

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENERAL SALES SUPPLY CO., INC., GERARDO SAMSON, AND
RESTITUTO SAMSON, DEFENDANTS-APPELLANTS.**

G.R. No. L-18543. October 31, 1968

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

Appeal from the judgment of the Court of First Instance of Manila ordering the defendants to pay the plaintiff the sum of P79,379.69 as deficiency income taxes for the years 1946 to 1949 plus 5% surcharge and 1% monthly interest from April 15, 1955 until fully paid.

The General Sales Company was engaged in the purchase and sale of school and office supplies and equipment. Gerardo Samson and Restituto Samson were President and General Manager, respectively, of the corporation. For the taxable years 1946 to 1949 the defendant corporation filed its income tax returns and paid the income taxes due on the net incomes reported therein.

In an investigation conducted by the Senate Blue Ribbon Committee, anomalous sales of school supplies and equipment to the government were unearthed. In view, thereof, on November 17, 1950, the Commissioner of Internal Revenue assigned examiner Valeriano Robles to investigate the income tax returns of all dealers in school supplies and equipment, including the General Sales Supply Co., Inc.

In due course of investigation, examiner Robles found out that the records and books of account of the General Sales Supply Co., Inc., showed that the purchases and expenses reported in its income tax returns had been padded and did not correctly state the taxes due the government in the total sum of P108,557.90 including the 5% surcharge. On the basis of the aforesaid findings of examiner Robles, the Commissioner of Internal Revenue, on February 28, 1951, sent a letter of demand to the corporation requiring it to pay the deficiency income taxes for the taxable years 1946 to 1949. Proper assessment notices were issued to the corporation on March 8, 1951.

On April 14, 1951, the corporation protested the assessment and requested for a reinvestigation. The request was granted and on May 22, 1952, the Commissioner of Internal Revenue notified the defendant corporation to submit within 20 days from notice a list of all its general and miscellaneous expenses as well as its various local purchases duly supported by vouchers. The corporation requested further extensions of time within which to submit vouchers and other records to substantiate its allegation that the deficiency tax assessment was incorrect. These requests for extensions were dated June 10, August 9, September 9, October 9 and November 8, 1952.

On December 15, 1952, the corporation submitted a detailed statement of merchandise purchased for the years 1946 to 1949 without the vouchers and invoices. In view of the re-peated failure on the part of the General Sales Supply Com-pany to submit the required vouchers and invoices, the Commissioner of Internal Revenue, on February 12, 1954, wrote the corporation a letter reiterating the demand for the pay-ment of the original assessment dated March 8, 1951, including the accrued interests.

On April 20, 1954, the corporation again requested for a reconsideration of the assessment, which request was granted, and a reassessment was conducted. Based on the evidence submitted during the reassessment, the Commissioner of Internal Revenue modified his assessment against the corporation by reducing the previous total assessment of P108,557.90 to P79,379.69. Assessment notice was duly served upon the corporation on March 12, 1955. Still, the corporation was not satisfied with the reduction and on June 25, 1956, it protested anew the latest assessment. Finally, on March 15, 1957, the corporation reiterated its protest and inter-posed the defense of prescription under Sec. 51 (d) of the Tax Code. The Commissioner of Internal Revenue replied, advising the corporation that the applicable provision of law was that provided for in Section 332 (a) of the Tax Code and not Section 51 (d) of the same. The Commissioner insisted on the payment of the assessment of March 12, 1955.

In view of the refusal of the corporation to pay, the present suit was filed in the Court of First Instance of Manila in the name of the Republic of the Philippines as plaintiff, to recover from the defendant corporation the amount of P79,379.69 as deficiency income taxes due from defendant corporation, as follows:

1946	P 2,850.36
1947	P26,290.59
1948	P15,593.27
1949	P34,645.46

The complaint also alleged that the defendant corporation was liable for the payment of 5% surcharge (fraud penalty) under Section 72 of the National Internal Revenue Code because it overstated its purchases and manipulated its books of accounts purposely to evade the payment of taxes due from it.

Instead of answering the complaint the defendant corporation filed a motion to dismiss solely based on the ground that the deficiency income taxes sought to be collected were assessed beyond the 3-year period prescribed by law (Sec. 51[d], Tax Code). The motion was denied for lack of merit. Consequently, defendants filed their answer which was sub-sequently amended. After the issues were joined, the parties proceeded to trial. The plaintiff presented its evidence, oral and documentary. No evidence was presented by the defendants.

On March 17, 1961, the lower court rendered judgment holding that the right of the appellee to assess and collect the deficiency taxes from the appellants for the years 1946 to 1949 has not prescribed. The court ordered the plaintiff to pay the total amount of P79,379.69 plus 5% surcharge and 1% monthly interests from April 15, 1955, until fully paid. The defendants filed a motion for reconsideration and for a new trial alleging that they were deprived of their day in court and that the lower court erroneously admitted some exhibits presented during the hearing. The motion for reconsideration and new trial was denied. Defendants appealed to the Supreme Court on questions of law.

There is no question that the tax imposed upon the appellant corporation in the amount of P79,379.69 is correct, final and conclusive. Indeed, the appellant questioned the assessment. Nevertheless, they did not appeal the decision of the Commissioner of Internal Revenue to the Court of Tax Appeals to assail the correctness of the assessment. It is the Court of Tax Appeals which has the original and exclusive jurisdiction to entertain cases involving disputed assessments. (Sec. 7, Rep. Act No. 1125.) Having failed to appeal the tax assessment to the Court of Tax Appeals within the time provided by law, the same became final and collectible. It is only cases involving the collection of taxes which fall within the jurisdiction of the regular courts.

The remaining interrelated issues may be crystallized into two main problems: First, had the action for collection off the deficiency income taxes prescribed; second, were the defendants deprived of their day in court?

1. Appellants contend that the deficiency income tax assessment for 1946 to 1949, inclusive, having been issued on March 19, 1955, is illegal on two grounds: (a) It was made beyond the three-year period prescribed in Section 51 (d) of the Internal Revenue Code and (b) the action was not instituted within five years as provided by Section 331 of the same Code.

Section 51 (d) of the Tax Code prior to its amendment by Republic Act No. 2343, provided that:

"(d) REFUSAL OR NEGLECT TO MAKE RETURNS; FRAUDULENT RETURNS, etc. - In cases of refusal or neglect to make a return and in cases erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after the 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."

The Supreme Court has repeatedly held that the prescriptive period of three years in the aforementioned provision of the Internal Revenue Code refers to summary collection of taxes by distraint and levy. (Collector of Internal Revenue vs. Villegas, 56 Phil. 554, citing Holmes, Fed Income Tax 2d p.581; Collector of Internal Revenue vs. Haygood, 65 Phil. 520; and Juan de la Viña vs. El Gobierno de las Islas Filipinas, G.R. No. 42669, Jan. 29, 1938; Philippine Sugar Estate Development Co., Inc. vs. Posadas, 68 Phil. 215; The Collector of Internal Revenue vs. Aurelio P. Reyes, et al., G.R. No. L-8685, January 31, 1957.)

It is to be observed that Section 51 (d) of the Tax Code provides: " * * * 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. In the case of Republic of the Philippines vs. Ernesto Gamboa, G.R. No. L-16504, October 27, 1961, this Court said:

"The period of three years prescribed in said Section 51 (d) refers to the assessment for the purpose of 'immediate' collection of the tax due, that is to say, by summary proceedings."

The manner by which the Republic proceeded to collect the deficiency tax in the instant case was by judicial action, not by summary proceedings; hence, Section 51 (d) of the Tax Code relied upon by the appellants is not applicable. Neither will Section 331 of the Internal Revenue Code apply. The opening clause of said section itself warrants the institution of the present suit. It provides:

"Sec. 331. Period of limitation upon assessment and collection. - Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

We stress the first statement which reads: "Except as provided in the succeeding section," and the succeeding section clearly provides:

"Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

There is no doubt that the income tax returns filed by the appellant corporation were false and fraudulent with the intent to evade payment of taxes. Hence, under Section 332 of the Tax Code, the 10-year prescriptive period within which to file action in court shall commence not from the filing of the income tax returns nor from the

assessment of the tax but from the "discovery of the falsity, fraud or omission." We said so in the case of Collector of Internal Revenue vs. Aurelio P. Reyes, G.R. Nos. L-11534 and L-11558, November 25, 1958:

"This finding of fraud, also disposes adversely to the taxpayer, of his contention that reassessment of his taxes was barred because more than five years had elapsed since the disputed returns were filed. Under Section 332 of the Internal Revenue Code, collection of taxes may be started within ten years from the discovery of the fraud."

The padded and fraudulent income tax returns filed by the General Sales Supply Co., Inc., defendant below and appellant here, were discovered and made known to the Commissioner of Internal Revenue on February 3, 1951, when examiner Valeriano Robles of the Bureau of Internal Revenue filed a report of his investigation of the tax liability of the appellant corporation. The instant suit was commenced in the court below on February 27, 1959. The action was filed within the 10-year limit prescribed by law. It is clear, therefore, that the present action for collection of the deficiency taxes in question had not yet prescribed when the action was commenced. (Republic of the Philippines vs. Damian P. Ret, G.R. No. L-13754, March 31, 1952.)

The other issue raised in this appeal is whether the appellants had been deprived of their day in court. There is no merit in appellants' contention in the affirmative. We agree with the observation of the lower court on this point, to wit:

"* * *. The records show that on February 2, 1961 when this case was called for hearing, counsel for defendants failed to appear due to illness, and on motion of defendants Gerardo and Restituto Samson, the court postponed the hearing and set it on February 20, 1961. On the date set for hearing (February 20, 1961), counsel for defendants failed again to appear. The court therefore ruled that the case be submitted for decision."

Undoubtedly, the trial court acted correct when it considered the case submitted for decision sans the evidence for the defendants-appellants. Although a defendant who answered the complaint but fails to appear at the scheduled trial cannot be declared in default, the trial, however, may proceed without his presence. (Go Changjo vs. Roldan Sy-Changjo, 18 Phil. 405.) And if the absence of a party during the hearing was due to his own fault, he cannot later on complain that he was deprived of his day in court (Sandejas vs. Robles, 81 Phil. 421; Siojo vs. Tecson, G.R. No. L-2807, April 23, 1951.)

PREMISES CONSIDERED, the judgment appealed from is affirmed, with double costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Zaldivar, J., did not take part.

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