

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. SANTIAGO GANCAYCO, DEFENDANT AND APPELLEE.

G.R. No. L-18307. June 30, 1965

Ponente: PAREDES, J.

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PAREDES, J.:

On June 13, 1946, appellee Santiago Gancayco was assessed by the Collector of Internal Revenue for P11,203.19, for various taxes corresponding to the first quarter of the year 1946, and demand for the payment of the same amount within five (5) days from receipt thereof was made. The assessment and demand were made after Gancayco allegedly refused to produce his books of accounts and other records. For failure to make payment, the Collector issued on September 6, 1946, a Warrant of Dstraint and Levy, to enforce the same. The warrant was not served on Gancayco because his whereabouts could not then be ascertained. The whereabouts of Gancayco remained unknown until October 13, 1947, when he wrote the Collector a letter (Exh. "2" or "H"), which contained, among others, the following:

"* * *. It was only recently that I was reminded of my obligation to our Government and I found out after consulting my records and other papers that it is not as high as P11,203.19.

* * * * *

I am ready and willing to pay the taxes due the Government but at the same time I hope you will not collect what is not. Based on the foregoing facts and circumstances, I am requesting your consideration to order another investigation and whatever is found to be legally due from me, I will not hesitate paying it. * * *.

In conclusion, permit me to reiterate my request for reinvestigation and I assure you that I will abide by your decision on the matter and pay the taxes legally due from me."

The above letter was answered by the Collector of Internal Revenue on March 3, 1949, more than a year later, wherein he stated that after a reinvestigation of the case, it was found out that the allegations in the letter of October 13, 1947, were not supported by the evidence, with the exception of two items, resulting in the revision of the assessment from P11,203.19 to P10,982.30, plus P100.00 as compromise penalty.

Under date of March 14, 1949, Gancayco sent another letter to the Collector, claiming that all his documents and records were being sorted out, in the course of which, he found additional evidence relating to the taxes being collected and asking for some time to prepare and submit such evidence. In response to this letter, the Deputy Collector advised appellee on March 17, that he was given until April 1, 1949 within which to submit the evidence stated in said letter. One day before the dateline, or on March 31, 1949, Gancayco wrote the Collector stating:

"I am happy to inform you that I have now in my possession the books and documents that will support my objections to the taxes assessed against me. These evidences will prove the following:

1. That I purchased these surplus goods not in my own behalf but in the capacity of an agent or co-buyer of

third persons. In this connection, I have copies of the legal papers which show the names of those persons numbering more than seventy in all and the particular items acquired by them. After my purchase, all these equipments passed directly to the hands of third persons and were registered in their names. As an intermediary therefore, it would not be fair to levy the taxes assessed on such equipments against me. The ones who should be liable for such obligations are these third persons who acquired the true ownership of those equipments from the Foreign Liquidation Office through my intercession.

2. I did not actually gain such estimated twenty (20%) percent profit as assessed. My books and documents will bear me out that while it is true that I gained in some of my transactions, my profits did not exceed 20%. In the majority of cases, my deals were on even terms if not on a losing basis.

The books and papers that I am ready to present are quite voluminous. I believe it would be for the convenience of all parties concerned if your office should order a reinvestigation of my case. All these evidences are now ready for the inspection of the investigator that you may send. I have also the names and addresses of all the third persons who are the true owners of those equipments.

I therefore request that a thorough reinvestigation of my case be ordered and I am willing to abide by whatever the outcome of the same maybe after a careful study of all the evidences."

Nothing in the record would show what action was taken in connection with the above letter. Manifestly, no reinvestigation was conducted or a review of the evidence offered by appellee was made by the Collector or any of his agents or representatives. On May 17, 1960, however, more than ten (10) years after the above letter of Gancayco, the Collector wrote appellee, saying:

"Your repeated request for the cancellation of said assessments on the ground that the right of this Office to collect the tax has already prescribed is not sustained by law nor judicial precedents.

Recently, the Supreme Court held in the case, entitled "Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., Inc.", 104 Phil., 819, that the statute of limitations is suspended upon the request of the taxpayer for reinvestigation or reconsideration of its tax liability.

* * * * *

Your contention that you purchased the surplus goods from the Foreign Liquidation Office as an agent or co-buyer of third persons and not in your own behalf, is not borne out by the findings of the reinvestigation.

In view thereof, it is requested that the amounts of P10,370.19 and P612.11 be paid to the City Treasurer of Manila, within ten (10) days from receipt hereof; otherwise, judicial action will be instituted against you without further notice."

Appellee Gancayco must have failed to pay the amount in question, because, on July 19, 1960, the case at bar was presented with the CFI of Manila.

On August 3, 1960, Gancayco moved to dismiss the complaint on the ground of prescription, invoking Sec. 332 of the Revenue Code, which provides that court proceedings for the collection of taxes must be instituted within five (5) years after the assessment was made. Here, the original assessment was made on June 13, 1946 and the revised assessment on March 3, 1949. An opposition to the motion to dismiss was supposedly made (We do not find it in the record) and the lower court, on September 30, 1960, denied the motion in an order of the following tenor:

"Acting on Defendant's motion for dismissal, considering the reasons adduced in support thereof and the opposition thereto, the Court denies the motion for lack of merit, on the authority of Collector of Internal Revenue vs. Suyoc Consolidated Mining Co. Inc., 104 Phil., 819, promulgated November 25, 1958; Republic of the Philippines vs. Luis G. Ablaza, 108 Phil., 1105."

A motion to reconsider the above order was denied for lack of merit, on September 3, 1960.

In Answer to the complaint, after the customary admissions and denials, Gancayco interposed the following special and affirmative defenses, to wit:

"8. That over five years from the date of the assessment had elapsed before the complaint was filed, and hence, the plaintiff is barred by the statute of limitations from enforcing collection thru judicial action;

"9. That the alleged assessment against the defendant is erroneous and illegal as the same was arrived at without referring to the books and records and in spite of the fact that the same were at the disposal of the Collector."

In sustaining the defense of prescription, the lower court stated:

"Under the evidence, it appears that the final assessment made by Commissioner of Internal Revenue covering the sales tax due from the defendant for the first quarter of 1946 was made on May 17, 1960, more than five years from the date of the original assessment made on June 13, 1946 or from March 3, 1949 when the Collector of Internal Revenue made his revised assessment (Exh. 3 or 1). It is true that defendant requested for a reinvestigation and reconsideration based on additional records and evidence by letters dated March 14 and 31, 1949 (Exhs. 5 and 6); however, the collector gave defendant until April 1, 1949 only within which to submit the aforementioned evidence, upon the expiration of which without such evidence being presented, it became the duty of the Collector to reiterate its revised assessment, Exhibit 3, and prosecute court action within five years thereafter. This is an imperative duty imposed upon the Collector, which he failed to discharge. Indeed, no action was taken in the tax case until May 17, 1960, or after the lapse of more than 11 years from the request for reinvestigation. However broad and wide the powers and discretion of the Collector (now Commissioner), to allow him to delay action without justifiable reason beyond the five-year period would run counter to the letter, spirit and purpose of the statute of limitations regarding taxes * * *.

* * * * *

It results that the filing of the action on July 19, 1960 comes too late, it being based on the final assessment dated May 17, 1960 after the action has long prescribed. The case of Collector vs. Suyoc Consolidated Mining Co., Supra promulgated November 25, 1952 does not improve plaintiff's position due to factual differences between that case and the present case. Therein there were several requests for reconsideration and reinvestigation conducted by the tax payer including an appeal to the conference in the Bureau of Internal Revenue.

While the assessment of March 3, 1949 has become final for lack of appeal to the Court of Tax Appeals, the defense of prescription is not barred in a court proceeding for collection, as here."

The observations and conclusions of the lower court, are well taken. Under the circumstances stated and found in the decision, it is evident that the right of the State to collect the taxes due from appellee has prescribed. Whether the computation of time starts from June 13, 1946 or March 3, 1949, the filing of the tax collection case on July 19, 1960, is far beyond the period. While it is true that on March 31, 1949, appellee Gancayco requested a thorough reinvestigation of his case, he, at the same time, placed at the disposal of the collector all the evidences he had for such purpose. Apparently, the collector ignored the request, for the records and documents were not at all examined. The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension (Collector vs. Suyoc Consolidated, supra; also Republic vs. Ablaza, supra). Moreover, the Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection case from April 1, 1949. The very letter of the Collector to appellee on May 17, 1960, indicated that the letter had been asking for the cancellation of the assessments in question due to prescription, which only goes to show that in the

interim, no action had been taken by the Collector on the request for re-examination of the documents appellee had placed under the Collector's disposal. Sec. 332 of the Revenue Code, among others, provide:

"(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, * * *." (Italics supplied)

Obviously, the five-year period had long lapsed when the case at bar was instituted.

The Solicitor General further argues that even if the five year period had lapsed, still the case at bar was properly instituted, because the extra-judicial demands upon the appellee tolled the prescriptive period, citing in support thereof, provisions of the Civil Code and cases.

The argument is untenable. This Court said:

"The only agreement that can suspend the running of the prescriptive period for the collection of taxes by court action is a written agreement between the taxpayer and the Collector of Internal Revenue, entered into before the expiration of the five year prescriptive period from assessment, extending the period of limitation prescribed by law. (Coll. of Int. Rev. vs. Solano, G. R. No. L-11475, July 31, 1958). (See also par. b) Sec. 332 Revenue Code.)

Manifestly, therefore, the extra-judicial demands made, if any, did not serve to suspend or toll the period of prescription, the provisions of the Civil Code notwithstanding. It should be noted, in this connection, that the Internal Revenue Code, being a special law, prevails over a general law.

Wherefore, the decision appealed from is hereby affirmed, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Regala, and Makalintal, JJ., concur.

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