

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LILIA YUSAY GONZALES AND THE COURT OF TAX APPEALS, RESPONDENTS.

G. R. No. L-19495. November 24, 1966

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Matias Yusay, a resident of Pototan, Iloilo, died intestate on May 13, 1948, leaving two heirs, namely, Jose S. Yusay, a legitimate child, and Lilia Yusay Gonzales, an acknowledged natural child. Intestate proceedings for the settlement of his estate were instituted in the Court of First Instance of Iloilo (Special Proceedings No. 459). Jose S. Yusay was therein appointed administrator.

On May 11, 1949 Jose S. Yusay filed with the Bureau of Internal Revenue an estate and inheritance tax return declaring therein the following properties:

Personal Properties:

Palay.....

P 6,444.00

Carabaos.....

1000.00

P7,444.00

Real Properties:

Capital, 74

parcels

Conjugal 19

parcels

assessed at.....

P179,760.00

Total gross estate.....

P187,204.00

The return mentioned no heir.

Upon investigation however the Bureau of Internal Revenue found the following properties

Personal Properties:

Palay.....

P6,444.00

Carabaos.....

1,500.00

Packard Automobile

2,000.00

2 Aparadora.....

500.00

P10,444.00

Real Properties:

Capital, 25 parcels assessed at

P87,715.32

1/2 of Conjugal, 130 parcels assessed at.....

P121,425.00

P209,140.32

Total.....

P219,584.32

The fair market value of the real properties was computed by increasing the assessed value by forty percent.

Based on the above findings, the Bureau of Internal Revenue assessed on October 29, 1953 estate and inheritance taxes in the sums of P6,849.78 and P16,970.63, respectively.

On January 25, 1955 the Bureau of Internal Revenue increased the assessment to P8,225.89 as estate tax and P22,117.10 as inheritance tax plus delinquency interest and demanded payment thereof on or before February 28, 1955. Meanwhile, on February 16, 1955, the Court of First Instance of Iloilo required Jose S. Yusay to show proof

of payment of said estate and inheritance taxes.

On March 3, 1955 Jose S. Yusay requested an extension of time within which to pay the tax. He posted a surety bond to guarantee payment of the taxes in question within one year. The Commissioner of Internal Revenue however denied the request. Then he issued a warrant of distraint and levy which he transmitted to the Municipal Treasurer of Pototan for execution. This warrant was not enforced because all the personal properties subject to distraint were located in Iloilo City.

On May 20, 1955 the Provincial Treasurer of Iloilo requested the BIR Provincial Revenue Officer to furnish him copies of the assessment notices to support a motion for payment of taxes which the Provincial Fiscal would file in Special Proceedings No. 459 before the Court of First Instance of Iloilo. The papers requested were sent by the Commissioner of Internal Revenue to the Provincial Revenue Officer of Iloilo to be transmitted to the Provincial Treasurer. The records do not however show whether the Provincial Fiscal filed a claim with the Court of First Instance for the taxes due.

On May 30, 1956 the commissioner appointed by the Court of First Instance for the purpose, submitted a re-amended project of partition which listed the following properties:

Personal Properties :

Buick Sedan

P8,100.00

Packard car.....

2,000.00

Aparadors.....

500.00

Cash in Bank (PNB).....

8,858.46

Palay.....

6,444.00

Carabaos.....

1,500.00

P27,402.46

Real Properties:

Land, 174 parcels assessed at.....

P324,797.21

Buildings.....

4,500.00

P329,297.21

Total.....

P356,699.67

More than a year later, particularly on July 12, 1957, an agent of the Bureau of Internal Revenue apprised the Commissioner of Internal Revenue of the existence of said reamended project of partition. Whereupon, the Internal Revenue Commissioner caused the estate of Matias Yusay to be reinvestigated for estate and Inheritance tax liability. Accordingly, on February 13, 1958 he issued the following assessment:

Estate Tax

P16,246.04

5% surcharge.....

411.29

Delinquency Interest.....

11,868.90

Compromise:

No Notice of death.....

P15

Late Payment.....

40

Total.....

55.00

P28,581.23

Inheritance Tax.....

P39,178.12

5% surcharge.....

1,105.86

Delinquency interest.....

28,808.75

Compromise for late payment.....

50.00

Total.....

P69,142.73

Total estate and inheritance taxes.....

P97,723.96

Like in previous assessments, the fair market value of the real properties was arrived at by adding 40% to the assessed value.

In view of the demise of Jose S. Yusay, said assessment was sent to his widow, Mrs. Plorencia Piccio Vda. de Yusay, who succeeded him in the administration of the estate of Matias Yusay.

No payment having been made despite repeated demands, the Commissioner of Internal Revenue filed a proof of claim for the estate and inheritance taxes due and a motion for its allowance with the settlement court invoking priority of lien pursuant to Section 315 of the Tax Code.

On June 1, 1959, Lilia Yusay, through her counsel, Ramon Gonzales, filed an answer to the proof of claim alleging non-receipt of the assessment of February 13, 1958, the existence of two administrators, namely, Plorencia Piccio Vda. de Yusay who administered two-thirds of the estate, and Lilia Yusay, who administered the remaining one-third, and her willingness to pay the taxes corresponding to her share, and praying for deferment of the resolution on the motion for the payment of taxes until after a new assessment corresponding to her share was issued.

On November 17, 1959 Lilia Yusay disputed the legality of the assessment dated February 13, 1958. She claimed that the right to make the same had prescribed inasmuch as more than five years had elapsed since the filing of the estate and inheritance tax return on May 11, 1949. She therefore requested that the assessment be declared invalid and without force and effect. This request was rejected by the Commissioner in his letter dated January 20, 1960, received by Lilia Yusay on March 14, 1960, for the reasons, namely, (1) that the right to assess the taxes in question has not been lost by prescription since the return which did not name the heirs cannot be considered a true and complete return sufficient to start the running of the period of limitations of five years under Section 331 of the Tax Code and pursuant to Section 332 of the same Code he has ten years within which to make the assessment counted from the discovery on September 24, 1953 of the identity of the heirs; and (2) that the estate's administrator waived the defense of prescription when he filed a surety bond on March 3, 1955 to guarantee payment of the taxes in question and when he requested postponement of the payment of the taxes pending determination of who the heirs are by the settlement court.

On April 13, 1960 Lilia Yusay filed a petition for review in the Court of Tax Appeals assailing the legality of the assessment dated February 13, 1958. After hearing the parties, said Court declared the right of the Commissioner of Internal Revenue to assess the estate and inheritance taxes in question to have prescribed and rendered the following judgment:

"WHEREFORE, the decision of respondent assessing against the estate of the late Matias Yusay estate and inheritance taxes is hereby reversed. No costs."

The Commissioner of Internal Revenue appealed to this Court and raises the following issues:

1. Was the petition for review filed in the Court of Tax Appeals within the 30-day period provided for in Section 11 of Republic Act 1125?
2. Could the Court of Tax Appeals take cognizance of Lilia Yusay's appeal despite the pendency of the "Proof of Claim" and "Motion for Allowance of Claim and for an Order of Payment of Taxes" filed by the Commissioner of Internal Revenue in Special Proceedings No. 459 before the Court of First Instance of Iloilo?
3. Has the right of the Commissioner of Internal Revenue to assess the estate and inheritance taxes in question prescribed?

On November 17, 1959 Lilia Yusay disputed the legality of the assessment of February 13, 1958. On March 14,

1960 she received the decision of the Commissioner of Internal Revenue on the disputed assessment. On April 13, 1960 she filed her petition for review in the Court of Tax Appeals. Said Court correctly held that the appeal was seasonably interposed pursuant to Section 11 of Republic Act 1125. We already ruled in *St. Stephen's Association v. Collector of Internal Revenue*,^[1] that the counting of the thirty days within which to institute an appeal in the Court of Tax Appeals should commence from the date of receipt of the decision of the Commissioner on the disputed assessment, not from the date the assessment was issued.

Accordingly, the thirty-day period should begin running from March 14, 1960, the date Lilia Yusay received the appealable decision. From said date to April 13, 1960, when she filed her appeal in the Court of Tax Appeals, is exactly thirty days. Hence, the appeal was timely.

Next, the Commissioner attacks the jurisdiction of the Court of Tax Appeals to take cognizance of Lilia Yusay's appeal on the ground of *lis pendens*. He maintains that the pendency of his motion for allowance of claim and for order of payment of taxes in the Court of First Instance of Iloilo would preclude the Court of Tax Appeals from acquiring jurisdiction over Lilia Yusay's appeal. This contention lacks merit.

Lilia Yusay's cause seeks to resist the legality of the assessment in question. Should she maintain it in the settlement court or should she elevate her cause to the Court of Tax Appeals? We say, she acted correctly by appealing to the latter court. An action involving a disputed assessment for internal revenue taxes falls within the exclusive appellate jurisdiction of the Court of Tax Appeals.^[2] It is in that forum, to the exclusion of the Court of First Instance,^[3] where she could ventilate her defenses against the assessment.

Moreover, the settlement court, where the Commissioner would wish Lilia Yusay to contest the assessment, is of limited jurisdiction. And under the Rules,^[4] its authority relates only to matters having to do with the settlement of estates and probate of wills of deceased persons.^[5] Said court has no jurisdiction to adjudicate the contentions in question, which - assuming they do not come exclusively under the Tax Court's cognizance - must be submitted to the Court of First Instance in the exercise of its general jurisdiction.^[6]

We now come to the issue of prescription. Lilia Yusay claims that since the latest assessment was issued only on February 13, 1958 or eight years, nine months and two days from the filing of the estate and inheritance tax return, the Commissioner's right to make it has expired. She would rest her stand on Section 331 of the Tax Code which limits the right of the Commissioner to assess the tax within five years from the filing of the return.

The Commissioner claims that fraud attended the filing of the return; that this being so, Section 332(a) of the Tax Code would apply.^[7] It may be well to note that the assessment letter itself (Exhibit 22) did not impute fraud in the return with intent to evade payment of the tax. Precisely, no surcharge for fraud was imposed. In his answer to the petition for review filed by Lilia Yu-say in the Court of Tax Appeals, the Commissioner alleged no fraud. Instead, he broached the insufficiency of the return as barring the commencement of the running of the statute of limitations. He raised the point of fraud for the first time in the proceedings, only in his memorandum filed with the Tax Court subsequent to resting his case. Said Court rejected the plea of fraud for lack of allegation and proof, and ruled that the return, although not accurate, was sufficient to start the period of prescription.

Fraud is a question of fact. The circumstances constituting it must be alleged and proved in the court below.^[9] And the finding of said court as to its existence and non-existence is final unless clearly shown to be erroneous.^[10] As the court *a quo* found that no fraud was alleged and proved therein, We see no reason to entertain the Commissioner's assertion that the return was fraudulent.

The conclusion, however, that the return filed by Jose S. Yusay was sufficient to commence the running of the prescriptive period under Section 331 of the Tax Code rests on no solid ground.

Paragraph (a) of Section 93 of the Tax Code lists the requirements of a valid return. It states:

"(a) Requirements. - In all cases of inheritance or transfers subject to either the estate tax or the inheritance tax, or both, or where, though exempt from both taxes, the gross value of the estate exceeds three thousand pesos, the executor, administrator, or anyone of the heirs, as the case may be, shall file a return under oath in duplicate, setting forth (1) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident not a citizen of the Philippines, or that part of his gross estate situated in the Philippine; (2) the deductions allowed from gross estate in determining net estate as defined in section eighty-nine; (3) such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct taxes."

A return need not be complete in all particulars. It is sufficient if it complies substantially with the law. There is substantial compliance (1) when the return is made in good faith and is not false or fraudulent; (2) when it covers the entire period involved; and (3) when it contains information as to the various items of income, deduction and credit with such definiteness as to permit the computation and assessment of the tax.[11]

There is no question that the estate and inheritance tax return filed by Jose S. Yusay was substantially defective.

First, it was incomplete. It declared only ninety-three parcels of land representing about 400 hectares and left out ninety-two parcels covering 503 hectares. Said huge underdeclaration could not have been the result of an oversight or mistake. As found in G.R. No. L-11378, *supra* note 7, Jose S. Yusay very well knew of the existence of the omitted properties. Perhaps his motive in underdeclaring the inventory of properties attached to the return was to deprive Lilia Yusay from inheriting her legal share in the hereditary estate, but certainly not because he honestly believed that they did not form part of the gross estate.

Second, the return mentioned no heir. Thus, no inheritance tax could be assessed. As a matter of law, on the basis of the return, there would be no occasion for the imposition of estate and inheritance taxes. When there is no heir - the return showed none - the intestate estate is escheated to the State.[12] The State taxes not itself.

In a case where the return was made on the wrong form, the Supreme Court of the United States held that the filing thereof did not start the running of the period of limitations.[[13]] The reason is that the return submitted did not contain the necessary information required in the correct form. In this Jurisdiction, however, the Supreme Court refrained from applying the said ruling of the United States Supreme Court in *Collector of Internal Revenue v. Central Azucarera de Tarlac*, G.R. No. L-11760-61, July 31, 1958, on the ground that the return was complete in itself although inaccurate. To our mind, it would not make much difference where a return is made on the correct form prescribed by the Bureau of Internal Revenue if the data therein required are not supplied by the taxpayer. Just the same, the necessary information for the assessment of the tax would be missing.

The return filed in this case was so deficient that it prevented the Commissioner from computing the taxes due on the estate. It was as though no return was made. The Commissioner had to determine and assess the taxes on data obtained, not from the return, but from other sources. We therefore hold the view that the return in question was no return at all as required in Section 93 of the Tax Code.

The law imposes upon the taxpayer the burden of supplying by the return the information upon which an assessment would be based.[14] His duty complied with, the taxpayer is not bound to do anything more than to wait for the Commissioner to assess the tax. However, he is not required to wait forever. Section 331 of the Tax Code gives the Commissioner five years within which to make his assessment. [15] Except, of course, if the taxpayer failed to observe the law, in which case Section 332 of the same Code grants the Commissioner a longer period. Non-observance consists in filing a false or fraudulent return with intent to evade the tax or in filing no return at all.

Accordingly, for purposes of determining whether or not the Commissioner's assessment of February 13, 1958 is barred by prescription, Section 332(a) which is an exception to Section 331 of the Tax Code finds application. [16]We quote Section 332(a):

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. - (a) In the case of a false or fraudulent re-turn 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."

As stated, the Commissioner came to know of the identity of the heirs on September 24, 1953 and the huge underdeclaration in the gross estate on July 12, 1957. From the latter date, Section 94 of the Tax Code obligated him to make a return or amend one already filed based on his own knowledge and information obtained through testimony or otherwise, and subsequently to assess thereon the taxes due. The running of the period of limitations under Section 332(a) of the Tax Code should therefore be reckoned from said date for, as aforesaid, it is from that time that the Commissioner was expected by law to make his return and assess the tax due thereon. From July 12, 1957 to February 13, 1958, the date of the assessment now in dispute, less than ten years have elapsed. Hence, prescription did not abate the Commissioner's right to issue said assessment.

Anent the Commissioner's contention that Lilia Yusay is estopped from raising the defense of prescription because she failed to raise the same in her answer to the motion for allowance of claim and for the payment of taxes filed in the settlement court (Court of First Instance of Iloilo), suffice it to state that it would be unjust to the taxpayer if We were to sustain such a view. The Court of First Instance acting as a settlement court is not the proper tribunal to pass upon such defense, therefore it would be but futile to raise it therein. Moreover, the Tax Code does not bar the right to contest the legality of the tax after a taxpayer pays it. Under Section 306 thereof, he can pay the tax and claim a refund therefor. A fortiori his willingness to pay the tax is no waiver to raise defenses against the tax's legality.

WHEREFORE, the judgment appealed from is set aside and another entered affirming the assessment of the Commissioner of Internal Revenue dated February 13, 1958. Lilia Yusay Gonzales, as administratrix of the intestate estate of Matias Yusay, is hereby ordered to pay the sums of P16,246.04 and P39,178.12 as estate and inheritance taxes, respectively, plus interest and surcharge for delinquency in accordance with Section 101 of the National Internal Revenue Code, without prejudice to reimbursement from her co-administratrix, Plorencia Piccio Vda. de Yusay for the latter's corresponding tax liability. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Sanchez and Ruiz Castro, JJ., concur.

Zaldivar, J., no part.

[1] G.R. No. L-11238, August 21, 1958. See also *Baguio Country Club Corporation v. Collector of Internal Revenue, et al.*, G.R. No. L-11419, April 22, 1959.

[2] Sec. 7(1), Rep. Act 1125; *Blaquera v. Rodriguez*, G.R. No.L-11295, March-29, 1958.

[3] *Castro v. Blaquera*, G.R. No. L-8429, February 28, 1957, 53 O.G. 2135; *Ledesma v. Court of Tax Appeals*, G.R. No.L-11343, January 29, 1958, 55 O.G. 2883.

[4] Rules 74-92, now Rules 73-91, Rules of Court.

- [5] Adapon v. Maralit, 69 Phil. 383, 387.
- [6] Guzman v. Anog and Anog, 37 Phil. 62.
- [7] Brief for Petitioner, p. 26.
- [8] Collector of Internal Revenue v. Bautista, G.R. Nos. L-12250 & L-12259, May 27, 1959.
- [9] Gutierrez v. Court of Tax Appeals, G.R. Nos. L-9738 & L-9771, May 31, 1957.
- [10] Perez v. Court of Tax Appeals, G.R. No. L-9738, May 31, 1957
- [11] Jacob Mertens, Jr., The Law of Federal Income Taxation, 1958 ed., Vol. 10, Section 57.13.
- [12] Articles 1011-1014, Civil Code; Rule 91, Rules of Court.
- [13] Florsheim Brothers Dry-Goods Company, Ltd. v. United States, 280 US 453, 74 L. ed. 542. See also Commissioner v. Lane-Wells Co., 321 US 219, 88 L. ed. 684; Rockland & Rockport Lime Corporation v. Ham, 38 F 2d 239 (D.C.S.D. Main, 1930); Dubuque Packing Co. v. US, 126 F. Supp. 796 (D.C.N.D. Iowa, 1954).
- [14] Florsheim Brothers Dry-Goods Company, Ltd. v. United States, 280 U.S. 453, 74 L. ed. 542, 547.
- [15] Republic of the Philippines v. Lim De Yu, G.R. No. L-17438, April 30, 1964.
- [16] Taligaman Lumber Co. v. Collector of Internal Revenue, G.R. No. L-15717, March 31, 1962; Tan Tiong Bio, et al. v. Commissioner of Internal Revenue, G.R. No. L-15778, April 23, 1962.

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