

## THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. AURELIO P. REYES AND COURT OF TAX APPEALS, RESPONDENTS.

*G. R. No. L-8685. January 31, 1957*

Ponente: FELIX, J.

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### FELIX, J.:

[. January 31, 1957]

This is a petition for certiorari filed by the Collector of Internal Revenue wherein he seeks to nullify the resolution of the Court of Tax Appeals restraining him from collecting, through summary administrative methods, taxes allegedly due from Dr. Aurelio P. Reyes. The facts of the case may be summarized as follows:

In a letter dated October 13, 1954, petitioner, the Collector of Internal Revenue demanded from Aurelio P. Reyes payment of his alleged deficiency income taxes, surcharges, interests and penalties for the tax years 1946 to 1950 amounting to P641,470.04 as of October 31, 1954, with the suggestion that the aforesaid tax liabilities be paid either to the Bureau of Internal Revenue or the City Treasurer of Manila. Together with said letter of assessment, respondent Aurelio P. Reyes received a warrant of distraint and levy on his properties in the event that he should fail to pay the alleged deficiency income taxes on or before October 31, 1954. Being informed by the City Treasurer of Manila by a letter dated November 4, 1954, that said Treasurer was instructed by petitioner to execute the warrant of distraint and levy in the amount demanded is not settled on or before November 10, 1954, Aurelio P. Reyes filed with the Court of Tax Appeals on November 15, 1954, a petition for review of the Collector's assessment of his alleged deficiency income tax liabilities. This was followed by an urgent petition, filed on November 16, 1954, to restrain the Collector of Internal Revenue from executing the warrant of distraint and levy on his properties, alleging among others, that the right of respondent to collect by summary proceedings the tax demanded had already prescribed in accordance with section 51 (d) of the National Internal Revenue Code, as his income tax returns for the tax years 1946 to 1950 had been filed more than three years ago, the last one being on April 27, 1951; that a distraint and levy on his properties would work injustice or irreparable injury to him and would tend to render any judgment of the Court in the main case meaningless and ineffectual; that the requisite of Section 11 of Republic Act No. 1125 for the filing of a bond or deposit before a writ of distraint and levy may be suspended is not applicable in this case; and that the greater portion of his assets consists of real properties located in Manila and shares of stock in the Philippine Racing Club which are all encumbered in various financial institutions and therefore there is no possibility that he would abscond with his property or remove or conceal the same.

The Collector of Internal Revenue opposed said petition on November 19, 1954, on the ground that the Court of Tax Appeals has no authority to restrain him from executing the warrant of distraint and levy on the properties of Aurelio P. Reyes in connection with the collection of the latter's deficiency income taxes; that said taxpayer has an adequate remedy in law by paying first and then seek for the recovery thereof; and that section 51 (d) does not preclude distraint and levy. By resolution of January 8, 1955, the Court of Tax Appeals upheld the stand of Aurelio P. Reyes and ordered the Collector of Internal Revenue to desist from collecting by administrative

method the taxes allegedly due from Reyes pending the outcome of his appeal, without prejudice to other judicial remedy or remedies which the Collector may desire to pursue for the protection of the interest of the Government, pending the final decision of the case on the merits. On January 21, 1955, the Solicitor General filed a notice of appeal from said Resolution and instituted in this Court the instant certiorari case on January 22, 1955.

It is not disputed that respondent Reyes filed his income tax returns for the years 1946 to 1950, and that the warrant of distraint and levy against the properties of said respondent was issued only on October 13, 1954, or 3 years, 5 months and 16 days after the respondent taxpayer had filed his returns for the tax year 1950, which he made on April 27, 1951. Therefore, the issues in this instances are: (1) whether the Court of Tax Appeals could restrain the Collector of Internal Revenue from enforcing collection of income tax deficiency by summary proceedings after the expiration of the three-year period provided for in section 51 (d) of the National Internal Revenue Code; and (2) granting that the Collector could be restrained, whether the Court of Tax Appeals had any power to grant an injunction without requiring the filing of a bond or making a deposit as prescribed by section 11 of Republic Act No. 1125.

(d) Refusal or neglect to make return; fraudulent returns, etc.- In cases of refusal or neglect to make a return or in cases of erroneous, false or fraudulent returns, the Collector of Internal Revenue shall, upon 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 Code 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.",

and in a long line of cases this Court has already construed this just quoted provision to mean that the three-year prescriptive period provided therein constituted a limitation to the right of the Government to enforce the collection of income taxes by the summary proceedings of distraint and levy though it could proceed to recover the taxes due by the institution of the corresponding civil action (Collector of Internal Revenue vs. Villegas, 56 Phil., 554, citing Holmes, Federal Income Tax 2d, p. 581; Collector of Internal Revenue vs. Haygood, 65 Phil., 520; and Juan de la Vina vs. El Gobierno de las Filipinas, G. R. No. 42669, January 29, 1938). This doctrine was reiterated in the case of Philippine Sugar Estate Development Co., Inc., vs. Juan Ppsadas, 68 Phil., 216, wherein it was held that:

"\* \* \* after the three years have elapsed from the date to which income tax returns which have been found to be false,

fraudulent or erroneous, may have been made, the Collector of Internal Revenue cannot make any summary collection through administrative methods, but must do so through judicial proceedings."

In the recent case of the Collector of Internal Revenue vs. Jose Avelino et al., supra, p. 327, promulgated November 19, 1956, this Court held:

"It therefore appears that when it refers to the Collection of income tax it is mandatory that the right of the Collector of Internal Revenue to collect it by the summary methods of distraint and levy be exercised within the period of three years from the time the income tax return is filed, otherwise the right can only be enforced by judicial action. Since, admittedly, the deficiency taxes in question were assessed and the warrants for their collection by distraint and levy were issued after the period of three years from the filing of the returns, it is evident that said warrants, as well as the steps taken in connection with the sale of the properties of the taxpayer, were issued without authority of the law and, hence, the Court of Tax Appeals acted properly in enjoining their enforcement as prayed for by petitioner."

It is, however, contended by petitioner that the respondent Court of Tax Appeals acted in complete disregard of the prohibition of section 305 of the National Internal Revenue Code when it restrained the former from executing

the warrant of distraint and levy against the properties of respondent Aurelio P. Reyes. Said provision reads as follows:

"Sec. 305. Injunction not Available to Restrain the Collection of Tax.—No court shall have authority to grant an injunction to restrain the collection of any internal revenue tax, fee, or charge imposed by this Code" (National Internal Revenue Code).

However, Section 11 of Republic Act No. 1125 prescribes the following:

"Sec. 11.-Who may appeal; effect of appeal.-Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, \* \* - may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling.

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue \* \* \* shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue \* \* \* may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court."

It can be inferred from the aforequoted provision that there may be instances like the one at bar, when the Collector of Internal Revenue could be restrained from proceeding with the collection, levy, distraint and/or sale of any property of the taxpayer. In this respect, this Court said in the case of Collector of Internal Revenue vs. Avelino et al., supra:

"This section (Sec. 11 of Rep. Act No. 1125) must be deemed to have modified section 305 of the National Internal Revenue Code in view of the repealing clause contained in said Act to the effect that 'any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed' (Section 21)".

But petitioner asserts that even assuming that under Section 11 of Republic Act No. 1125 respondent Court is empowered to order him to desist from the collection of said taxes by extra-judicial methods, yet the Court erred in issuing the injunction without requiring the taxpayer either to deposit the amount claimed or file a surety bond for an amount not more than double the tax sought to be collected. We disagree with this contention. At first blush it might be as contended by the Solicitor General, but a careful analysis of the second paragraph of said Section 11 will lead us to the conclusion that the requirement of the bond as a condition precedent to the issuance of the writ of injunction applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law for such cases provided and not when said processes are obviously in violation of the law to the extreme that they have to be SUSPENDED for jeopardizing the interests of the taxpayer.

Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the collection by summary proceedings is by itself in accordance with existing law; and then what is suspended is the act of collecting, whereas, in the case at bar what the respondent Court suspended was the use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. It certainly would be an absurdity on the part of the Court of Tax Appeals to declare that the collection by the summary methods of distraint and levy was violative of the law,-and then, on the same breath, require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction. Let us suppose, for the sake of argument, that the Court a quo would have

required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court a quo be obliged to authorize or allow the Collector of Internal Revenue to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?

The pronouncement made by the respondent Court, after due hearing, to the effect that the summary methods of collection by distraint and levy would be improper in the instant case, was done in the exercise of its power to pass judgment on all matters brought before it. It was a lawful exercise of the jurisdiction vested in said Court which is well-provided for in section 7 of Republic Act No. 1125:

"Sec. 7. Jurisdiction.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by Bureau of Internal Revenue."

There is another issue raised by respondent Aurelio P. Reyes that merits consideration. It does not appear from the records that a motion for reconsideration was ever filed by counsel for petitioner, although a notice of appeal, dated January 21, 1955, was filed in the court below. It is an established doctrine in this jurisdiction that the attention of the Court should first be called to its supposed error, and its correction asked for on a motion for reconsideration (*Herrera vs. Barretto*,<sup>25</sup> Phil. 245; *Uy Chua vs. Imperial*, 44 Phil. 27; *Manila Post Publishing Co. vs. Sanchez*, 81 Phil., 614 46 Off., Suppl. (1) 412; *Alvarez vs. Ibanez*, 83 Phil., 104, 46 Off. Gaz., 4233).

That failure of the petitioner to file with the court below a motion for reconsideration of the order subject of the certiorari proceedings is a fatal and unsurmount-able barrier, is further stressed in the case of *Valeriano Nicolas et al. vs. The Hon. Modesto Castillo et al.*, (97 Phil., 336) wherein this Court held:

"No motion for reconsideration was ever filed by petitioners in the court below, calling its attention to the alleged errors and irregularities now raised in this petition, to give it an opportunity to correct such errors and irregularities, if indeed any were committed. For this reason alone if not for any other, the writ applied for should be denied."

Wherefore, the petition for certiorari is denied and the resolution of the respondent Court of Tax Appeals is hereby affirmed, without pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Endenda, JJ., concur.

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