. Inc., which shares, they asserted, were sufficient to guarantee the payment of their liabilities, if any.

Acting upon the information thus furnished, the Commissioner issued orders of garnishment of such shares. All this was in October 1951. Nothing seems to have been done until February 1953, when petitioners again asked for re-investigation, which was granted. Afterwards, insisting in his previous assessments after such re-investigation, the Commissioner in August, 1955, addressed to the Josephs a letter requesting that the shares of stock previously garnished be transferred to the Bureau of Internal Revenue to satisfy their deficiency income taxes amounting to P294,498.03.

Wherefore, in December 1955, the Josephs protested by letter to the Commissioner of Internal Revenue, questioning for the first time the Government's power to collect by distraint and levy. Such power, they contended, had prescribed. However, by his letter of January 13, 1956, the Commissioner overruled the protest, saying that in view of their petitions for reconsideration and re-investigation, the right to collect had not prescribed; and then he warned the taxpayers that failure to pay would impel his office to take drastic action.

In view of such threat, the Josephs surrendered the shares of stock on March 3, 1956, with a letter in which they reserved the privilege to contest the seizure on the ground of prescription. On March 21, 1956, the Bureau advertised the shares for sale to satisfy the total sum of deficiency taxes and penalties.

So, in order to restrain the sale, respondents filed with the Court of Tax Appeals their petition for injunction on May 5, 1956, asserting prescription as ground for relief. But for reasons not necessary to mention, the advertised sale of the shares proceeded; with the result that they were awarded to the Government for lack of bidders.

The petition for injunction was later amended (July 1956) and converted into four separate petitions for review: Cases Nos. 267, 314, 315, and 316. On October 1, 1956, the Commissioner moved for dismissal of said petitions on the ground that the same had been filed beyond the 30-day period fixed in sec. 11 of Republic Act No. 1125;

but such motion was denied.

And after hearing, judgment was rendered, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent is hereby reversed. The sale of petitioners' shares of stock in Joseph Bros. Inc., to the government on August 30, 1956, is hereby declared null and void, and respondent is hereby ordered to return the said shares of stock to petitioners.

It is further declared that there is no deficiency income tax due and payable by petitioner Lazarus Joseph for the years 1945 and 1946 and petitioners Alberto Joseph, George Joseph and John Joseph and for the year 1946."

The Commissioner, thereafter, asked for this review; and in his printed brief, he assigned several errors, the most important of which reiterated the issue of timeliness of the Josephs' petition to the Court of Tax Appeals.

It is undeniable that the 30-day period fixed by law within which the taxpayer may question any ruling of the Commissioner of Internal Revenue before the Tax Appeals Court is jurisdictional.[1]

Now, what is the ruling questioned by the Josephs? Not the amount of the tax; it could not be, since the tax had been assessed more than one year before May 5, 1956. Obviously, it was the Commissioner's ruling that the right of the Government to collect by distraint had not prescribed.[2] Such ruling was contained in the Commissioner's letter of January 13, 1956, which the Josephs received before March 3, 1956, date when they surrendered their shares. From March 3, to May 5, 1956, more than 30 days had elapsed.

Nevertheless, the respondents contended and the Tax Court held, that the 30-day period should be counted from April 10 when the Josephs received notice of the sale at public auction. This is, we believe, a mistaken view of the Josephs' request for relief. They asked the Court of Tax Appeals to reverse the Commissioner's opinion that the Government could still recover the unpaid taxes by distraint proceedings. They asserted prescription of such power. It was, therefore, the Commissioner's ruling in his letter of January 13, 1956, that they were asking the Tax Court to over rule. To uphold the Josephs' contention that the period began from notice of sale would amount to declaring that in an ordinary civil case, the defendant's period to appeal the adverse decision begins only when the sheriff advertises his properties for sale on execution.[3]

Of course, if the petition of the Josephs merely questioned the notice of sale on grounds different from the issue of prescription—for instance, it fixed bigger amounts than those previously specified in the orders of the Commissioner, or that its form did not accord with law—then the 30-day period would run from the day notice of such sale was received. As it was, the petition submitted to the Court of Tax Appeals the issue of prescription of the Government's right to collect by distraint proceedings.

Therefore, the petition was filed out of the 30-day period—March 3 to May 5, 1956; and the Tax Court had jurisdiction neither to entertain it nor to declare the distraint proceedings, including the sale, to be invalid. Much less had it any jurisdiction to consider the right of the Government to collect any deficiency income taxes from the Josephs.

Accordingly, the decision under review is hereby revoked, and one will be entered ordering dismissal of the four petitions of the Josephs. Costs against them.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Johnston Lumber vs. Ct. of Tax App., 101 Phil., 151; Gibbs vs. Collector of Internal Revenue and CTA, 107

Phil., 232.

[2] A reading of the petition so discloses.

[3] In fact, it may even be said that the time to question the summary collection began in October 1951, when the distraint was first ordered and the Josephs' goods seized.

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