

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ERNESTO S. GAMBOA, DEFENDANT AND APPELLANT.

G.R. No. L-16504. October 27, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, by defendant Ernesto S. Gamboa, from a decision of the Court of First Instance of Negros Occidental sentencing him to pay plaintiff, Republic of the Philippines, the sum of P19,422, plus a surcharge of P4.855.50, with interest thereon at the rate of 1% a month, from June 1, 1957 to the date of payment, and the costs.

The facts have been stipulated. On March 20, 1953, defendant Gamboa filed his income tax return for 1952 reporting a net loss of P2,122.26. On January 29, 1956, plaintiff discovered, however, that sometime in 1952, Gamboa had sold for P110,000 several parcels of land he had originally bought for P42,000, thus ostensibly making a profit of P68,000. Hence, on May 13, 1957, plaintiff issued an assessment notice demanding from Gamboa the payment of P29,133, as deficiency income tax for 1952 computed as follows:

Net loss per return

(P2,122.00)

Add:

Gain on sale of real property:

Selling price

P110,000.00

Less:

Acquisition cost

42,000.00

68,000.00

Net income per investigation

P65,878.00

Less:

Personal & additional exemptions

3,600.00

Net taxable income

62,278.00

Income tax due thereon

19,422.00

Add:

50% surcharge

9,711.00

TOTAL DEFICIENCY INCOME TAX DUE

29,133.00"

Gamboa did not contest or dispute this assessment notice before the Court of Tax Appeals within the period stated in section 11 of Republic Act No. 1125. Yet, he failed and refused to pay the aforementioned sum of P29,133. Accordingly, on February 17, 1958, plaintiff instituted this ordinary action for the recovery of said sum, plus 5 per cent surcharge and interest at the rate of 1 per cent a month from June 1, 1957, aside from the costs. In the stipulation of facts submitted by the parties plaintiff agreed to reduce the surcharge set forth in the assessment notice from P9,711 to P4,855.50. Hence, the aforementioned decision, from which Gamboa has appealed upon the ground: (1) that the assessment in question is null and void; (2) that the lower court had no jurisdiction to try and decide this case; and (3) that he had not made the alleged net profit of P68,000 in 1952.

The first contention is based upon section 51 (d) of our Tax Code reading:

"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 assessments 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." (*Italic supplied.*)

and the fact that the deficiency income tax assessment in the case at bar was made on May 13, 1957, or a little over three (3) years after Gamboa's income tax return for 1952 was due (March 30, 1953) or had been filed (March 20, 1953). However, as stated in defendant's brief, this Court has already held that the three years limitation in said section 51 (d) "was not & limitation upon the right of the government to sue for unpaid taxes, but was at most a. limitation upon the right of the collecting officers to make assessments and enforce the payment by the summary statutory proceedings. * * * " (*Collector vs. Villegas*, 56 Phil.. 554; citing *Homes*, *Federal Income Tax*, 2d edition, p. 581; *Phil. Sugar Estate Dev. Co. vs. Posadas*, 68 Phil. 216).

Moreover, section 331 and 332 (a) of said Tax Code provide:

"SEC. 331—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. * * *." (*Italic supplied.*)

"SEC. 332 (a)—In the case of a false or fraudulent return 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."

Hence, in *Collector of Internal Revenue vs. A. P. Reyes*, 100 Phil., 822, 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: "* * *. 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 vs. Alhambra Cigar & Cigarettes Manufacturing Co.*, G. R. Nos. L-12026 & L-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*, 100 Phil., 327; 53 Off. Gaz. 645; *Collector of Internal Revenue vs. Zulueta*, 100 Phil., 872; 53 Off. Gaz., 6532; *Sambrano vs. Court of Tax Appeals*, 101 Phil., 1; 53 Off. Gaz., (15) 4839; *Collector of Internal Revenue vs. Aznar*, 102 Phil., 979; 56 Off. Gaz. [11] 2386—after assessment made "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 defendant 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.

In support of defendant's second contention, it is urged that this case was cognizable, not by the Court of First Instance of Negros Occidental, but by the Court of Tax Appeals. The cases relied upon by appellant (*Ledesma vs. Court of Tax Appeals et al.*, 102 Phil., 931; 55 Off. Gaz. (16) 2883; *Blaquera vs. Judge Rodriguez*, 103 Phil., 267; 55 Off. Gaz., [10] 1740; *Blaquera vs. Judge Rodriguez*, 103 Phil., 335; 54 Off. Gaz., [38] 8632; *Blaquera vs. Rodriguez*, (103 Phil., 511) refer, however, to assessments contested by the taxpayer in accordance with the provisions of section 11 of Republic Act No. 1125, which we quote:

"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.

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

Defendant herein has not taken the steps required in this provision. As a consequence, the deficiency income tax assessment upon which plaintiff's complaint relies must be considered uncontested and said pleading merely sets forth an ordinary action for the recovery of a sum of money, which, by reason of its amount, is cognizable by courts of first instance, and beyond the jurisdiction of the Court of Tax Appeals. (*Ventanilla vs. Board of Tax Appeals*, 98 Phil, 988.)

Defendant insists that he had not made any profit in the sale of the parcels of land above referred to, plaintiff having admitted, "for the sake of argument", in the stipulation of facts, that he had constructed and introduced improvements worth P68,000, which is the difference between the purchase price and the sale of said lands. This admission "for the sake of argument" does not amount however, to the admission of a fact. Moreover, defendant seeks to contest the accuracy of the deficiency income tax assessment in question, which is feasible only in the

manner and within the period stated in section 11 of Republic Act No. 1125. Having failed to avail himself of the benefits of this provision, said assessment became final and it is now too late for the defendant to assail it (See *Blaquieta vs. Rodriguez*, supra; *Republic vs. Del Rdsario*, 105 Phil., 277; 57 Off. Gaz. [31]5543; *Republic vs. Uy Ham*, L-13809, October 20, 1959; *San Juan vs. Vasquez*, supra, p. 85.

Wherefore, the decision appealed from should be, as it is hereby, affirmed with costs against defendant Ernesto S. Gambao. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

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