

[With resolution of January 31, 1962]

G.R. No. L-12996. December 28, 1961

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by Antonio Albert from the decision of the Court of First Instance of Manila. sentencing him to pay the Republic of the Philippines the sum of P16,889.00 as deficiency income tax for the year 1951, with 5% surcharge, and 1% monthly interest thereon from October 16, 1953 until full payment, plus costs.

On February 28, 1952, appellant filed his income tax return for the calendar year 1951. After examination and audit thereof by the personnel of the Bureau of Internal Revenue, a deficiency tax for said year was found due from appellant in the amount of P6,889.00 computed as follows:

1951

Amount

Net Income per Return

P32,247.23

Add:

Undeclared dividends—Atok

453.60

Educational trip expenses disallowed

18,852.24

Disallowance of excess of contribution

per Office Audit

P5,118.92

Adjustment

1,158.35

3,960.58

Net Income per investigation

48,931.65

Less: Personal & Additional exemptions

6,600.00

Net Taxable Income

48,931.65

Tax due thereon

P13,785.46

Less: Tax already paid

6,896.00

Deficiency tax

P6,896.46

On August 31, 1953, the Bureau of Internal Revenue issued and caused to be served on appellant the corresponding Income Tax Assessment Notice No. 43-AR-4429-53/51 (Exhibit C) requiring him to pay the sum aforesaid or or before October 15, 1953. Thereupon appellant, through his counsel, filed a letter of protest (Exhibit D) with the Bureau, but the same was overruled on June 21, 1955 (Exhibit E).

The above-mentioned income tax deficiency was due to: (1) the inclusion-as taxable income-of the sum of P453.60 received as dividend from the Atok Goldfield Mining Co. for the year 1951, which appellant failed to include in his return; (2) the disallowance of the amount of P18,552.24 claimed by appellant as a deductible item because it was spent in attending technical international conferences abroad in representation of the Government and of the University of the Philippines; and (3) the reduction of the charitable contributions claimed by him as a deductible item from P7,500.00 to P3,960.53. Of these disallowed items appellant disputed only the second.

On February 4, 1957, an action to recover the deficiency tax above mentioned, with 5% surcharge, and 1% monthly interest thereon from October 16, 1953 to the date of full payment, was filed by the Republic of the Philippines against appellant.

In his answer to the complaint, appellant alleged that the disallowance by the Bureau of Internal Revenue of the amount of P18,852.24, which he had claimed as a deduction in his income tax return for the year 1951, was wrong because said amount was a legitimate and deductible business expense, the same having been incurred by him in 1951 in attending technical international conferences held abroad as a duly appointed representative of the Republic of the Philippines and of the University of the Philippines.

After due trial the lower court rendered the appealed decision on the ground principally that appellant was already estopped from questioning the assessment which had become final and executory because he did not appeal therefrom to the Court of Tax Appeals.

The facts involved in the present case are very similar to, if not on all fours with those involved in the case of Republic of the Philippines vs. Enrique Magalona, Jr. et al., (109 Phil., 723) where we held that upon the facts before the Court, the income tax assessment in question therein was a final assessment of the income tax liability of the Magalonas for the calendar year 1950; that they had 30 days to dispute said assessment by appealing to the Court of Tax Appeals in accordance with the provisions of Section 11, Republic Act No. 1125; that having failed to do so, the assessment became final, executory and demandable.

In the present case, therefore, after receiving the denial of his protest (Exhibit D) against the deficiency tax assessment made against him appellant should have appealed therefrom within 30 days from June 21, 1955, his failure to do so having caused said assessment to become finally executory and demandable. Therefore, when on February 4, 1957 the action for collection was commenced, appellant was already barred from invoking any defense that would reopen the question of his tax liability, on the merits. In this connection we quote with approval the pertinent portion of the decision of the lower court:

"As it is really true that any person who is aggrieved by an assessment issued by the Collector of Internal Revenue is given only 30 days to appeal therefrom to the Court of Tax Appeals, the only effect should be that after that period should have expired that assessment can no longer be questioned by the taxpayer; and if this is the case as a necessary corollary, if afterwards the Government comes in aid presents an action for the collection of the tax under the assessment, to permit the taxpayer in the case presented by the Government to question the assessment would have no other effect than to nullify the finality of the assessment made by the Bureau of Internal Revenue, notwithstanding that it had already become final under the provisions of Act 1125 in its sec. 11; and the Court cannot construe the law to result in that absurdity."

In view of the conclusion we have reached, we deem it unnecessary to decide the other questions raised in appellant's brief.

Wherefore, the appealed decision is hereby with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and De Leon, JJ., concur.

RESOLUTION

January 31, 1962

DIZON, J.:

The matter before us is a motion for reconsideration filed by the appellant praying that our decision promulgated on December 28, 1961 be set aside and that another be rendered absolving him from liability in connection with the deficiency tax in question, the 5% surcharge thereon and the 1% monthly interest from October 16, 1953. Appellants contends that he is not barred from contesting the assessment in question, there being no evidence in the record to sustain a finding that the Bureau of Internal Revenue's letter on June 21, 1955 (Exh. D) was sent to, and received by him on the aforesaid date or on any other date thereafter.

The lower court found that, upon the evidence before it, the period of 30 days within such appellant could have appealed from the deficiency assessment to the Court of Tax Appeals had expired, and held, as a consequence,

that said assessment had become final, demandable and beyond appellant's power to assail or contest. This finding we cannot review, appellant having taken this appeal directly to us to raise questions purely of law.

Moreover, the record shows that the answer filed by appellant expressly admitted that he had received the assessment notice on or before October 14, 1953. This notwithstanding, his answer made no mention to his protest against, or motion for a reconsideration of the assessment against aforesaid; to the contrary, it admitted (Rec. on Ap. p. 15) that appellant "had not appealed from the aforesaid assessment to the Court of Tax Appeals." and while denying that the same had become final, the only reasons adduced in support of such denial were (1) that the allegation made in the complaint regarding the executory and final character of the assessment was a mere conclusion of law and that (2) at any event, appellant's failure to appeal "has not rendered the assessment final in the sense that it can no longer be resisted, controverted or disputed by the defendant in a judicial proceeding brought against the latter". The appellant, therefore, clearly failed to allege that the assessment had not become final because he had not received any notice of denial thereof or that there was no evidence to prove that exact date on which such notice, if any was sent, was received by him. For this reason we are of the opinion that he is without right to raise these points for the first time on appeal in connection with his assignment of error.

Wherefore, the motion of reconsideration is denied.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes and De Leon, JJ., concur.

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