

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. JOSE CONCEPCION, AS ANCILLARY ADMINISTRATOR OF THE ESTATE OF MARY H. MITCHELL-ROBERTS (DECEASED), AND JACK F. MITCHELL-ROBERTS...

G.R. No. L-23912. March 15, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this petition for the review of a decision of the Court of Tax Appeals, the decisive question, one of first impression, is whether a taxpayer who had lost his right to dispute the validity of an assessment, the period for appealing to the Court of Tax Appeals having expired, as found by such Court in a previous case in a decision now final, and who thereafter paid under protest could then, relying on Section 306 of the National Internal Revenue Code[1] sue for recovery on the ground of its illegality? The Court of Tax Appeals, in the decision under review, answered in the affirmative. We hold otherwise and accordingly reverse.

In CTA Case No. 669, respondents Jose Concepcion, as ancillary administrator of the estate of Mary H. Mitchell Roberts, and respondent Jack F. Mitchell-Roberts, husband of the deceased, sought a refund of the sum of P1,181.33 and P2, 616.10 representing estate and inheritance taxes on 50 shares of stock of Edward J. Nell Company issued in the names of both spouses "as joint tenants with full rights of survivorship and not as tenants in common." The above assessment was made by petitioner Commissioner of Internal Revenue on the ground that there was a transmission to the husband of one-half share thereof upon the death of the wife, the above shares being conjugal property. Respondents maintained on the other hand that there was no transmission of property since under English law, ownership of all property acquired during the marriage vests in the husband. Moreover, the shares of stock were issued to the spouses "as joint tenants with full rights of survivorship and not as tenants in common." Not being agreeable to the theory entertained by petitioner Commissioner of Internal Revenue, respondents, in a previous case, CTA Case No. 168, appealed such a decision under Republic Act No. 1125. The Court of Tax Appeals, however, dismissed such an appeal as the petition for review because it was filed beyond the reglementary period of 30 days. That decision, rendered on April 29, 1957, became final.

What next transpired was set forth in the appealed decision, CTA Case No. 669, thus: "Whereupon, on June 14, 1957, petitioners paid the taxes in question amounting to P1,181.33 (as estate tax) and P2, 616.10 (as inheritance tax), inclusive of delinquency penalties, and at the same time filed a claim for the refund of said amounts (Exh. A. BIR rec. pp. 83-87). In the claim for refund, petitioners also invoked the reciprocity provision of Section 122 of the Revenue Code (CTA rec. pp. 92-93). Without waiting for the decision of respondent on the claim for refund, petitioners instituted the instant appeal on June 11, 1959 in order to avoid the prescriptive period of two years provided for in Section 306 of the Revenue Code." [2]

Petitioner Commission of Internal Revenue, before the Court' of Tax Appeals, raised as one of its defenses the fact that respondents were "estopped from denying the legality and correctness of the assessment for estate and

inheritance taxes in view of the fact that they paid the same in pursuance of a decision of the Commissioner which has become final, executory and demand-able as a result of the dismissal of CTA Case No. 168, * * *." [3] Such a defense was considered unavailing by the Court of Tax Appeals by virtue of its decision in *La Paz y Buen Viaje Cigar & Cigarette Factory v. Commissioner of Internal Revenue*. [4] It was the view of the Court of Tax Appeals that with no procedural obstacle to stand in the way and with the spouses, both non-resident English subjects, being married in England, their pro-property relation thus being governed by English law, the national law of the husband, by virtue of which there was no transmission of property from wife to husband, governs, with the result that no tax was demandable. Petitioner Commissioner of Internal Revenue was ordered to refund the inheritance and estate taxes paid in the amount of P3, 797.43. Hence this petition for review.

The Court of Tax Appeals in relying on its previous decision in the *La Paz y Buen Viaje Cigar & Cigarette Factory* and ruling against the defense of the finality of the assessment, after the dismissal of the appeal in CTA No. 168 in view of the failure to have it filed within the reglementary period of thirty (30) days, must have been of the belief that this Court, in affirming its decision on March 30, 1963, without however passing on the above question, did give an indication of its probable thinking on the matter. Such is not a correct appraisal of the situation however, for on March 30, 1963, the very same day its *La Paz y Buen Viaje* decision was affirmed, the opinion in *Republic of the Philippines v. Lopez* [5] was handed down. This is an appeal by the Republic from an order of the Court of First Instance of Baguio dismissing its complaint for collection of a deficiency income tax against defendant Lopez on the ground that the action had prescribed. After noting that prescription as a defense did not lie, this Court, in an opinion by Justice J. B. L. Reyes, likewise stated: "Another ground for reversing the dismissal of the complaint is that the proper remedy of the taxpayer against the assessment complained of was to appeal the ruling of the Collector to the Court of Tax Appeals. * * *." The precise question in this litigation then, while undoubtedly one of novelty, is not without illumination supplied by radiations from past decisions.

For subsequently, in *Republic v. Lim Tian Teng Sons & Co., Inc.*, [6] the above doctrine was reaffirmed categorically in this language: "Taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little-sense." Once the matter has reached the stage of finality, in view of the failure to appeal, it logically follows, in the appropriate language of Justice Makalintal, in *Morales v. Collector of Internal Revenue*, [7] that it "could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy."

In the same way then that the expedient of an appeal from a denial of a tax request for cancellation of warrant of distraint and levy cannot be utilized for the purpose of testing the legality of an assessment, which had become conclusive and binding on the taxpayer, there being no appeal, the procedure set forth in Section 306 of the National Internal Revenue Code is not available to revive the right to contest the validity of an assessment once the same had been irretrievably lost not only by the failure to appeal but likewise by the lapse of the reglementary period within which to appeal could have been taken. Clearly then, the liability of respondent Concepcion as an ancillary administrator of the estate of the deceased wife and of respondent Mitchell-Roberts as the husband for the amount of P1,181.33 as estate tax and P2,616.10 as inheritance tax was beyond question. Having paid the same, respondents are clearly devoid of any legal right to sue for recovery. The decision of the Court of Tax Appeals ordering petitioner Commissioner of Internal Revenue to refund the above total sum of P3,797.43 cannot stand.

WHEREFORE, the decision of the respondent Court of Tax Appeals under review is reversed. With costs against respondents.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Concepcion, C.J., on official leave.

[1] Section 306 provides: "Recovery Of Tax Erroneously Or Illegally Collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal-revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

[2] Brief for the Petitioner, Decision of the Court of Tax Appeals, Appendix A, p. 41.

[3] *Id.*, p. 42.

[4] Court of Tax Appeals Case No. 700, August 4, 1960. The decision of the respondent Court of Tax Appeals was affirmed by this Court in *La Paz y Buen Viaje Cigar & Cigarette v. Collector of Internal Revenue*, G.R. No. L-17830, promulgated March 30, 1963. The opinion however by the then Justice, now Chief Justice, Concepcion passed sub silentio on the question of whether the failure on the part of a taxpayer to file its appeal within the reglementary period of 30 days under Republic Act No. 1125 closed all avenues available to the taxpayer who disputes the legality of the assessment.

[5] G.R. No. L-18007, March 30, 1963.

[6] G.R. No. L-21731, March 31, 1966, the opinion being penned by Justice Bengzon.

[7] G.R. No. L-16759, August 31, 1966.

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