

**NATIONAL DENTAL SUPPLY CO., PLAINTIFF AND APPELLANT, VS.
BIBIANO MEER, IN HIS CAPACITY AS COLLECTOR OF INTERNAL
REVENUE, DEFENDANT AND APPELLEE.**

G. R. No. L-4183. October 26, 1951

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action for declaratory relief to obtain a ruling on whether sales of dental gold or gold alloys and other metals used for dental purposes come within the purview of Article 184 of the National Internal Revenue Code as claimed by the Collector of Internal Revenue.

Defendant filed a motion to dismiss on the ground (1) that plaintiff has no cause of action for declaratory Judgment and (2) that even assuming the existence of a cause of action, relief by declaratory Judgment is not proper because It will not terminate the controversy. The court sustained the motion under the first ground holding that actions for declaratory relief do not apply to cases where a taxpayer questions his liability for the payment of any tax collectible under any law administered by the Bureau of Internal Revenue. From this ruling the plaintiff has appealed.

The only question to be determined is whether plaintiff can bring the present action for declaratory relief.

Plaintiff contends that it can do so under section 1, Rule 66, of the Rules of Court, which contains no prohibition to a taxpayer to file an action for declaratory relief to test the legality of any tax, whereas defendant contends that the failure to incorporate in Rule 66 the proviso added by Commonwealth Act No. 55 to section 1, of Act No. 3736, does not imply its repeal and, therefore, it still stands and applies to the plaintiff.

The original law on declaratory relief is Act No. 3736, which went into effect on November 22, 1930. Section 1 of said Act provides:

"SECTION. 1. Construction.—Any person Interested under a deed, contract or other written instrument, or whose rights are affected by a statute, may bring an action in Court of First Instance to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder."

On October 17, 1936, Congress approved Commonwealth Act No. 55 adding to section 1 of said Act No. 3736, the following proviso:

" * * * Provided, however, That the provisions of this Act shall not apply to cases where a taxpayer questions his liability for the payment of any tax, duty, or charge collectible under any law administered« by the Bureau of Customs or the Bureau of Internal Revenue."

Subsequently, by virtue of the powers granted to it by our Constitution, the Supreme Court codified and promulgated the present Rules of Court among which is Rule 66, section 1, which reproduces the declaratory relief provisions contained in Act No.3736, but eliminates the proviso Introduced by Commonwealth Act No. 55.

Speaking of the reasons why said proviso has not been incorporated in rule 66, former Chief Justice Moran who intervened in the preparation of said Rules of Court, has the following to say:

"(a) Propriety of remedy.—The proviso added by Commonwealth Act No. 55 to section 1 of Act No. 3736, which prohibits an action for declaratory relief In 'cases where a tax-payer questions his liability for the payment of any tax, duty, or charge collectible under any law administered by the Bureau of Customs or the Bureau of Internal Revenue', is not Incorporated in the above provision in order to make it discretionary upon the courts to apply or not to apply the remedy in such cases. Of course, where the tax is already due and collectible, the taxpayer cannot prevent collection by a declaratory action, but he should pay the tax and sue for its recovery within the period limited by law. But, where the tax is not yet due, there can be no valid reason why a tax-payer cannot by declaratory relief test its validity. Such a procedure cannot possibly hamper the activities of the government and is, on the other hand, simple, speedy and inexpensive. The United States Supreme Court has approved the practice, long prevailing In other Jurisdictions, of testing the legality of a tax by an action of this nature." (2 Moran, Comments on the Rules of Court, 3rd ed. p. 129).

From the opinion of former Chief Justice Moran may be deduced that the failure to incorporate the above proviso in section 1, rule 66, is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court, which is the sole arbiter to determine whether a case Is meritorious or not. And even if it be desired to incorporate it in rule 66, it is doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of said proviso is substantive and not adjective, its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer or of the Government. With the adoption of said proviso, our law-making body has asserted its policy on the matter, which is to prohibit a taxpayer to question his liability for the payment of any tax that may be collected by the Bureau of Internal Revenue. As this Court well said, quoting from several American cases, "The Government may fix the conditions upon which it will consent to litigate the validity of its original taxes. * * * ." "The power of taxation being legislative, all the incidents are within the control of the Legislature". (Sarasola vs. Trinidad, 40 Phil. 252, 263.) In other words, it is our considered opinion that the proviso contained in Commonwealth Act No. 55 is still in full force and effect and bars the plaintiff from filing the present action.

The foregoing view finds support in section 306 of the National Internal Revenue Code, which specifically lays down the procedure to be followed in those cases wherein a taxpayer entertains some doubt about the correctness of a tax sought to be collected. Said section provides that the tax should first be paid and the taxpayer should sue for its recovery afterwards. The purpose of the law obviously is to prevent delay in the collection of taxes upon which the government depends for its very existence. To allow a taxpayer to first secure a ruling as regards the validity of the tax before paying it would be to defeat this purpose, and to prevent this result the rule regarding declaratory relief was declared inapplicable to cases involving collection of taxes.

Wherefore, the order appealed from is affirmed, with costs against the appellant.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo., concur.

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