

JOSE A. ARCHES, PETITIONER-APPELLANT, VS. ANACLETO I. BELLOSILLO AND JAIME ARANETA, RESPONDENTS-APPELLEES.*G.R. No. L-23534. May 16, 1967*

Ponente: BENGZON, J.P. J.

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Petitioner-appellant Jose Arches filed on February 27, 1954 his income tax return for 1953. Within five years thereafter, or on February 26, 1959, deficiency income tax and residence tax assessments were issued against him.

Said assessments not having been disputed, the Republic, represented by the Bureau of Internal Revenue Regional Director, filed suit on December 29, 1960, in the municipal court of Roxas City, to recover from petitioner-appellant the sum of P4,441.25 as deficiency income tax and additional residence tax for 1953. Arches then moved to dismiss the complaint on the ground that it did not expressly show the approval of the Revenue Commissioner, as required by Section 308 of the Tax Code, and on the further ground of prescription of the action.

The municipal court denied the motion. Petitioner-appellant, his motion to reconsider having been denied also, resorted to the Court of First Instance of Capiz on a petition for certiorari and prohibition assailing the order denying his motion to dismiss. The trial court dismissed the petition. Hence, this appeal.

The only question here is the correctness of the dismissal of the petition by the Court of First Instance. The order was predicated upon the impropriety of the writ. We find no error committed by said court.

The municipal court had jurisdiction over the parties and over the subject matter, the amount demanded being less than P5,000.00.[1] The suit below instituted by the Republic, based on an uncontested assessment, was one merely for the recovery of a sum of money where the amount demanded constitutes the jurisdictional test.[2]

Petitioner-appellant would make much of the lack of approval of the Revenue Commissioner. First of all, in this case, such requisite is not jurisdictional, but one relating to capacity to sue or affecting the cause of action only.[3] So, in ruling on said question, whatever error - if any - the municipal court committed, was merely an error of judgment, not correctible by certiorari.[4]

Neither was there grave abuse of discretion on the part of the municipal court in ruling that the express approval of the Revenue Commissioner himself was not necessary. The court relied upon Memorandum Order No. V-634 of the Revenue Commissioner, approved by the Finance Secretary on July 1, 1956, wherein the former's functions regarding the administration and enforcement of revenue laws and regulations - powers broad enough to cover the approval of court actions as required in Section 308 of the Tax Code - were expressly delegated to the Regional Directors. This regulation, the issuance of which was authorized by statute, has the force and effect of law.[5] To rely upon it, hence, would not be tantamount to whimsical, capricious and arbitrary exercise of judgment.

The verification by the Regional Director of the complaint constitutes sufficient approval thereof already. It states, inter alia, that said Director has caused the preparation of the complaint and that he has read the allegations

thereof and they are true and correct to the best of his knowledge and belief. Pleadings are to be liberally construed.[6]

Assuming, therefore, in gratia argumenti, that the suit is being erroneously - but not invalidly - entertained, for lack of express approval of the Commissioner or the Regional Director, certiorari would still not lie. An order denying a motion to dismiss is interlocutory and the remedy of the unsuccessful movant is to await the judgment on the merits and then appeal therefrom.[7] And, as the Court of First Instance rightly observed, there was no showing of a special reason or urgent need to stop the proceedings at such early stage in the municipal court.

Petitioner-appellant would also raise the question of prescription. Again, this is not jurisdictional. And, We have already ruled[8] that the proper prescriptive period for bringing civil actions is five years from the date of the assessment, under Section 332 of the Tax Code. The three year period urged by petitioner-appellant under Section 51(d) refers only to the summary remedies of distraint and levy. Here, the action was commenced one year, ten months and three days after the assessments were made; hence, well within the period.

WHEREFORE, the dismissal of appellant's petition for certiorari by the Court of First Instance is hereby affirmed. Costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez, and Castro, JJ., concur.

[1] Sec. 88, Judiciary Act, as amended by Sec. 10, Rep. Act No. 2613.

[2] *Ventanilla vs. B.T.A.*, L-7384, Dec. 19, 1955; *Republic vs. Gamboa*, L-16504, Oct. 27, 1961.

[3] In this it differs from petitions for adoption or guardianship, where notice to or consent of specified persons is jurisdictional, since the latter are special proceedings, in rem, whereas the suit for collection in question is a simple money claim.

[4] *Gala vs. Cui*, 25 Phil. 522; *Villa Rey Transit vs. Hon. Bello*, L-18957, Apr. 23, 1963; *J.R.S. Business Corp. vs. Imperial Insurance*, L-19891, July 31, 1964.

[5] Art. 7, Civil Code; *Re Huttman*, 70 Fed. 669; *Re Weeks*, 82 Fed. 729; *Gratiot vs. U.S.*, 4 How. 80; *U.S. vs. Elliason*, 16 Pet. 291.

[6] Rule 6, Sec. 15, Rev. Rules of Court.

[7] *Harrison Foundry & Machinery vs. Harrison Foundry Work-ers' Assn.*, L-18432, June 20, 1963; *Bautista vs. de la Cruz*, L-21107, Dec. 24, 1963; 3 *Moran*, 1953 ed., pp. 152-153.

[8] *Republic vs. Ledesma*, L-18759, Feb. 28, 1967.

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