

GONZALO P. NAVA, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.*G.R. No. L-19470. January 30, 1965*

Ponente: REYES, J.B.L., J.

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Gonzalo P. Nava prosecuted this appeal against a decision dated September 25, 1961 by the Court of Tax Appeals (C.T.A. Case No. 568) holding him liable in the amount of P3,052.00 as deficiency income tax for the year 1950, as well as from its order dated February 10, 1962 denying a motion to reconsider said decision.

The undisputed facts are: that on May 15, 1951, Nava filed his income tax return for the year 1950, and, on the same date, he was assessed by respondent Commissioner (formerly Collector) of Internal Revenue in the sum of P4,952.00, based solely on said return. Nava paid one-half of the tax due, leaving a balance of P2,491.00. Subsequently, Nava offered his backpay certificate to pay said balance, but respondent refused the offer. On July 28, 1953, he requested the respondent to hold in abeyance the collection of said balance until the question of whether or not he was entitled to pay the same out of his backpay shall have been decided, but this was also rejected by the latter in a reply letter dated January 5, 1954. This rejection was followed by two more letters or notices demanding payment of the balance thereof, the last of which was dated February 22, 1955.

On March 30, 1955, after investigation of petitioner's 1950 income tax return, respondent Collector issued a deficiency income tax assessment notice (Exhibit "4") requiring petitioner to pay not later than April 30, 1955 the sum of P9,421.50, that included the balance of P2,491.00, still unpaid under the original assessment, plus a 50% sur-charge. Several notices of this revised assessment are alleged to have been issued to the taxpayer, but Nava claims to have learned of it for the first time on December 19, 1956, more than five years since the original tax return was filed, and testified to that effect in the court below. In a letter of January 10, 1957, Nava called attention to the fact that more than six years had elapsed, protested the assessment, and contended that it was a closed issue. The Director insisted upon his demand that the new assessment be paid (registered letter of March 25, 1957, Exh. "5"). Nava asked for reconsideration, and on June 16, 1958 was informed that reinvestigation would be granted provided the taxpayer waived the statute of limitations (Exh. "7"), a condition that was rejected (Exh. "8"). Thereupon, the reconsideration of the assessment was denied by the Collector's letter of July 22, 1958 (Exh. "9"), and on August 8, 1958, Nava filed a petition for review with the Court of Tax Appeals. The latter reduced the deficiency to P3,052.00, and cancelled the 50% surcharge. The petitioner appealed to this Court.

The principal issue in this appeal is whether the enforcement of the tax assessment has prescribed. The Court of Tax Appeals ruled that it had not, stating that:

"The duplicate copy of the income tax assessment notice indicates that it was issued on March 30, 11)55 (Exh. 4, page 7, B.I.R. records). 'Call-up' letters were sent to petitioner reminding him of the obligation. Three call-up letters or notices were recorded in Exh. C for petitioner (Exh. 2 for respondent, page 6, B.I.R. records), to wit:

1st notice 4/10/56

2nd notice 7/3/56

Final-9/25/56

"In addition to the written notice sent to petitioner, he was also personally interviewed. A report on these written notices and personal interviews appears in the memorandum of an agent of the bureau of Internal Revenue dated December 10, 1956, the pertinent portion of which reads as follows:

"Several call up letters and repeated demands have been made to subject taxpayers but in spite of the considerable length of time that has elapsed the above accounts still remain unsettled. The warrant assemblies of the above-stated tax cases were assigned to Agent A. H. Aguilar and an interview with Mr. G.P. Nava revealed that the latter refused to pay alleging that these cases come within the purview of the Avelino case, hence, the BIR has no more right to collect from him. (Exh. 1), page 8, B.I.R. records)"

"Petitioner's claim that he came to know of the assessment only on or about December 19, 1956, can not be given much credence. We are inclined to believe that the assessment notice dated March 30, 1955 and the several call-up letters sent to him were received by him in due course of mail but that he ignored them because of his belief that the right of the Government to collect the tax had prescribed in view of the decision in the Avelino case. This conclusion finds support in a note sent or delivered by petitioner to an employee of the Bureau who interviewed him, wherein he stated:

"This is to certify that I have received today, second final notice from the Bureau of Internal Revenue delivered by Mrs. Canlas. My reply to your said final notice, as per your request, will be sent to you on or before January 3, 1957, in view of the fact that I may not be able to contact right away my Accountant." (Exh. E, page 9. B.I.R. records; Italics ours)

"The fact that petitioner admitted receipt of the 'second final notice' without protest is an indication that he received the previous notices.

"Assuming that petitioner received the income tax assessment notice dated March 30, 1955 in due course of mail, that is, not later than April 10, 1955, the assessment was made within the five-year period since he filed his income tax return on May 15, 1951, even granting that the ten-year period applicable to fraud cases does not apply to this case. (The assessment includes the fraud penalty.) Since the deficiency income tax was assessed on or about April 10, 1955, the Government is authorized to collect the same by distraint or levy or by judicial action within five years from that date, or not later than April 10, 1960. Judicial action was instituted in the Court of First Instance of Manila in Civil Case No. 32796 for collection of said amount, followed by the institution of the instant appeal in this Court by petitioner himself on August 8, 1958, both within the five-year period. Therefore, we are of the opinion that the right of the Government to assess and collect said deficiency income tax has not prescribed." (Annex "Q", petition, pp. 134-137, records).

It is to be noted that in its decision the Court of Tax Appeals relied mainly on the duplicate copy of the deficiency income tax notice found in the Bureau of Internal Revenue file of petitioner Nava (Exhibit "4", page 7, B.I.R. records). On the corresponding blank space for the date of issue of said duplicate copy was typed "3/30/55". Petitioner Nava denied having received the original copy of said notice. The Revenue Commissioner, on the other hand, presented a witness (Mr. Pablo Sangil, an employee (clerk) of the B.I.R.) who attempted to establish that the original copy thereof was actually issued or sent on March 30, 1955. This witness, however, disclaimed having personal knowledge of its issuance or release on said date either by mail or personal delivery because, according to him, he was assigned in the income tax section of the Bureau of Internal Revenue in October, 1956 only. Sangil also declared that there is no notation whatsoever in said file copy (Exhibit "4"), nor even a slip of paper attached to the records, to show that the original copy of said exhibit was ever actually issued or sent to the taxpayer. He even admitted that he had no hand in the preparation or sending of written notices or demand letters of the Bureau of Internal Revenue to the taxpayers, his duties being merely to keep the dockets of taxpayers pertaining to

income tax, to post and transmit papers to the other branches of the Bureau for action; and to keep letters of taxpayers, memorandum and other official matters. Respondent presented another witness, Mr. Eliseo B. Fernandez, whose duties, as record clerk of the Records Control Section of the Bureau of Internal Revenue since 1957 (already past the limitation period of this case), are to send mail and to keep a record book of letters which are mailed to the taxpayers. Insofar as the testimony of this witness is concerned, he only declared as to the fact that there appears in his record book a note (Exhibit "10") that a letter dated March 15, 1957 was mailed by special delivery with return card to Gonzalo P. Nava. He admitted, however, that he was not the one who prepared such entry in the record book. What was the nature of the letter does not appear; at any rate, it was mailed beyond the 5-year limitation period.

The lower court also relied on the supposed notices noted in ink (followed by an illegible initial) in Exhibit "3" for respondent (page 6, B.I.R. records), the first of which was purportedly sent on April 10, 1956, the second on July 3, 1956, and the final one on August 25, 1956, as well as on the supposed "call-up" or demand letters referred to in a memorandum of an agent (Mrs. Canlas) of the Bureau of Internal Revenue (Exhibit "D", page 8, B.I.R. records). No witness for the respondent testified to the issuance or sending of any of these supposed written demand letters or notices, nor was there any duplicate or even a simple copy thereof found in petitioner Nava's Bureau of Internal Revenue file. Although witness Sangil testified as to the meaning of the dates noted in Exhibit "3", his testimony cannot be given much credence because those supposed notices were sent on or before August 25, 1956 at the latest, and, as hereinabove pointed out, the witness was assigned in the income tax section of the Bureau of Internal Revenue since October, 1956 only.

Thus, contrary to the finding of the Court of Tax Appeal, respondent utterly failed to prove by substantial evidence that the assessment notice dated March 30, 1955 and the other supposed written demand letters or notices subsequent thereto were in fact issued or sent to taxpayer Nava. The presumption that a letter duly directed and mailed was received in the regular course of mail (Sec. 5(v), Rule 131, revised Rules of Court) cannot be applied to the case at bar.

"The facts to be proved to raise this presumption are (a) that the letter was properly addressed with postage prepaid, and proved, the presumption is that the letter was received by the addressee as soon as it could have been transmitted to him in the ordinary course of the mails. But if one of the said facts fails to appear, the presumption does not lie." (VI Moran, Comments on the Rules of Court, 1963, Ed., 56-57; citing *Enriquez vs. Sun Life Assurance of Canada*, 41 Phil. 269) (Italics supplied)

Since none of these requirements have been shown, there has been no valid and effective issuance or release of said deficiency income tax assessment notice dated March 30, 1955 and of the other demand letters or notices subsequent thereto, the latest of which was purportedly sent on August 25, 1956, and these dates cannot be reckoned with in computing the period of prescription within which a court action to collect the same may be brought.

The fact that in Exhibit "K" Nava acknowledged receipt of the second final notice personally delivered to him is no proof that he received the first notice by mail. There is a difference between receiving a second final notice and receiving a final notice for the second time.

It being undisputed that an original assessment of Nava's 1950 income tax return was made on May 15, 1951, and no valid and effective notice of the re-assessment having been made against the petitioner after that date (May 15, 1951), it is evident that the period under Section 331 of the Tax Code within which to make a re-assessment expired on May 15, 1956. Since the notice of said deficiency income tax was effectively made on December 19, 1956 at the earliest, the judicial action to collect any deficiency tax on Nava's 1950 income tax return has already prescribed under Section 332 (c) of the Tax Code, it having been found by the Tax Appeals court that said return

was not false or fraudulent.

While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (*Coll. of Int. Rev. vs. Bautista*, G.R. Nos. L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.

Having reached the conclusion that the action to collect said deficiency income tax has already prescribed, it is unnecessary to discuss the other issues raised by petitioner Nava in the instant appeal.

WHEREFORE, the decision of the Court of Tax Appeals under review is reversed, without costs.

Bengzon, C. J., Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ. concur.

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