

REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GUADALUPIO OQUIAS, DEFENDANT-APPELLANT.

G.R. No. L-21874. June 30, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Cebu (Civil Case No. R-7478) ordering the defendant appellant to pay the plaintiff-appellee the sum of P10,600.21 representing deficiency percentage taxes for the years 1952 and 1953, with legal interest from the filing of the complaint, plus costs.

In the court below, the case was submitted for decision on the following stipulation of facts:

"1. That on or about June 12, 1954, the plaintiff, thru the Bureau of Internal Revenue, assessed and demanded of the defendant the sum of P 10,600.21, representing deficiency percentage taxes for the years 1952-1953, inclusive of surcharge and penalty, (Annex 'A' of plaintiffs complaint);

"2. That on August 9, 1954, the defendant thru counsel, requested a reinvestigation which was granted by the plaintiff on September 2, 1954, (Annex B' of plaintiff's complaint);

"3. That on or about October 12, 1956, the plaintiff notified the defendant that the reinvestigation of his tax deficiencies will be conducted on October 15, 1956. but neither the defendant nor his counsel appeared on the said date scheduled for the reinvestigation. (Pars. 1, 2 and 3 page two of Annex 'C' of plaintiffs complaint);

"4. That on or about November 21, 1960, the Bureau of Internal Revenue issued a Warrant of Distrainment and Levy in accordance with the provisions of Section 316 of the National Internal Revenue Code but was not executed due to the fact that the defendant's counsel requested that the same be lifted on the ground that the plaintiffs right to collect taxes thru civil remedies either by distrainment and levy or by judicial action has prescribed and if not, a reinvestigation be conducted, (Annex 'C' of plaintiffs complaint);

"5. That on March 2, 1962, the plaintiff, thru the Bureau of Internal Revenue, denied the defendant's request for further reinvestigation and reiterated its demand for P10,600.21 as deficiency percentage taxes, inclusive of surcharge and penalty, (Annex 'D' of plaintiff s complaint);

"6. That the defendant did not contest the demand Annex A" nor the final decision of the plaintiff, Annex'D', both of the plaintiff s complaint, in the Court of Tax Appeals; and

"7. That the defendant did not pay the percentage tax deficiencies in the amount of P10,600.21 including surcharge and penalties.

"That both parties hereby reserve their right to present additional evidence not covered by the above stipulation of facts.

"Cebu City, August 4, 1962."

The only issue to be resolved is whether or not the present action for collection of the deficiency taxes had prescribed when it was filed on May 2, 1962. The pertinent provisions of the National Internal Revenue Code (CA No. 466, as amended) read as follows:

"SEC. 332. Exceptions as to period of limitations of assessment and collection of taxes.— x x x (c) Where the assessment of any internal-revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint and levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of the period previously agreed upon.

"SEC. 333. Suspension of running of statute.— The running of the statute of limitations provided in Section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and for sixty days thereafter."

The assessment of the deficiency taxes in question was made on June 12, 1954. From that date the said taxes could be collected by a proceeding in court, and hence from that date the five-year period fixed for the purpose started. The time that had elapsed when the suit for collection was filed on May 2, 1962 was 7 years, 10 months and 20 days. From this, however, should be deducted the period during which prescription was interrupted. The interruption began on September 2, 1954, when the appellant's request for reinvestigation was granted, since the grant in effect tied the hands of the appellee from filing the action[+] In fact the actual reinvestigation was set for October 15, 1956; and although it was not conducted then because neither the appellant nor his counsel appeared, the appellee obviously considered the matter still open, at least until November 21, 1960, when the Bureau of Internal Revenue issued a warrant of distraint and levy. That was the first clear and unequivocal act on the part of the appellee which showed that as far as it was concerned the assessment of the deficiency taxes was final, that the door which had been previously opened towards its possible reconsideration was definitely closed, and hence collection of the amount assessed would proceed. Consequently the interruption of the prescriptive period terminated on that day, 6 years, 2 months and 19 days after September 2, 1954. Deducting this interruption from 7 years, 10 months and 20 days, the actual time covered by prescription since it started June 12, 1954, was only 1 year, 8 months and 1 day, much less than the five years fixed in the Revenue Code.

WHEREFORE, the decision appealed from is affirmed, with costs.

Concepcion. C.J., Reyes. J.B.L., Dizon. Zaldivar. Ruiz Castro, Fernando. Teehankee, Barredo and Villamor. JJ., concur.

[+] "x x x There are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously.

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