

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
MANUEL LEDESMA, DEFENDANT-APPELLEE.***G.R. No. L-18759. February 28, 1967*

Ponente: MAKALINTAL, J.

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Plaintiff-appellant sued in the Court of First Instance of Iloilo to recover from defendant-appellee P16,212.00 as deficiency income tax for the year 1951, including a sur-charge of 50%. Defendant-appellee denied liability, alleging that the proceeds of the sale of 3,000 piculs of sugar on which the tax was being principally levied had been declared as income by his son-in-law, Raul Poblador, to whom the said sugar belonged and who had paid the corresponding tax thereon. Aside from that defense, prescription was likewise pleaded. Upon the plea of prescription alone the Court a quo dismissed the complaint, and plaintiff appealed directly to Us.

The last day for filing the return for the tax year 1951 was March 1, 1952. The assessment for the deficiency was released by the Bureau of Internal Revenue on February 25, 1957. It was received by defendant-appellee, who re-requested through counsel, by letter dated May 10, 1957, that a reinvestigation be made so that he could show that he had no delinquency at all. The Regional Director (of the Bureau of Internal Revenue) for Iloilo then wrote back, requesting counsel to specify under oath the grounds of his client's protest, to pay one-half of the amount assessed and put up a bond for the balance, pursuant to a circular of the Bureau in order that a reinvestigation could be granted. No further communication, however, was received from defendant-appellee, and so a civil action for collection was instituted in the Court of First Instance of Iloilo on July 21, 1958.

On the issue of prescription appellant cites Sections 331 and 332 of the Internal Revenue Code, which provide:

"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."

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes. 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."

It should be noted that under section 331 internal revenue taxes shall be assessed within five (5) years after the last day prescribed by law for the filing of the return, and if there is no assessment a proceeding in court for collection must be commenced within the same period. Under section 332(c), where an assessment is made the

court proceeding must be filed within five (5) years thereafter. In other words, as long as there is a timely assessment the Government has an additional five years within which to bring an action for collection. In this case, appellant points out, the assessment notice was issued on February 25, 1957, or before the lapse of five years from March 1, 1952; and the action was filed only a little over one year there-after, or within the prescriptive period.

On the other hand appellee contends - and his contention was upheld by the trial court - that insofar as income taxes are concerned the applicable provision was section 51(d) of the Internal Revenue Code, (prior to its amendment by R.A. No. 2343 on June 20, 1959),^[1] which fixed a period of three (3) years after the return became due, or had been made, for the Collector to make a return of his own upon information obtained by him and issue the corresponding assessment. Such assessment, appellee admits, is only for purposes of summary collection by distraint and levy, but he maintains that if such remedy is not resorted to then judicial collection may be resorted to, but only within five years from the date the taxpayer filed his return or in the absence thereof from the last day he was supposed to do so, which in this case was March 1, 1952; and since the complaint was filed only on July 21, 1958 the five-year period had already expired.

The interpretation advanced by defendant-appellee cannot be upheld. Section 51(d) referred merely to the summary remedy of distraint and levy, which should be effected within three (3) years. A warrant of distraint and levy issued beyond that period was void.^[2] It did not prescribe any limitation as to judicial action for collection, which must be governed by section 331 and 332 by supplementary application. Thus it was held in the cases of *Collector vs. Bohol Land Transportation Co.* and *Bohol Land Transportation Co. vs. Collector*, G.R. Nos. L-13099 and L-13462, April 29, 1960, where this Court said:

"x x x. Considering this void in the law applicable to income tax, and bearing in mind that Section 331 which provides for the limitation upon assessment and collection by judicial action comes under Title IX, Chapter II, which refers to 'CIVIL REMEDIES FOR COLLECTION OF TAXES', it may be concluded that the provisions of said Sec. 331 are general in character which may be considered supplementary with regard to matters not covered by the title covering income tax. In other words, Title II of the Code is a special provision which governs exclusively all matters pertaining to income tax, whereas Title IX, Chapter II, is a general provision which governs all internal revenue taxes in general which cannot apply insofar as it may conflict with the provisions of Title II as to which the latter shall prevail, but that in the absence of any provision in said Title II relative to the period and method of collection of the tax the provisions of Title XI, Chapter II, may be deemed to be supplementary in character."

And in *Republic vs. Gamboa*, G.R. No. L-16504, October 27, 1961, this Court, speaking through then Associate Justice, now Chief Justice Concepcion, said:

"Hence, in *Collector of Internal Revenue vs. A. P. Reyes*, G.R. No. L-8685 (January 31, 1957), we declared that the 3-year period prescribed in the above-quoted section 51(d) constitutes 'a limitation to the right of the Government to enforce the collection of income taxes by the summary proceedings of distraint and levy, though it could proceed to recover the taxes due by the institution of the corresponding action.' In fact, we have repeatedly held: 'x x x that taxes may be collected either by distraint, or by judicial action. The period of three years prescribed in said section 51(d) refers to the assessment for the purpose of 'immediate' collection of the tax due, that is to say, by summary proceedings or distraint. The aforementioned provision does not bar assessment as a step preliminary to collection by judicial action' (*Alhambra Cigar & Cigarettes Manufacturing Co. vs. Collector of Internal Revenue*; *Collector of Internal Revenue v. Alhambra Cigar & Cigarettes Manufacturing Co.*, G.R. Nos. L-12026 & 12131, May 29, 1959. See also *Collector of Internal Revenue vs. Haygood*, 65 Phil. 520; *Pasudeco vs. Posadas*, 68 Phil. 216; *Collector of Internal Revenue vs. Avelino*, G.R. No. L-9202, Nov. 19, 1956; *Collector of Internal Revenue vs. Zulueta*, G.R. No. L-8840, Feb. 8, 1957; *Sambrano vs. Court of Tax Appeals*, G.R. No. L-8652, March 30, 1957; *Collector of Internal Revenue vs.*

Aznar, G.R. No. L-10370, January 31, 1958) - after assessment 'within five years after the return was filed' (as provided in said section 331) - which action, in the event of a false return, such as that filed by defendants herein, may be filed 'at any time within ten (10) years after the discovery of the falsity', which, in the case at bar, took place on January 29, 1956. The deficiency income tax assessment above mentioned and the complaint herein were made and filed within said periods of five (5) and ten (10) years, respectively."

We therefore hold that the action here was filed within the statutory prescriptive period. In his answer to appellant's third assignment of error appellee con-tends that irrespective of the question of prescription the action cannot prosper because appellant failed to substan-tiate its claim for the deficiency income tax by competent evidence. It should be pointed out, however, that when appellee received the assessment notice issued by the Col-lector of Internal Revenue on February 25, 1957, all he did was to send a letter through counsel on May 10, 1957 requesting a reinvestigation, to which he received a reply dated June 14, 1957, wherein he was asked to submit under oath specific grounds of his client's protest, to pay one-half of the amount and put up a bond for the rest. Nothing more was heard from appellee thereafter until the present action for collection was filed. In other words appellee failed to dispute the assessment effectively, and the same therefore be-came final and properly collectible by means of an ordinary action. Had appellee complied with the conditions required of him by the Bureau of Internal Revenue in its letter of June 14, 1957, or had he even challenged the validity of those conditions, the assessment would have been a disputed one which the Collector of Internal Revenue would have had to decide, and from his decision the recourse would have been to the Court of Tax Appeals according to Section 7 (1) of Republic Act No. 1125. As it was, appellee's failure to dispute the assessment in the manner prescribed by law has barred his right to do so in the present case.

Appellee's position as may be gathered from his brief, insofar as the merits of the case are concerned, seems to be that the entire amount being collected here is the deficiency tax, plus surcharge, on 3,000 piculs of sugar produced from a certain hacienda "Concordia," which was ac-tually worked under a verbal contract of lease to appellant's son-in-law, Raul Poblador, and that the latter had already paid the corresponding tax on the said produce for the year 1951. The truth, however, is that the assessment issued by the Commissioner of Internal Revenue was based largely on other items. Following is the breakdown shown on Exhibit B:

"Net income disclosed by return as audited

P25, 305.81

Add unallowable deductions

and additional income:

1-Undeclared sales

Sale of 3,000 piculs of

sugar at P14.04

P42,120.00

As per return

37,500.00

4,620.00

2 – laborer's quarters

12,000.00

3 - Other expenses

1,500.00

4 - Additional income on sale of capital

assets

11,288.88

Net income as per reinvestigation

54,714.49

Less: Personal exemption

3,000.00

Taxable net income

51,714.49

Income tax due thereon

P14,940.00

Less: Amount already as?

sessed

4,132.00

Deficiency income tax

10,808.00

Add: 50% Surcharge

5,404.00

AMOUNT DUE & COLLECTIBLE

P16,212.00

In other words, the defense of payment of the tax, allegedly made by Raul Poblador on the 3,000 piculs of sugar, is neither very material nor decisive. The question is whether or not the assessment was correct, and the same should have been taken to the Court of Tax Appeals by petition for review if ap-pellee had wished to dispute it.

In any event, the defense of payment, assuming that it presents a justiciable question in this case, has no evidence to sustain it. Neither Manuel Ledesma nor Raul Poblador testified at the trial. The alleged verbal contract of lease of the hacienda "Concordia" in favor of the latter was merely testified to by counsel; and while it is true that Poblador did file an income tax return for 1951 (Exh. 5), which contains an entry referring to receipts from the sale of crops, there is nothing therein to show that these were the very crops produced from the hacienda aforesaid. What is more, aside from the testimony of counsel for appellee - which is of course hearsay - there is no evidence to support the allegation in his brief that appellee had no other sugar cane farm than the hacienda "Concordia". It is significant that in the assess-ment for deficiency tax issued by the Commissioner of Internal Revenue (Exh. B) reference is made to the fact that 3,000 piculs of sugar had been the subject of the income tax return filed by appellee himself, although valued at only P37,500 - the additional undeclared value of the same sugar on which the deficiency tax was being assessed being only P4,620. This fact - unexplained as it is by appellee - does not sit well with his defense that the said sugar had already been declared and the tax thereon paid by another person altogether.

Wherefore the judgment appealed from is reversed and defendant-appellee is ordered to pay to plaintiff-appellant

the amount of P16,212.00 as deficiency income tax for the year 1951, plus surcharges and interests accrued thereon in accordance with law, and costs.

Concepcion, C.J., Reyes, Dizon, Regala, Bengzon, Zaldivar, Sanchez and Castro, JJ., concur.

[1] "Refusal or neglect to make returns; fraudulent returns, etc. - In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment."

[2] Collector v. Avelino, 100 Phil. 327. Collector v. Reyes, 100 Phil. 822. Collector v. Zulueta, 100 Phil. 827. Sambrano v. CTA, 101 Phil. 1 Collector v. Aznar, G.R. No. L-8652, Jan. 31, 1958. Collector v. Solano, G.R. No. L-11475, July 31, 1958. Gancayco v. Collector, G.R. No. L-13325, April 20, 1961.

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