

REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. LUCIA TAN, DEFENDANT-APPELLEE.*G.R. No. L-25483. May 23, 1969*

Ponente: CAPISTRANO, J.

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Appeal on questions of law from the orders of the Court of First Instance of Misamis Occidental in its Civil Case No. 2108 dismissing the complaint filed by the Republic for collection of deficiency income taxes, surcharges and interests, and denying the plaintiff's motion for reconsideration.

In August, 1954, after discovery that Lucia Tan had not filed income tax returns for the years 1949, 1950, 1951 and 1952, although she was liable for income taxes for the said years, the Commissioner of Internal Revenue, thru his authorized representative, filed the corresponding returns on her behalf. On the basis of the said returns, the Bu-reau of Internal. Revenue, hereinafter referred to as the BIR, issued assessment notices to Lucia Tan requiring her to pay, on or before June 30, 1955, the amounts of P248.00, P129.50 and P450.50 as income taxes for the years 1949, 1950 and 1951, respectively. Another assessment notice was issued to Lucia Tan on May 6, 1955, requiring her to pay on or before August 15, 1955, the sum of P1,482.50 as income tax for 1952. Lucia Tan refused to pay any of the aforesaid assessments.

The Republic filed a complaint dated May 8, 1958, seeking to collect from Lucia Tan deficiency income taxes, surcharges and interests in the total amount of P2,310.50 for the years 1949, 1950, 1951 and 1952. In her answer the defendant admitted not having filed income tax returns for the above-mentioned years and alleged that the assess-ments were arbitrary, capricious and oppressive, and that she was not given an opportunity to present her side. The defendant also set up the affirmative defense of prescrip-tion. Defendant averred that the assessments for 1949, 1950 and 1951 had already prescribed because they were made beyond the three-year period provided in Section 51(d) of the National Internal Revenue Code; and that by virtue of said Section 51(d), in relation to Section 331, the action was already barred by prescription.

At the hearing on February 15, 1960, the court ordered the BIR to conduct a reinvestigation of the case in accord-ance with the defendant's request. A reinvestigation was conducted, and it was found out that the defendant's income tax liability for the years 1949 to 1952 was P6,123.60 in-stead of P2,310.50. The BIR then sent to the Provincial Fiscal, for filing, a motion for leave of court to amend the complaint, attaching thereto an amended complaint. The defendant's counsel was furnished copies of said motion and amended complaint. However, for unknown reasons the said motion and amended complaint were not filed in court. In an order dated November 23, 1964, the court gave the Provincial Fiscal thirty (30) days within which to locate them. Appa-rently, the motion and the amended complaint could not be found; so the plaintiff prepared another amended complaint and filed it on December 23, 1964. On February 20, 1965, the court issued an order denying admission of the amended-com-plaint for the reasons that it was not accompanied by a mo-tion for leave to file an amended complaint and the defend-ant was not even served a copy of the amended complaint. In a separate order issued on the same date, the court, acting on the defendant's affirmative defense of prescription, the plaintiff

having already rested its case, dismissed the original complaint on the ground that the action had already prescribed. The plaintiff filed a motion for reconsideration, but the same was denied by the order of March 20, 1965. The plaintiff appealed from the orders.

The principal question before us for resolution in this appeal is whether, as contended by the defendant-appellee, the applicable law is Section 51(d) of the National Internal Revenue Code before its amendment by Republic Act No. 2343 on June 20, 1959, which reads:

"In cases of refusal or neglect to make a return and in cases of erroneous, false or fraudulent returns the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this case or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment."

or, as contended by the plaintiff-appellant, Section 332(a) of the same Code, which provides:

"In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of said tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission." (Emphasis supplied.)

It is now settled that the three-year period provided in Section 51(d) refers to the summary remedy of distraint and levy (*Republic vs. Ledesma*, G.R. No. L-18759, February 28, 1967, citing *Collector vs. Avelino*, 100 Phil., 327; *Collector vs. Reyes*, 100 Phil., 822; *Collector vs. Zulueta, et. al.*, 100 Phil., 872; *Sambrano vs. CTA*, 101 Phil., 1; *Collector vs. Azner*, G.R. No. L-8652, January 31, 1958; *Gan-cayco vs. Collector*, G.R. No. L-13325, April 20, 1961); that said Section 51(d) did not bar an assessment as a step preliminary to collection by judicial action (*Republic vs. Ledesma*, supra, citing *Republic vs. Gamboa*, G.R. No. L-16504, October 27, 1961); that even after the lapse of the three-year period, the Government could still proceed to recover the taxes due by the institution of the corresponding civil action (*Collector vs. Zulueta, et al.*, supra); and that the judicial action may be instituted at any time within ten (10) years after the discovery of the falsity, fraud or omission (Cf. *Republic vs. Gamboa*, supra), pursuant to Section 332(a) of the Tax Code.

This being a judicial action for the collection of income taxes where the taxpayer had failed to file income tax returns, the same could be brought at any time within ten (10) years after the discovery of the omission. Here, the defendant-appellee's failure to file the returns was discovered in August, 1954. Hence, the Republic had ten (10) years from that date, or until August, 1964, within which to institute an action for collection. The action in the instant case having been commenced in May, 1958, or four (4) years after the discovery of the omission, it is clear that the lower court erred in dismissing the complaint on the ground of prescription under Section 51(d).

PREMISES CONSIDERED, the orders appealed from are set aside and the Case is hereby remanded to the court below for further proceedings.

Costs against the defendant-appellee in this instance.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, and Fernando., JJ., concur.
Teehankee and Barredo, JJ., did not take part.
Concepcion, C.J., and Ruiz Castro, J., on leave.

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