

**SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL REVENUE,
PETITIONER, VS. HON. JOSE S. RODRIGUEZ, IN HIS CAPACITY AS
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND CHENG
HOK, DOIN...**

G. R. No. L-11295. March 29, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

On 25 May 1956 respondent Cheng Hok, doing business under the firm name "Magallanes Bakery," filed a complaint dated 24 May 1956, in the respondent Court against the petitioner Collector of Internal Revenue, alleging that notwithstanding the fact that he had paid fully the percentage tax due on his business for certain periods from 1951 to 1954, the petitioner was demanding from him the payment of P7,221.74 as deficiency percentage tax, 25 per cent surcharge thereon, and P50 as compromise penalty, or a total of P9,077.18. He prayed for a writ enjoining the petitioner, his agents, subordinates and all persons acting on his behalf from effecting the collection of the aforesaid sum and from levying on any of his property to satisfy it; and after hearing for a final writ of injunction. He further prayed that the petitioner be ordered to pay him the sum of P5,000 as actual and consequential damages, P5,000 as moral damages, P2,000 as attorney's fees, and costs (civil No. R-4542, Appendix A). On 25 May, the respondent Court, presided over by Hon. Clementino V. Diez, granted the petition for a writ of preliminary injunction upon the filing of a bond in the sum of P9,077.18 (Appendix B). On 28 May, after the filing by the respondent of the required bond, the writ was issued (Appendix C). On 18 June, the petitioner moved for the dismissal of the complaint and for the discharge of the writ of preliminary injunction theretofore issued, on the ground that the respondent Court has no jurisdiction of the subject matter of the action, involving as it does a disputed assessment, surcharge and penalty or other matters arising under the provisions of the National Internal Revenue Code, which falls within the jurisdiction of the Court of Tax Appeals, and that no court has authority to grant a writ of injunction to restrain the collection of any internal revenue tax, fee, or charge imposed by the same Code (Appendix D). On 22 June, the respondent filed an opposition thereto (Appendix E). On 11 July the respondent Court, presided over by Hon. Edmundo S. Piccio, denied the motion to dismiss (Appendix P). On 8 September, the same Court, presided over by Hon. Jose S. Rodriguez, denied (Appendix H) the petitioner's motion for reconsideration (Appendix G).

On 2 October 1956, the petitioner filed this petition in this Court seeking to annul the orders of the respondent Court of 25 May that granted the writ of preliminary injunction and the writ issued on 28 May pursuant thereto; of 11 July that denied the petitioner's motion to dismiss; and of 8 September that denied the petitioner's motion for reconsideration. The petitioner further prayed for a writ of preliminary injunction to restrain the respondent Court from enforcing the writ it had issued. On 4 October, this Court issued the writ of preliminary injunction prayed for.

Section 7, Republic Act No. 1125, which took effect on 16 June 1954, in part provides:

The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.[1]

Section 11 of the same Act provides:

Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

The letters of the officer in charge of the office of the regional director and of the regional director of the Bureau of Internal Revenue in Cebu City to the respondent informed him that it appears from the various receipts of payment made by him on different dates from 1951 to 1954, that he had not paid the correct amount of the percentage tax due on his business; demanded that he pay the sums of P5,777.39 as deficiency percentage tax, P1,444.35 as 25 per cent surcharge thereon, and P100 as compromise penalty, or a total of P7,321.74 within ten days from receipt of the first letter and five days from receipt of the second; and warned him that if he failed to settle his obligation, they would resort to the summary remedies provided by law and would recommend his prosecution for violation of section 183 of the National Internal Revenue Code (Annexes A & A-1). The respondent refused to pay¹ on the ground that he had paid fully and on time the percentage tax due on his business.

It is clear that the action, involving as it does a disputed assessment of an internal revenue tax, surcharge and penalty imposed in relation thereto, or a matter arising under the National Internal Revenue Code, falls within the exclusive appellate jurisdiction of the Court of Tax Appeals. The claim that the respondent taxpayer had paid fully and timely the tax due is a matter of defense which must be averred or set up in the proper court. The averment or setting up of such defense in another court would not vest in the latter court jurisdiction to hear and determine the case.

The contention that the complaint is essentially for collection of damages against the petitioner, over which the Court of Tax Appeals has no jurisdiction, is without merit. The allegations and prayer of the complaint do not support the contention. Section 11 of Republic Act No. 1125 providing for the suspension of tax collection refers to the Court of Tax Appeals and not to the Courts of First Instance.

Section 305 of the National Internal Revenue Code providing that "No court shall have authority to grant an injunction to restrain the collection of any national internal-revenue tax, fee, or charge imposed by this Code,"[1] refers to courts other than the Court of Tax Appeals.

The petition is granted and the writ heretofore issued is made permanent, with costs against the respondent taxpayer.

Bengzon, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

Paras, C. J. and Reyes, A., J.,

[1]See *Castro vs. David*, 100 Phil., 454; 53 Off. Gaz., 4088; *Castro vs. Blaquera*, 100 Phil., 981; 53 Off. Gaz., 2135.

[1] See *David vs. Ramos and Castro*, 90 Phil., 351.

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