

INTESTATE ESTATE OF THE LATE JOVITO CO, FLORA ROBERSON CO, ADMINISTRATRIX, PETITIONER AND APPELLEE, VS. COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT

G.R. No. L-9352. November 29, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

In Special Proceedings No. 599 of the Court of First Instance of Iloilo to wind up the estate of the deceased Jovito Co, the Collector of Internal Revenue filed in March 1951, a claim for deficiency war profits tax plus surcharge, amounting to more than P22,003.34. On April 14, 1951 the administratrix denied liability, asserting complete payment. In addition she presented a counterclaim for the sum of P1,561.56 which the deceased had paid as compensating tax on vessels purchased in 1946 from the Foreign Liquidation Commission, Republic Act No. 361 (1949) having exempted from that tax all purchases of vessels. The Collector opposed the counterclaim, arguing that it had not been submitted within the two-year period prescribed by law.

The issues were framed upon a stipulation of facts, in view of which the court rendered judgment, (a) dismissing the claim for deficiency, (b) upholding the counterclaim and (c) requiring the Collector to refund the compensating tax, P1,561.56.

Having appealed in due time, said officer discussed here one sole question: the legality of the order to refund. He contends that inasmuch as the counterclaim had been filed more than two years after the collection of the tax, the order to refund violated the law.

There is no doubt that the tax was due and payable when Jovito Co paid the same in May and September 1947. There is also no doubt that more than two years had elapsed before refund was urged for the first time (before the counterclaim) in November 3, 1949.

The appellant cites section 306 of the National Internal Revenue Code which partly provides:

"No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

Of course it is obvious that if no suit could be begun to recover a given sum, no counterclaim could be presented to recover the same.

The appellee, on the other hand, maintains that the two-year period should be counted from June 9, 1949, date of the approval of Republic Act No. 361, which amended the National Internal Revenue Code, by expressly

exempting from the compensating tax purchases similar to the one made by Co in 1946. The Act says, the tax (compensating) shall not extend to vessels "purchased or received before or after the taking effect of this Act" (June 1949).

Remembering that laws are prospective in operation, said Act, in our opinion, means: "hereafter" or "in the future" or "after the approval of this law" no taxes shall be collected on the purchase of vessels, even if such purchase had been made before June 1949.

Does the Act imply that all taxes already collected on purchases of vessels shall be returned? In the first place the words do not express that command. In the second place, as the Act had no retroactive effect (Article 4 Civil Code) it had not impliedly outlawed the taxes already paid; and therefore no right arose to recover them. It would be awful if taxes legally collected on specified acts must be returned to the taxpayers whenever the Legislature, in the exercise of its discretion, should afterwards exempt such acts from taxation by repealing the law taxing them. Congress should not be presumed to render illegal all those collections previously authorized by the statutes.

Regarding the effects of repealing statutes, the argument has been advanced, that taxes assessed (but, not collected) under the law before its repeal, may not be collected after such repeal—except, always, provisions to the contrary. But the courts permit such collection.

"The rule favoring a prospective construction of statutes is applicable, to statutes which repeal tax laws. Accordingly it is held that where such statute is not made retroactive a tax assessed before the repeal is collectible afterwards; and where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to, be collected according to the law in force when they were levied." (Cooley Taxation Section 638 Vol. 2.)

So, if taxes assessed may still be demanded after the repeal of the law, it follows that taxes, already' collected may be and should be retained after the repeal. Unless of course the repealing statute provides otherwise.

Be it noted furthermore that there is no statute authorizing this suit against the Collector (and the Government) excerpt the provisions of section 306 of the National Internal Revenue Code. Yet that section permits recovery only for taxes "erroneously or illegally" collected. This tax had been validly assessed when taken Hence it had not been erroneously or illegally collected. But even supposing the tax had been "erroneously or illegally" collected, the Government still contends that Co's counterclaim must be denied, because the return was not demanded within two years as prescribed by section 306 of the National Internal Revenue Code.

Republic Act 361, it should be observed, merely amended a section of that Revenue Code, and the Congress may be presumed to have considered all the provisions thereof as a whole. Therefore, granting that Congress by Act 361 intended to direct the repayment of taxes previously collected on the purchase of vessels—which is granting too much—still it should also be presumed that the lawmakers intended to respect the other provisions of the Revenue Code prohibiting return of taxes two years after their collection. This limitation period is important to the Government, so that it may know what revenues are controversial and may not be counted on for purposes of expenditure.

We find the Government's appeal to be meritorious, and therefore, we hereby revoke the order of the lower court directing payment. Costs against appellee.

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

[1] Subsequently amended by Republic Act 1511 and Republic Act 1612.

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