

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. CHING LAK ALIAS ANG YOU CHU DEFENDANT-APPELEE.

G.R. No. L-10609. May 23, 1958

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

On March 31, 1954, the defendant-appellee was charged with having violated Section 5 (b) in connection with Section 8 of Republic Act No. 55 in an information which reads as follows:

"That on or about the 17th day of February, 1948, in the City of Manila, Philippines, the said accused did then and there willfully and unlawfully fail and refuse to pay, and continue to do so, the war profits taxes due from him in favor of the Republic of the Philippines in the total amount of P33,643.651 Philippine currency."

After his arrest, he was arraigned, duly assisted by his attorney, and entered the plea of not guilty. Thereafter he filed a motion to quash the information on the ground that the criminal action or liability charged therein had been extinguished by prescription, and the court, after proper hearing, sustained the motion.

The provisions of Sections 5 (b) and 8 of Republic Act No. 55 are as follows:

"SEC. 5 (b) Time of Payment.-The total amount of the tax imposed by this Act shall be paid on or before the last day of the sixth month following the approval hereof. The deficiency tax due on the amended return required to be filed under section 4 (b) of this Act on account of the receipt of payment for war damage or other claims shall be paid within thirty days from the receipt of the assessment of the Collector of Internal Revenue. To any sum or aims due and unpaid after the date prescribed for the payment of the same there shall be added the surcharge of fifteen per centum on the amount of the tax unpaid and interest at the rate of one per centum per month upon said tax from the time the same becomes due,"

"SEC. 8. Penalty.-Any individual or responsible officer of a partnership, company or corporation violating any provision of this Act or of the regulations promulgated hereunder, or any person conniving with such individual or responsible officer for the purpose of evading the tax herein imposed, shall, upon conviction, be punished by imprisonment from five years to twenty years or a fine of not less than five thousand pesos but not more than thirty thousand pesos, or both, in the discretion of the court."

Evidently, in the information quoted above, the accused herein was charged with an offense against a law administered by the Collector of Internal Revenue, for it clearly appears from the provisions of Republic Act No. 55, especially from Sec. 9 thereof, that the execution of all its provisions was entrusted to the Collector of Internal Revenue; and in accordance with Sec. 1 of Act 3585 which amended Act 3326, all offenses against any law or part of law administered by the Collector of Internal Revenue shall prescribe after five years.

Act 3326, enacted on December 4, 1926, is "an Act to establish periods of prescription for violations penalized by special acts and municipal ordinances and to provide when prescription shall begin to run." It reads as follows:

"SECTION 1. Violations penalized by special acts, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment

for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after twelve years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months,

"SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

"The prescription shall be interrupted when proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

"SEC. 3. For the purposes of this Act, special acts shall be acts defining and penalizing violations of the law not included in the Penal Code.

"SEC. 4. This Act shall take effect on its approval."

Act No. 3326 was amended by Act No. 3585 which reads as follows:

"SECTION 1. Violations penalized by special acts shall, unless otherwise proved in such acts, prescribe in accordance with the following rules: (a) after a year for offences punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for not more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offence punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years: Provided, however, That all offences against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. Violations penalized by municipal ordinances shall prescribe after two months."

Acts 3226 and 3585 were not repealed by Act otherwise known as the Revised Penal Code; their provisions remained intact and in full force. It follows that Article 90 of the Revised Penal Code providing for the prescription of crimes would not apply to prescription of violations of special laws or part of laws administered by the Bureau of Internal Revenue, for Article 10 of said law (Act 3815) clearly provides as follows:

"Offenses not subject to the provisions of this Code.-Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary."

In view of the foregoing provisions, defendant herein filed his motion to quash on the ground that since February 7, 1948 up to the filing of the information on March 31, 1954, more than five years have elapsed, contending that if he had ever violated Republic Act No. 55, that violation must have taken place either on February 7, 1948, as alleged in the information, or on April 30, 1947, which was the last day of the sixth month following the approval of said Act within which the tax in question should have been paid, otherwise the defendant would incur the penalty prescribed by Section 8 of said Act. This contention was upheld by the lower court, presided by Hon. Antonio G. Lucero, in the decision appealed from, as follows:

"From the certified copies of the documents presented by the defense, it appears that on May 22, 1947, Collector Bibiano L. Meer, of the Bureau of Internal Revenue, sent to the accused an assessment for war profit tax amounting to P219,842.00 and required him to pay it on or before June 15, 1947. On June 4, 1947, Atty. Modesto Formilleza, as counsel for said accused, contested the assessment in a letter he sent to the Collector of Internal Revenue in which he expressed his reasons why his client could not see his way clear to paying said assessment. In a well-reasoned motion to quash, Atty. Cesar Miraflor argued that from whatever angle the case is viewed, it is apparent that the criminal action or liability on the part of the accused, if any, has already been

extinguished. Before connecting premise and conclusion, it is essential to discuss the law applicable. Defense counsel contended that the prescriptive period applicable in this case is that found in Act 3585, approved by the Philippine Legislature on November 27, 1929, which provides, in its pertinent portion, that all offenses against any law or part of law administered by the Bureau of Internal Revenue shall prescribe after five years. It is worthy to note in this connection that Act 3535 establishes period of prescription for violations penalized by Special Acts, as its caption so states, and there can be no question that Republic Act No. 55 is a Special Act. There can be also no question that Republic Act No. 55 is being administered by the Bureau of Internal Revenue, as shown not only by the notice of assessment sent to the accused on May 22, 1947, but also by the provisions of Section 9 of said Rep. Act No. 55 which states that "all administrative, special and general provisions of law, including the laws in relation to the assessment, remission, collection and refund of National Internal Revenue taxes, are hereby extended and made applicable to all the provisions of this law (Rep. Act No. 55), and to the tax herein imposed." This provision is quite clear as to require interpretation. On the other hand, Asst. Fiscal Reyes argued that the provisions of the Revised Penal Code on prescription should govern this case. However, whatever strength this argument might carry is totally destroyed by Article 10 of the Revised Penal Code which provides that offenses which are, or in the future may be punishable under special laws are not subject to the provisions of this code. It is, therefore, clear that the provisions of the Revised Penal Code do not govern offenses punishable under special laws. Besides, Article 367 of the Revised Penal Code, which enumerates the special acts repealed by said code, does not mention Act 3585, and so the prescriptive periods of Act 3585 still stand. As a desperate move to be able to wiggle out of the legal predicament, the prosecution contended that the crime charged in the information is a continuing offense but, as the defense counsel has correctly stated, for a continuing crime to exist, there should be plurality of acts performed, and, on this criterion, it is evident that this argument is without foundation. Even if this Court should hold that the prescriptive period provided for in Section 354 of the National Internal Revenue Code could be applied on the case, the period prescribed thereunder is five years, which is the same period prescribed in Act 3585. "Whether this Court takes as basis for prescription May 22, 1947, which is the date when Collector Meer sent the assessment to the herein accused, or June 4, 1947, the date when the accused wrote the letter to the Collector of Internal Revenue wherein he stated his reasons for refusing to pay the assessment, or February 17, 1948, the date alleged in the information as the time when the accused refused unlawfully to pay his war profit tax; the conclusion will not alter, namely, that the five-year period from the date of the discovery of the offense has already prescribed when the information was filed on March 31, 1954. This conclusion would not also alter whether this Court applies Act 3585 or the National Internal Revenue Code."

The Solicitor General claims that the lower court erred (1) in holding that the criminal liability of the defendant had been extinguished by prescription; (2) in denying appellee's motion for reconsideration dated January 25, 1956; and (3) in dismissing the criminal case against the defendant. Mainly, the contention of the Solicitor General is to the effect (a) that the law of prescription applicable to the present case are Articles 90 and 91 of the Revised Penal Code; (b) that the violation of law is a continuing offense and, therefore, does not prescribe notwithstanding the lapse of five years from February 17, 1949 up to the filing of the information; and (c) that the period of prescription in the case at bar should commence from the time the tax violation was referred to the Fiscal's Office for investigation, claiming that "Under Section 2, Act No. 3226, when the date of the violation needs to be discovered, as in the case here, the prescription begins 'from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.'"

Upon careful perusal of these contentions, we find them completely untenable, under the facts of the case, because it cannot be disputed that Articles 90 and 91 of the Revised Penal Code do not govern offenses punishable under special laws, that Republic Act No. 55 is a special law, and therefore, the prescriptive law applicable to the instant case should be Act 3326; as amended by Act 3585, it being a well-known principle in statutory construction that in case of conflict between a special law and a general law, the former should govern.

As to appellant's contention that the offense charged in the information is a continuing one, we cannot subscribe

to that theory for the simple reason that, under the provisions of Republic Act No. 55, upon failure of the herein defendant-appellee to pay the taxes in question on February 17, 1948 or on April 30, 1947, there has been a complete violation of law for which he should have been immediately prosecuted. Clearly, under Section 5, paragraph (b) of Republic Act No. 55, the moment a person fails to pay his war profits taxes within the period specified therein, he should be considered as having violated the law and no other action would be necessary for his prosecution.

Anent the theory that in the present case the period of prescription should commence from the time the case was referred to the Fiscal's Office, suffice it to state that such theory is not supported by any provision of law and we need not elucidate thereon. Moreover, the record of the case shows that on May 22, 1947, Collector Bibiano L. Meer of the Bureau of Internal Revenue assessed the war profits tax in question against the accused and fixed June 15, 1947 as the date of its payment without the herein accused paying it, and, according to the information, the accused, on February 17, 1948, willfully and unlawfully failed to pay said tax. Therefore, the violation of law in question was known to the prosecution, it was not concealed, and consequently it cannot now be pretended that same has not yet prescribed because it was not discovered until the papers of the case were sent to the Fiscal's Office of the City of Manila. Certainly appellant had knowledge of the illegal acts of the accused even before February 17, 1948, and that knowledge precludes the appellant from evading the operation of the Statute of Limitations.

The Solicitor General contends, however, that at the behest of appellee, the Internal Revenue examiners assigned to the case submitted an amended assessment of February 25, 1950 and, therefore, the prescriptive period for violation of the war profits tax law should be considered as having been suspended up to the aforementioned date, because up to that time it was legally impossible for appellant to charge appellee criminally in view of the fact that the war profits tax was as yet undetermined and, in support of that contention, the case of *Lattimore vs. U.S.*, 12 F. Supp. 895, was invoked, wherein it was held:

"It is important to recognize that the ordinary period of limitation may be extended or suspended not only by what has come to be recognized as a 'waiver' but also by the acts of the taxpayer involved. It has been held, for example, that where the taxpayer has strenuously objected to collection of the tax and has urged the Commissioner to withhold collection pending the adjustment of the controversy between him and the Commissioner and where the Commissioner yielded to the request and postponed collection until after the statute had run on collection, conferences being held in the interim, the taxpayer can not claim that the collection was not timely." (Merten's Law of Federal Income Taxation, Vol. 10, Sec. 57. 41 p. 195, 1953 ed.)

We have carefully examined this *Lattimore* case and we find it completely inapplicable to the case at bar, for it refers to civil action for collection of taxes and not to criminal prosecution for violation of law for non-payment of taxes. We hold that a petition for reconsideration of assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period of a criminal action for violation of law.

Wherefore, finding no error in the order appealed from, the same is hereby affirmed.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Felix, JJ., concur.

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