

ELPIDIO YABES AND SEVERINO YABES, PETITIONERS, VS. THE HON. NAPOLEON FLOJO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH II, COURT OF FIRST INSTANCE OF CAGAYAN AND THE REPUBLIC ...

G.R. No. L-46954. July 20, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

The lone issue raised in this petition for certiorari and prohibition, which seeks to annul the Order dated June 22, 1971 issued by the Court of First Instance of Cagayan in Civil Case No. II-7, which denied the motion to dismiss said case dated March 25, 1971, filed by petitioner;[1] the Order dated June 7, 1977 of the respondent District Judge of said Court in the same civil case denying petitioners' motion for reconsideration of the said Order of denial dated June 22, 1971;[2] and the Order dated July 21, 1977, issued by the said respondent Judge of said Court in the same civil case denying petitioners' motion for leave to file a second motion for reconsideration of the aforesaid order of denial,[3] is whether or not respondent Court of First Instance can lawfully acquire jurisdiction over a contested assessment made by the Commissioner of Internal Revenue against the deceased taxpayer Doroteo Yabes, which has not yet become final, executory and incontestable, and which assessment is being contested by petitioners in the Court of Tax Appeals, Case No. 2216, and still pending consideration.

After this Court required respondents to comment on the petition and issued a temporary restraining order in the Resolution dated September 28, 1977,[4] the Solicitor General, in his Comment dated November 21, 1977, submitted that the petition be given due course, and thereafter judgment be rendered setting aside the questioned orders issued by the respondent Court of First Instance of Cagayan in Civil Case No. 11-7, directing said lower Court to hold in abeyance any action or proceeding in Civil Case No. II-7 until after the Court of Tax Appeals shall have finally decided CTA Case No. 2216.[5] The Solicitor General also filed a Manifestation dated November 22, 1977, stating that "in their Comment dated November 21, 1977, they have limited their appearance as counsel only for the Republic of the Philippines and not for the respondent Judge on the ground that they do not agree with the latter's orders which are being questioned in the instant petition." [6]

Undisputed facts of record are as follows:

(1) Doroteo Yabes of Calamaniugan, Cagayan, who was for sometime an exclusive dealer of products of the International Harvester Macleod, Inc., received on or about May 1, 1962, a letter from the Commissioner of Internal Revenue dated March 27, 1962, demanding payment of the amount of P15,976.81, as commercial broker's fixed and percentage taxes plus surcharges and the sum of P2,530 as compromise penalty allegedly due from Yabes for the years 1956-1960;[7]

(2) On May 11, 1962, Doroteo Yabes, through his counsel, filed with the Commissioner's Office his letter dated May 10, 1962, protesting the assessment of commercial broker's fixed and percentage taxes plus penalties against him on the ground that his agreements with the International Harvester Macleod, Inc. were of

purchase and sale, and not of agency, hence he claimed he was not liable to pay such kind of taxes;[8]

(3) Thereafter, there ensued an exchange of correspondence between the lawyers of Doroteo Yabes and the Commissioner; the Commissioner in a letter dated August 3, 1962, informed Doroteo Yabes that he acted as a commercial broker "in accordance with the ruling of this Office in the case of Cirilo D. Constantino;"[9] in turn, Doroteo Yabes, in a letter dated August 22, 1962, requested for the reinvestigation or review of the case by the appellate division of the Bureau of Internal Revenue in accordance with standing rules, regulations or practice on the matter;[10] Yabes also wrote the Commissioner on August 24, 1962, requesting that the appeal be held in abeyance pending final decision of the Case of Cirilo D. Constantino;[11] in reply, the Commissioner informed Doroteo Yabes in a letter dated September 18, 1962, that the latter's request for reinvestigation was denied on the ground that he has "not submit-~~ted~~ any evidence to offset the findings of this Office as to warrant a reinvestigation thereof";[12] but eight days later or on September 26, 1962, the Commissioner wrote a letter advising Doroteo Yabes that "the administrative appeal x x x will be held in abeyance pending the resolution of the issues in a similar case (obviously referring to the aforesaid Constantino case)";

(4) To give time for the Commissioner to study the case and several other cases similar thereto, the lawyers of Doroteo Yabes agreed to file, and their client, Doroteo Yabes did file a tax waiver on October 20, 1962, extending the period of pres-~~cription~~ to December 31, 1967;[13]

(5) Doroteo Yabes died on March 13, 1963 and no estate proceedings were instituted for the settlement of his estate; his widow also died during the pendency of the case; the petitioners are the children of the deceased taxpayer;[14]

(6) On March 14, 1966, the Court of Tax Appeals decided the Constantino "test" case. The Court of Tax Appeals ruled that agreements entered into by Constantino with the International Harvester Macleod, Inc. were of purchase and sale, and not of agency, hence no commercial broker's fixed and percentage fees could be collected from the said taxpayer; however this Court on February 27, 1970, in G.R. No. L-25926 reversed the Court of Tax Appeals and ruled in favor of the Commissioner of Internal Revenue;[15]

(7) After a lapse of about five years, the heirs of the deceased Doroteo Yabes, through their lawyers, received on August 4, 1967, a letter from the Commissioner dated July 27, 1967, requesting that they "waive anew the Statute of Limitations" and further confirming the previous understanding that the final resolution of the protest of the deceased Doroteo Yabes was "being held in abeyance until the Supreme Court renders its decision on a similar case involving the same factual and legal issues brought to it on appeal" (referring to the Constantino "test" case);[16] conformably with the request of the Commissioner, the heirs of Doroteo Yabes filed a revised waiver further extending the period of prescription to December 31, 1970;[17]

(8) Thereafter, no word was received by the petitioners or their lawyers during the interim of more than three (3) years, but on January 20, 1971, petitioners as heirs of the deceased Doroteo Yabes received the summons and a copy of the complaint filed by the Commissioner's on December 4, 1970 with the Court of First Instance of Cagayan which seeks to collect from the petitioners the sum of P15,976.82, as deficiency commercial broker's fixed and percentage taxes, including surcharges and interest thereon, due from their predecessor-in-interest, Doroteo Yabes, by reason of the latter's income derived from transactions as dealer of the products of the International Harvester Macleod, Inc.;

(9) Taking the complaint as the final decision of the Commissioner on the disputed assessment against the deceased taxpayer Doroteo Yabes, petitioners filed on February 12, 1971, a petition for review of said disputed assessment with the Court of Tax Appeals;[18] later on the same day, February 12, 1971, petitioners filed their answer to the complaint of the Commissioner before the Court of First Instance of Cagayan;[19] and alleged therein, by way of special defense, that the Court of Tax Appeals has exclusive jurisdiction of the action and that there is another action of the same nature between the parties relating to the same assessment pending before the Court of Tax Appeals;

(10) On the other hand, the Commissioner filed a motion to dismiss dated March 24, 1971, with the Court of Tax Appeals in CTA Case No. 2216, and subsequently filed a memorandum in support of said motion to dismiss, on the ground that the assessment against Doroteo Yabes had already become final, executory and incontestible, and the Court of Tax Appeals had no jurisdiction over the case;

(11) On March 25, 1971, petitioners filed a formal motion to dismiss Civil Case No. II-7 with the Court of First Instance of Cagayan, on the grounds that said Court has no jurisdiction over the case and that there is another action pending between the same parties for the same cause before a competent court;[20]

(12) On June 22, 1971, the respondent Court of First Instance of Cagayan, through its former presiding judge issued the questioned order in Civil Case No. II-7, which is the main subject of the instant petition, denying the petitioners' motion to dismiss on the ground that the petitioners "have already made a previous answer wherein they categorically admitted the jurisdiction of the court over the subject matter and the Court believes that, granting for the sake of argument, there is a pending action between the same parties for the same cause yet the judgment which may be rendered in the first cited case does not necessarily bar the present action";[21]

(13) On September 1, 1972, the respondent Court of First Instance of Cagayan issued an order holding the trial of Civil Case No. II-7, in abeyance upon the joint motion of the parties;[22]

(14) On September 29, 1974, the Court of Tax Appeals denied the Commissioner's motion to dismiss CTA Case No. 2216.[23] Accordingly, on October 30, 1975, the Commissioner filed his Answer to the petition for review.[24]

(15) On December 17, 1976, however, the Court of First Instance of Cagayan, this time presided by the respondent Judge Napoleon Flojo, upon motion of counsel for the plain-tiff therein, set Civil Case No. II-7 for trial on January 27 and 28, 1977.[25]

(16) On February 9, 1977, the respondent Judge Flojo denied the petitioners' motion to suspend further proceedings and set the trial of the case for March 5, 1977.[26]

(17) On May 3, 1977, the herein petitioners filed a motion for the reconsideration of the order issued on June 22, 1971 and for a ruling on their affirmative defense that the Court of First Instance of Cagayan has no jurisdiction over the case.[27]

(18) On June 7, 1977, the respondent Judge denied the aforementioned motion for reconsideration for lack of merit, and set the trial of the case for June 23, 1977.[28]

(19) On July 8, 1977, the petitioners filed a motion seeking leave to file a second motion for reconsideration of the order issued on June 7, 1977,[29] attaching thereto a copy of their motion for reconsideration.[30] The motions were denied on July 21, 1977, and trial was set for August 18 and 19, 1977[31] which was postponed to September 23, 1977.[32]

Hence, the present recourse. As prayed for, a temporary restraining order was issued on September 28, 1977.[33]

As to the issue of whether or not the assessment made by the Commissioner of Internal Revenue against the deceased taxpayer Doroteo Yabes, as contained in the letter dated March 27, 1962, has become final, executory and incontestable, after Doroteo Yabes had received the Commissioner's letter dated August 3, 1962, denying the latter's protest against the said assessment on September 18, 1962 and his failure to appeal therefrom within the 30-day period contemplated under Section 11, of Republic Act 1125, We are constrained to agree with the Court of Tax Appeals, when it denied the Commissioner's motion to dismiss CTA Case No. 2216, that:

"the period for appeal to this Court should not be counted from September 18, 1962. In a letter of July 27, 1967, respondent informed petitioners that a resolution of their protest was being held in abeyance until the Supreme Court renders a decision on a similar case 'involving the same factual and legal issues'. As a matter of

fact, in an earlier letter dated September 26, 1962, respondent also informed petitioners' counsel that 'administrative appeal for and in behalf of their clients will be held in abeyance pending resolution of the issues on a similar case which was appealed by you to the Court of Tax Appeals'. It is thus clear in these letters that respondent reconsidered the finality of his decision of August 3, 1962, assuming *arguendo* that the letter had a tenor of finality."^[34]

The Court of Tax Appeals in CTA Case No. 2216, stated further:

"The records show that a warrant of distraint and levy was issued on October 2, 1970. Had this been served on Doroteo Yabes, it would have been equivalent to a final decision, x x x. There is, however, nothing to show that it was ever served on Yabes. Neither is there anything in the record to show that a formal decision of denial was made after respondent's letter of July 27, 1967."^[35]

There is no reason for Us to disagree from or reverse the Court of Tax Appeals' conclusion that under the circumstances of this case, what may be considered as final decision or assessment of the Commissioner is the filing of the complaint for collection in the respondent Court of First Instance of Cagayan, the summons of which was served on petitioners on January 20, 1971, and that therefore the appeal with the Court of Tax Appeals in CTA Case No. 2216 was filed on time.^[36] The respondent Court of First Instance of Cagayan can only acquire jurisdiction over this case filed against the heirs of the taxpayer if the assessment made by the Commissioner of Internal Revenue had become final and incontestable. If the contrary is established, as this Court holds it to be, considering the aforementioned conclusion of the Court of Tax Appeals on the finality and incontestability of the assessment made by the Commissioner is correct, then the Court of Tax Appeals has exclusive jurisdiction over this case. Petitioners received the summons in Civil Case No. II-7 of the respondent Court of First Instance of Cagayan on January 20, 1971, and petitioners filed their appeal with the Court of Tax Appeals in CTA Case No. 2216, on February 12, 1971, well within the thirty-day prescriptive period under Section 11 of Republic Act No. 1125. The Court of Tax Appeals has exclusive appellate jurisdiction to review on appeal any decision of the Collector of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code.^[37]

For want of jurisdiction over the case, the Court of First Instance of Cagayan should have dismissed the complaint filed in Civil Case No. II-7.

The recommendation of the Solicitor General that the lower court hold in abeyance any action or proceeding in Civil Case No. II-7 until after the Court of Tax Appeals shall have finally decided CTA Case No. 2216, is untenable since the lower court has no jurisdiction over the case. Jurisdiction over an action includes jurisdiction over all interlocutory matters incidental to the case and deemed necessary to preserve the subject matter of the suit or protect interests of the parties. Absent jurisdiction over the case, it would be improper for the Court of First Instance of Cagayan to take cognizance over the case and act upon interlocutory matters of the case, as well.

The dismissal of the complaint, however, is not sufficient. The ends of justice would best be served by considering the complaint filed in Civil Case No. II-7 not only as a final notice of assessment but also as a counterclaim in CTA Case No. 2216 in order to avoid multiplicity of suits, as well as to expedite the settlement of the controversy between the parties. After all, the two cases involve the same parties, the same subject matter, and the same issue, which is the liability of the heirs of the deceased Doroteo Yabes for commercial broker's fixed and percentage taxes due from the said deceased.

WHEREFORE, the petition is granted and the writs prayed for are hereby issued. The questioned orders dated June 22, 1971, June 7, 1977, and July 21, 1977 are hereby annulled and set aside and the complaint filed in Civil Case No. II-7 of the Court of First Instance of Cagayan, entitled: "Republic of the Philippines, plaintiff, versus Nicolasa Jurado Yabes, et al., defendants," should be, as it is hereby, dismissed, the same to be transferred to the

Court of Tax Appeals to be considered therein as a counterclaim in CTA Case No. 2216. The temporary restraining order heretofore issued is hereby made permanent. Without costs.

SO ORDERED.

Barredo, (Chairman), Guerrero, Abad Santos, and Escolin, JJ., concur. Aquino, J., see concurrence. De Castro, J., voted to dismiss the complaint filed in the CFI, as well as to ????? all the questioned orders of said Court.

[1] Rollo, pp. 16-17.

[2] Id., pp. 18-19.

[3] Id., pp. 20-21.

[4] Id., p. 100.

[5] Id., p. 120.

[6] Id., p. 123.

[7] Id., p. 74.

[8] Id., pp. 75-79.

[9] Id., p. 38.

[10] Id., p. 39.

[11] Id., p. 40.

[12] Id., p. 41.

[13] Id., p. 44.

[14] Id., p. 113.

[15] Id., p. 113.

[16] Id., pp. 45-46.

[17] Id., p. 47.

[18] Id., pp. 48-52.

[19] Civil Case No. II-7.

[20] Rollo, pp. 22-30.

[21] Id., pp. 16-17.

[22] Id., p. 87.

[23] Id., p. 88.

[24] Id., p. 115.

[25] Id., p. 92.

- [26] Id., p. 94.
[27] Id., p. 53.
[28] Id., p. 18.
[29] Id., p. 56.
[30] Id., p. 58.
[31] Id., p. 20.
[32] Id., p. 97.
[33] Id., p. 100.
[34] Id., p. 91.
[35] Id., p. 92.
[36] Id., p. 92.
[37] *Blaquera vs. Rodriguez*, 103 Phil. 511.

CONCURRING OPINION

AQUINO, J.:

In 1970, the Government sued the heirs of Doroteo Yabes (he died in 1963), namely, his widow, Nicolasa, and his three children named, Elpidio, Severina and Julita, for the recovery of the sum of P15,976.82 as commercial broker's fixed and percentage taxes for the period from 1956 to 1960 (Civil Case No. II-7 of the CFI of Cagayan).

The suit, which was brought to stop the running of the prescriptive period, was filed on the theory that the tax assessment was uncontested. If contested, it should have been filed in the Court of Tax Appeals.

Ordinarily, such an action is not maintainable against the heirs because the remedy for asserting money claims against the deceased is to file a claim in the administration proceeding for the settlement of his estate, as indicated in Rule 86 of the Rules of Court.

However, the estate of the deceased is not under administration and his heirs had settled it extrajudicially. Hence, Solicitor General Felix Q. Antonio and his assistants deemed it proper to sue directly the decedent's heirs.

The taxes in question were assessed during the tax-payer's lifetime. The prescriptive period was extended and the enforcement of the taxes was held in abeyance by the Commissioner of Internal Revenue upon agreement with the Yabes heirs to await the outcome of a test case, the Constantino case, regarding the same kind of tax liability which was pending in this Court. After the Constantino case was decided in the Government's favor (*Commissioner of Internal Revenue vs. Constantino*, L-25926, February 27, 1970, 31 SCRA 779), the State filed the aforementioned collection case, Civil Case No. II-7.

The Yabes heirs considered the filing of the collection suit as the Commissioner's decision which they could contest in the Tax Court (a view which was later sustained by the Tax Court). Hence, on February 12, 1971, the Yabes heirs filed a petition for review with the Tax Court. They contended that Doroteo Yabes was not a commercial broker. They asked for the cancellation of the tax assessment (CTA Case No. 2216).

Respondent judge erred in setting Civil Case No. II-7 for trial. In my opinion, Civil Case No. II-7 should be transferred to the Tax Court. No rule allows the transfer to the Tax Court of a tax case pending in the Court of First Instance and vice-versa.

But under the peculiar situation in this case, the pragmatic, expedient and sensible thing to do is to transfer Civil Case No. II-7 to the Tax Court and to consider it as a counterclaim to CTA Case No. 2216. The two cases involve the same parties, the same subject-matter and the same issue: the liability of the Yabes heirs for the commercial broker's fixed and percentage taxes allegedly due from Doroteo Yabes.

That may be a novel and unprecedented solution but we have to be practical and should avoid duplicity of suits. Since it now appears that the Government erroneously assumed in filing Civil Case No. II-7 in the Court of First Instance that the tax assessment is uncontested when actually it is contested, then that case should be consolidated with the case in the Tax Court which is the proper forum for deciding contested tax assessments.

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