

THE COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CARLOS MORAN SISON. AND PRISOILA F. SISON, RESPONDENTS.

G. R. No. L-13739. April 30, 1963

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Appealing from the decision of the Court of Tax Appeals that absolved Carlos Moran Sison and his wife from same tax liability, the Collector (now Commissioner) of Internal Revenue ascribes error to its holding of prescription of the Government's right to collect.

It appears that on February 28, 1949, said spouses assigned by deed to a corporation called Priscila Estate Inc. "several real properties which Mrs. Sison had previously acquired by donation. Made in exchange for 672 shares of capital stock of said corporation, the assignment deed recited that the realties were transferred at their assessed value, the assignors receiving, in turn, shares of stock of equal amount. Reporting such transfer, the Sisons claimed deductible losses in their income tax return for 1949.

As the Bureau of Internal Revenue had a rule that "where a person transfers his property to a corporation in exchange for shares to its capital stock and the value of the shares exceeds the cost of the property, such excess constitutes taxable gain" the agents of the Bureau investigated the transfer; and on June 23, 1952 the Collector imposed on the spouses a deficiency income tax for 1949 in the amount of P41,101.83 in the belief that the spouses had gained P257,380.00 from the deal. The Sisons contested the validity of the assessment and asked for a reinvestigation, which was ordered. So on October 13, 1956, an amended assessment was issued against them, this time for the amount of P5,585.02. They immediately protested; and, furthermore, questioned the Collector's right to assess, asserting that the five-year period of prescription had elapsed. When their protest was overruled, the Sisons brought the matter to the Court of Tax Appeals. There they won. Said court upheld their plea of prescription, applying section 331 of the National Internal Revenue Code, which for convenience is quoted:

SEC. 331. Period of limitation upon assessment and collection.— Except as provided in the succeeding section, internal-revenue taxes shall be assessed within five years after 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 purposes 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."

Appellant here contends that the assessment was made in June 1952 (for P41,101.58)—well within the five-year period; and although it is true that the present assessment amending the first was made only on October 17, 1956, the period of time between June 1952 to October 1956, should be excluded from the computation of the five-year prescription, because of the petition made by the Sison's for reconsideration and re-investigation. In other words, petitioner contends that the taxpayer's petition for reconsideration or reinvestigation had stopped the running of, the five-year limitation period. This contention must be upheld, in the light of our pronouncements in several cases.

"It is true that the Collector revised the original assessment on February 9, 1955; and appellant avers that this revision was invalid in that it "was not made within the five-year prescriptive period fixed by law (Collector vs. Pineda, L-14522, 31 May 1941). But the fact is that the revised assessment was merely a result of petitioner Querol's requests for reconsideration of the original assessment, contained in his letters of December 14, 1951 and May 25, 1953. The records of the Bureau of Internal Revenue show that after receiving the letters, the Bureau conducted a reinvestigation of petitioner's tax liabilities, and, in fact, sent a tax examiner to San Fernando, La Union, for that purpose; that because of the examiner's report, the Bureau revised the original assessment, and that while it still refused to allow full deduction of the repairs to the taxpayer's residence as a business expense, it allowed him to capitalize the amount, and permitted him to deduct a reasonable depreciation for 1947. In other words, the reconsideration was granted in part, and the original assessment was altered. Consequently, the period between the petition for reconsideration and the revised assessment should be subtracted from the total prescriptive period. (Republic vs. Ablaza, 108 Phil., 1105) "[Querol vs. Collector of Internal Revenue, L-10705, promulgated October 30, 1952]."

In a decision last month, we said thru Mr. Justice J.B.L. Reyes, it is settled that the five-year period of sec. 332 of the Internal Revenue Code (prescription, like 331) is to be counted from the last revised assessment resulting from a reinvestigation asked for by the taxpayer; and that where a taxpayer demands a reinvestigation, the time employed in re-investigating should be deducted from the total period of limitation. (Republic vs. Lopez, L-18007, March 30, 1963.)

We must consequently reverse the Tax Court's decision in so far as it holds the amended assessment of October 1956 to be late and not enforceable.

Needless to add, the claim of appellees (respondents) for damages due to alleged harassment by revenue officers may not now be entertained, not only because they took no appeal from the decision presently under review, but also because the collector's actuation is herein sustained.

Judgment reversed. No costs.

Bautista Angelo, Labrador, Concepcion, Barrera, Paredes Regala and Makalintal, JJ., concur.

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