

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ENRIQUE MAGALONA, JR., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-15802. September 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal taken originally to the Court of Appeals but which was certified to us because one of the issues raised by appellants is the supposed lack of jurisdiction of the Court of First Instance of Manila over the subject matter.

The case involves the collection of income tax due from appellants spouses Enrique Magalona, Jr. and Teresita Durango, in the amount of P2,964.00, plus 5% surcharge, interest thereon at 1% per month from April 16, 1953 to the date of full payment, and costs.

It appears that on April 30, 1951, appellants Magalona, Jr. and Durango, filed with the Bureau of Internal Revenue, a joint income tax return for the calendar year 1950. After examination and audit of said return, said office assessed the income tax payable by appellants at P2,964.00. Accordingly, Income Tax Assessment Notice Ear-23187-52150 dated March 18, 1953, was sent to appellants, demanding payment of said amount to the City Treasurer of Manila, on or before April 15, 1953. Said notice was received by appellants on the same day it was sent. No payment was made thereon and, on April 14, 1954, appellant Magalona, Jr. needing to have a tax clearance in connection with his going abroad, posted a surety bond, with himself as principal and the Luzon Surety Co., Inc. as surety, to guaranty the payment of said tax.

On December 17, 1955, the Collector of Internal Revenue sent a letter to the Luzon Surety Co., Inc., informing it of appellant Magalona, Jr.'s failure to pay the tax, and requesting settlement on or before December 31, 1955, otherwise he (Collector) would recommend immediate forfeiture of the bond without further notice. On January 28, 1957, the Chief of the Collection Branch, Bureau of Internal Revenue, sent a letter to appellant Magalona, Jr. himself, reminding him of his said unpaid tax liability, and advising him that if payment thereof is not made to the City Treasurer of Manila within 10 days from receipt of said letter, immediate forfeiture of the bond would be recommended. Said official also sent a similar letter of the same date to the Luzon Surety Co., Inc.

Not having received any reply to these letters, the Collector of Internal Revenue, on April 24, 1957, filed the present complaint with the Court of First Instance of Manila.

On May 6, 1957, after the filing of the complaint, appellant Magalona, Jr. sent a letter to appellee Collector of Internal Revenue, requesting that he be allowed to pay said tax in 3 installments, and stating that "the delay in the payment of this tax is only due to a misunderstanding on (his) my part, coupled with the continuous pressure of work." This request was denied by appellee. On May 9, 1957, the appellants filed their answer, alleging as special defense that upon filing of the bond in favor of the appellee on April 14, 1954, they "were led to believe that the determination of the exact amount of their income tax liability to the plaintiff (appellee) would be reviewed and reassessed" and that they would be notified of the amount of their income tax after said reassessment, and that

they had no intention of avoiding payment thereof. Appellants stated also that they "are ready and willing to pay their tax liability in the sum of P2,964.00 without surcharge and interests."

On May 22, 1957, appellee amended its complaint alleging, as paragraph 8 thereof, the contents of the letter dated December 17, 1955, addressed to the Luzon Surety Co., Inc.

On May 28, 1957, the Luzon Surety Co., Inc. filed an amended answer, alleging as special defense that the condition precedent appearing in the bond, namely, a final adjudication that appellant Magalona, Jr. is finally liable in the sum of P2,964.00 has not yet been complied with; hence, the action was premature. It prayed for the dismissal of the complaint.

On September 13, 1957, appellants filed an amended answer alleging, in addition to the special defense contained in their answer filed on May 9, 1957, that the present action has already prescribed, and that the court has no jurisdiction over the case. On September 16, 1957, appellee filed a reply, stating that the action against appellants is in accordance with Article 1144 of the new Civil Code and Section 51 (e) of the National Internal Revenue Code and, therefore, has not prescribed; and that the court has jurisdiction, pursuant to Section 44, paragraph (c) of the Judiciary Act.

Issues having been thus joined, the case was tried and, after trial, the court, on January 30, 1958, rendered a decision which reads, in part, as follows:

"Defendant Luzon Surety Co., Inc. adopted the evidence for defendants Enrique Magalona, Jr. and Teresita Durango, as its own evidence.

"Defendants Enrique Magalona, Jr. and Teresita Durango raise the following issues: (1) that this Court has no jurisdiction to take cognizance of the present action; (2) that this present action has already prescribed; and (3) that, because they have not been officially notified of the final determination of their tax liability as embodied in the surety bond, they should not be made to pay further a surcharge of 5% on the amount of P2,964.00 and 1% monthly interest thereon. Defendant Luzon Surety Co., Inc., puts up the issue that the plaintiff has no cause of action against it, because the condition precedent contained in the surety bond, which states 'in case it should be finally decided that Enrique Magalona, Jr., is liable for the payment of the said amount of P2,964.00, has not yet been complied with.

"With respect to the first issue, the Court resolves that it has jurisdiction to take cognizance of the present action. As early as March 18, 1953, the date of their receipt of the Income Tax Assessment Notice, defendant spouses, Enrique Magalona, Jr. and Teresita Durango, had knowledge of their tax liability under their joint Income Tax Return for 1950 in the amount of P2,964.00. From that date, they had 30 days period within which to dispute the assessment by appeal to the Court of Tax Appeals, and having failed to do so, the amount assessed became final, hence undisputed, as of April 19, 1953, the next day after the thirty days' period to appeal has elapsed. The defendant spouses, however, contend that there has not been a final determination of their tax liability because they have never received a reply to their letter sent to the Collector of Internal Revenue requesting for a reconsideration and re-assessment of the amount mentioned in the Income Tax Assessment Notice (Exhibit C). The fact that defendant Magalona, Jr. failed to produce at the hearing a copy of his alleged letter to the Collector of Internal Revenue, that he never received a reply thereto, and that he did not send a follow-up letter to inquire as to the action taken on his alleged request for a reassessment, support the conclusion that he had not written and sent such a letter to the Collector of Internal Revenue. Their contention too that the surety bond, as provided in its clause marked Exhibit 3-A, is proof that they had actually requested for a reconsideration and reassessment of their tax liability, is without merit. A careful perusal of said surety bond shows that it was executed primarily to guarantee the payment of the amount of P2,964.00 in order that a tax clearance could be issued to defendant Enrique Magalona, Jr. who was then scheduled to go abroad, and not to guarantee any amount that would later on be finally assessed, because if it

were for the latter purpose, there would be no reason in putting up a surety bond for any amount, as it appears from the joint Income Tax Return (Exh. A) that they are tax exempt. Besides, the bond is purely an undertaking of the signatories thereto, and the plaintiff is only concerned with the assurance of payment of the tax mentioned therein.

"With respect to the second issue, the Court resolves that the present action has not prescribed. In the instant case, the period of prescription commenced on April 16, 1953, the date following April 15, 1953, which is the last date the defendants were given to pay the amount of P2,964.00 mentioned in the Income Tax Assessment Notice (Exhibit C). It appearing that this case was filed on April 24, 1957, it was, therefore, brought within the period of five years, prescribed by law for the collection of income taxes.

"Having arrived at the conclusion that the assessment in the amount of P2,964.00 became final as of April 19, 1953, for the reasons above adverted to, the third and fourth issues raised, respectively, by defendants spouses and defendant Luzon Surety Co., Inc. are without merit.

"In view of all the foregoing considerations, the Court hereby renders judgment in favor of the plaintiff and against the defendants, ordering the defendants Luzon Surety Co., Inc. and Enrique Magalona, Jr. to pay to the plaintiff, jointly and severally, the sum of P2,964.00 in accordance with the terms of the surety bond (Exhibit D) executed by them; and the defendants Enrique Magalona, Jr. and Teresita Durango to pay the plaintiff 5% surcharge on the amount of P2,964.00 and 1% interest thereon from April 16, 1953, to the date of full payment, and the costs of the suit.

"So ordered."

Not satisfied with this decision, appellants Magalona, Jr. and Durango[1] appealed to the Court of Appeals, but as already stated, said court, in its resolution of July 29, 1959, certified the case to us, on the ground that it involves only questions of law.

Appellants claim that the lower court erred in holding that the income tax assessment notice (Exh. C) in question, was a final income tax assessment of their income for the calendar year 1950 and, consequently, in taking cognizance of the case.

The claim is devoid of merit. It is not disputed that the income tax assessment notice in question was sent by the Collector of Internal Revenue to appellants on March 18, 1953, and was received by them on the same date. Pursuant to Section 7 of Republic Act No. 1125, appellants had 30 days from said date, within which to dispute said assessment, by appealing to the Court of Tax Appeals. Having failed to do so, as found by the trial court,[2] the assessment became final, executory, and demandable (Republic vs. Vda. del Rosario, et al., 105 Phil. 277; 57 Off. Gaz. [31] 5543).

It is, however, argued for appellants that the surety bond filed by appellant Magalona, Jr. with the Bureau of Internal Revenue on April 14, 1954, indicates that said assessment was disputed. We find nothing in said surety bond indicating a disputed assessment. The provision in paragraph 2 thereof (Exh. 3-A), to the effect that appellant Magalona, Jr. "claims and believes that he is not liable for the payment of the said taxes," is no proof that appellant had, in fact, disputed the assessment in question. It is nothing more than an expression of appellant's belief and conviction, personal to him and not binding on appellee, that he was not liable for the payment of said taxes. In this regard, we agree with the trial court that the surety bond in question "was executed primarily to guarantee the payment of the amount of P2,964.00, in order that a tax clearance could be issued" to appellant Magalona, Jr., who was then scheduled to go abroad, and "not to guarantee any amount that would later on be finally assessed, because if it were for the latter purpose, there would be no reason in putting up a surety bond for any amount, as it appears from the joint Income Tax Return (Exh. A) that they (appellants) are tax exempt." Except for the bare assertion and testimony of appellant Magalona, Jr. that he had requested for

reconsideration of the assessment, there is absolutely no evidence showing that the assessment notice is otherwise than final and definitive. If it is true, as claimed by appellant Magalona, Jr. that he sent a letter to appellee, he should have subpoenaed the latter to produce the same, and if appellee failed to do so, he could have presented a copy thereof. This, he did not even attempt to do. On the other hand, the clear and unequivocal letters of demand subsequently sent to him and the surety company, did not indicate at all that there was a dispute as to the correctness of the assessment of tax due. In fact, as late as May 6, 1957, even after the filing of the complaint, appellant Magalona, Jr. did not question the assessment but only offered to pay the tax installments. We agree with the lower court that this is not a case of disputed assessment.

Having reached the conclusion that the income tax assessment in question was a final assessment of appellants income tax liability for the calendar year 1950, it follows that the Court of First Instance had jurisdiction to hear the case. The ruling in the case of *St. Stephen's Association, et al, vs. The Collector of Internal Revenue* (104 Phil, 314; 55 Off. Gaz. [13] 2243) invoked by appellant, is inapplicable to the instant case. In the cited case, unlike in the one at bar, the taxpayer (*St. Stephen's Association*) did really question the assessment made by the Collector of Internal Revenue. In fact, there were several communications which transpired between said taxpayer and said official, regarding its request for reconsideration of the assessment.

Appellants have not urged in this appeal the defense of prescription which is clearly without merit.

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed in all respects, with costs against the defendants-appellants. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B, L., Gutierrez David, Paredes, and Dizon, JJ., concur.

[1] Defendant Luzon Surety Co., Inc. did not appeal.

[2] We are bound by such factual finding, which is supported by the record.

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