

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. VISAYAN ELECTRIC COMPANY AND THE COURT OF TAX APPEALS, RESPONDENTS.

G. R. No. L-24921. March 31, 1967

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In a judgment where the Tax Court absolved the taxpayer from the payment of -

(a) P2,443.30 as deficiency income tax, and

(b) P35,419.05 as 25% surcharge for late payment of franchise tax, but directed the taxpayer to pay the government -

(c) additional residence tax amounting to P3,850.00:

May the government enforce the judgment as to the last sum of P3,850.00, where neither government nor taxpayer questions payment thereof on ap-peal? The Tax Court's answer is in the negative. Hence, the government's petition for certiorari and mandamus to compel issuance of a writ of execution for the aforesaid sum of P3,850.00.

First, to the background facts. Required by the Commissioner of Internal Revenue to pay deficiency income tax from 1953 to 1958 amounting to P2,443.30; 25% surcharge for late payment of franchise tax from 1957 to 1959, P35,419.05; and additional residence tax from 1954 to 1959, P3,850.00, respondent Visayan Electric Company went to the Court of Tax Appeals. There, judgment was rendered, as heretofore stated, rejecting the government's claim to the sums of P2,443.30 and P35,419.05. The Tax Court, however, directed Visayan Electric Company to pay additional residence tax for the period from 1954 to 1959 in the sum of P3,850.00.[1]

The Commissioner appealed the judgment solely and exclusively as it freed the taxpayer from the payment of the sums of P2,443.30 and P35,419.05 just adverted to. That case is pending before this Court.[2]

Upon the other hand, the taxpayer did not appeal from the decision which adjudged it liable to pay the said additional residence tax of P3,850.00.

Pending such appeal, the Commissioner, on January 29, 1965, moved for the execution of the judgment for P3,850.00. By resolution of May 31, 1965, the Tax Court rejected the motion. And on August 13, 1965, on motion to reconsider, the Tax Court stood its ground.

1. Execution "is the fruit and end of the suit, and is very aptly called the life of the law".[3]

A judgment becomes final and executory by operation of law, not by judicial declaration. Finality of judgment, in turn, becomes a fact upon the lapse of the reglementary period for appeal, if no appeal is perfected.[4] In such a situation, the prevailing party is entitled as a matter of right to a writ of execution;[5] and issuance thereof is the

court's ministerial duty, compellable by mandamus.[6] The precepts just recited are as true in ordinary civil actions as they are in tax cases.[7]

2. As we analyze the lower court's decision, we find that adjudication was made on three (3) different kinds of taxes: income tax, franchise tax, and residence tax. The decision made separate findings of fact and conclusions of law as to each one of them. The three sums involved are separable, one from the two others. Indeed, one item has no bearing on any other. In plain words, the judgment for the payment of P3,850.00 will remain as it is. The taxpayer cannot escape liability therefor, whether the appeal taken results in affirmance or reversal. For, the correctness of the judgment for the said sum of P3,850.00 has passed out of the control of the courts.

We, accordingly, rule that where a portion of one single judgment (1) is not the subject of appeal, (2) is separable and distinct from and will not be affected by the appeal in other respects, (3) needs no further proceedings and (4) has acquired finality, the same may be enforced by execution, as a matter of right.[8]

3. But respondents argue that because Section 4, Rule 44 of the Rules of Court, provides that appeal "shall stay" the decision of the Court of Tax Appeals, the entire judgment herein is stayed by the Commissioner's appeal. We do not think so. Upon the facts, the decision which is stayed refers to that part thereof which is the subject-matter of the appeal, and no more.

4. Equitable considerations demand prompt execution of the judgment. For, the sum of P3,850.00, according to the judgment, does not earn interest. The longer execution is delayed, the greater the prejudice to the government.

Upon the view we take of this case, the petition for certiorari and mandamus is granted; the resolutions of the Court of Tax Appeals of May 31, 1965 and August 13, 1965 in CTA Case No. 1024, entitled "Visayan Electric Company, petitioner, versus Commissioner of Internal Revenue, respondent", are revoked and set aside; the Court of Tax Appeals is directed to grant the writ of execution prayed for by herein petitioner.

Costs against respondent Visayan Electric Company.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Bengzon, Zaldivar, and Castro, JJ., concur.
Makalintal, J., took no part.

[1] CTA Case No. 1024, Court of Tax Appeals, entitled "Visayan Electric Company, petitioner, versus Commissioner of Internal Revenue, respondent".

[2] G.R. No. L-22611, entitled "Commissioner of Internal Revenue, petitioner, versus Visayan Electric Company and The Court of Tax Appeals, respondents."

[3] Ipekjdian Merchandising Co., Inc. vs. Court of Tax Appeals, G.R. No. L-14791, May 30, 1963, citing Bank of U.S. vs. Halstead U. S. Supreme Court Reports, 6 Law ed., pp. 264-267, 268.

[4] Sawit vs. Rodas, 73 Phil. 310, 315; Daquis vs. Bustos, 94 Phil. 913, 917.

[5] Section 1, Rule 39, Rules of Court; De Fiesta vs. Llorente, 25 Phil. 554, 565; Lim vs. Singian, 37 Phil. 817, 823-824; Philippine Trust Co. vs. Santamaria, 53 Phil. 463, 467; Ebero vs. Cañizares, 79 Phil. 152, 155; Manansala vs. Narvasa, 101 Phil. 1260-1261; De los Angeles vs. Victoriano, G.R. No. L-13632, July 27, 1960.

[6] Hidalgo vs. Crossfield, 17 Phil. 466, 469-470; Amor vs. Jugo, 77 Phil. 703, 706-707; Buenaventura vs. Garcia,

78 Phil. 759, 762.

[7] By Rule 16 of the Rules of the Court of Tax Appeals, promulgated pursuant to Section 8 of the Charter of the Court of Tax Appeals, Republic Act 1125, "[t]he provisions of the Rules of Court applicable to proceedings before the Courts of First Instance shall, in-sofar as they may not be inconsistent with the provisions of Republic Act 1125 and of [said] rules, be applicable to cases pending" before the Court of Tax Appeals. There are no specific provisions on executions of judgments of the Court of Tax Appeals, either in Republic Act 1125 or in the Rules of the Court of Tax Appeals.

At all events, this Court has pronounced that "[t]he rule of execution of judgment under the rules [of court] should govern all kinds of execution of judgment, unless it is otherwise provided in other laws". *Sagucio vs. Bulos*, G.R. No. L-17608-09, July 31, 1962.

[8] *Zulueta vs. Paredes*, 63 Phil. 1, 4-5; *Arive vs. Ybañez*, 92 Phil. 1069, 1070; *Facundo vs. Pabalan*, G.R. No. L-17746, and *Ulep vs. Carbonell*, G.R. No. L-17807, jointly decided on January 31, 1962.

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