

REPUBLIC OF THE PHILIPPINES, PLAINTIFF, VS. THEODORE (TED) LEWIN; DEFENDANT.*G. R. No. L-17173. April 30, 1963*

Ponente: CONCEPCION, J.

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Appeal by defendant Theodore (Ted) Lewin from a decision of the Court of First Instance of Manila on questions of law.

On February 27, 1954, defendant (Theodore (Ted) Lewin filed his income tax return for the year 1953 (Exh. A) showing that his income subject to tax was P55,634.49 and that the amount of the tax due thereon was P11,870.00. The corresponding income tax assessment notice (Exh. B) demanding payment of the latter sum was, accordingly, sent to him at the address given in said return, namely, "Bayview Hotel, Manila." The notice gave defendant the option to pay said sum of P11,870.00 in two equal installments, on or before May 15, 1954 and August 15, 1954. By a letter, dated August 17, 1954 (Exh. C), his counsel, Atty. Salvador D. Lacuna acknowledged receipt of said assessment notice by Mrs. Lewin and advised the Collector of Internal Revenue that defendant was then in New York, United States, and was willing to meet his tax obligations "as soon as he arrives in Manila." Upon the recommendation of Senior Special Investigator Reynaldo A. Suarez, who had meanwhile re-investigated defendant's income tax return (Exhs. D and D-1), a deficiency income tax assessment notice (Exh. E) for P6,834.00, payable on or before February 20, 1958, was sent to defendant with a letter explaining its basis (Exh. E-1). Said notice and letter were received by defendant's counsel on March 13, 1958 (see Exh. F). In view of defendant's failure to pay the said sums of P11,870.00, and P6,834.00, this action was begun in the Court of First Instance of Manila on February 18, 1959, for the recovery of said sums, plus 5% surcharge and 1% monthly interest thereon from May 15, 1954 and February 20, 1958, respectively, and the costs.

In his answer to the complaint, defendant pleaded prescription of action. However, subsequently thereto, or on March 30 and September 24, 1959, he paid the sums of P11,870.00 and P6,834.00 respectively (Exhs. 1 and 2). Hence, after due hearing, thereafter held, said court rendered judgment the dispositive part of which reads:

"WHEREFORE, the Court hereby renders judgment, ordering defendant to pay to plaintiff the amount of P9,184.73, representing 5% surcharge and the 1% monthly interest from the date of maturity of the income tax assessment at against defendant for the year 1953, as specifically stated in Exhs. B and F, as of the dates embodied in Exhs. 1 and 2, and to pay the costs."

The only question liaised by defendant-appellant is whether he is liable for the payment of the five per cent (5%) surcharge and one per cent (1%) monthly interest, on the aforementioned sums of P11,870.00 and P6,834.00. Defendant maintains that the answer should be in the negative for he has never been in default in the payment of these sums, inasmuch as he has not been duly notified of the corresponding assessments therefor, he being in the United States, from September, 1953 to January, 1958 and hence when the assessment notice for P11,870.00 was issued. This pretense is clearly devoid of merit. The assessment notices were sent to the address given by him in his income tax return. As a matter of fact, receipt of said notices was acknowledged by his representative in the

Philippines. Moreover, defendant was in the Philippines when the deficiency assessment notice for P6,834.00 was issued on February 20, 1958. Again, defendant's absence from the Philippines did not render the requisite payments impossible.

Wherefore, the decision appealed from should be, as it is hereby affirmed, with costs against defendant-appellant. It is so ordered.

Bengzon, C.J., Bautista, Angelo, Labrador, Barrera, Paredes, Regala and Makalintal, JJ., concur.

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