

**SILVERIO BLAQUERA, AS COLLECTOR OF INTERNAL REVENUE,
PETITIONER, VS. HON. JUDGE JOSE S. RODRIGUEZ, ETC., AND HAO
GIOK SAN, ETC., RESPONDENTS.***G. R. No. L-10935. April 28, 1958*

Ponente: ENDENCIA, J.

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On May 10, 1956 respondent Hao Giok San filed with the Court of First Instance of Cebu, 14th Judicial District, then presided by respondent Hon. Judge Jose S. Rodriguez, a complaint against the petitioner herein, docketed as Civil Case No. R—4514, to secure an order enjoining the petitioner, his agents, subordinates and other persons acting in his behalf, to perpetually refrain from affecting the collection of the deficiency percentage taxes, surcharges or penalties and compromise in the total amount of P3,625 and from levying on execution any of his property to satisfy the aforesaid deficiency percentage taxes, surcharges and compromise and, after trial, to make the writ of preliminary injunction issued during the pendency of the proceeding permanent and perpetual. On the same date, pursuant to the prayer of the complaint and upon filing by the plaintiff therein of a bond in the amount of P3,625, the respondent Judge issued, ex-parte, a writ of preliminary injunction. Thereupon, on May 26, 1956, petitioner herein filed a motion to dismiss the complaint on the ground that the Court of First Instance of Cebu lacked jurisdiction to try it, and prayed for the lifting of the preliminary injunction issued thereunder. Upon opposition of Hao Giok San, this motion was denied by the respondent Judge. Petition for reconsideration was filed, but it was likewise dismissed. Hence petitioner initiated the present petition to secure from this Court a writ of prohibition (a) to restrain respondent Judge, Hon. Jose S. Rodriguez, from taking cognizance of the aforesaid Civil Case No. R—4514, for lack of jurisdiction over its subject matter; (b) to secure a preliminary injunction to prevent said respondent Judge from enforcing the preliminary injunction issued in said civil case; and (c) after hearing, to make permanent the writ of preliminary injunction which may be issued by this Court.

The record shows that on November 12, 1955, the Deputy Collector of Internal Revenue, Jose Arañas, sent to herein respondent the following communication:

"From the report submitted to this Office, it appears that you have short paid the correct percentage taxes covered by Official Receipts Nos. 218120, 704226, 699013, and 709019, dated April 20, 1955, July 20, 1964, April 20, 1954 and October 20, 1964, respectively, in the total amount of P2,900. Adding thereto the 25% surcharge for late payment, there is, therefore, due from you the sum of P3,625.

"You are hereby demanded to pay the said amount of P3,625, together with the sum of P50.00 as compromise for late payment, or a total of P3,675 within ten days from your receipt of this letter.

"Please be warned that your failure to pay the aforementioned tax and surcharge in the total amount of P3,625 together with the suggested compromise of P50 within the period indicated above will constrain this office to enforce the collection of the tax and surcharge by the summary remedies provided for by law and at the same time recommend your prosecution in court for violation of section 183, penalized under section 209, both of the National Internal Revenue Code."

On November 21, 1955, respondent Hao Giok San, thru counsel, wrote the Deputy Collector that he had paid in full the correct percentage taxes for the period referred to in the aforequoted letter, and denied any outstanding liability or deficiency in the payment of said percentage taxes. On December 19, Deputy Collector Arañas wrote back demanding payment of the deficiency taxes, to which respondent Hao Giok San answered insisting that he has paid religiously all his taxes to the government starting from the date he engaged in business up to the date of his letter, and reiterated his contention that he owes nothing to the Government of the Philippines by way of taxes; and in order to prevent the herein petitioner from collecting the disputed deficiency taxes and levying or distraining any property of the respondent Hao Giok San in satisfaction of said taxes, the latter initiated the aforesaid Civil Case No. R—4514 in the Court of First Instance of Cebu.

As could be readily seen, the main question we are called upon to decide is whether the respondent Judge, or more exactly, the Court of First Instance of Cebu, has jurisdiction to try the aforesaid civil case where the matter involved is the collection of the deficiency percentage taxes from respondent Hao Giok San and its enforcement by means of levy and distraint of respondent's properties in accordance with the National Internal Revenue Code. Essentially, in said civil case, respondent Hao Giok San sought to review the actuation of the herein petitioner on the aforesaid collection of taxes and, for this reason, petitioner claims that the Court of First Instance of Cebu has no jurisdiction to take cognizance of said civil case, contending that the question involved therein should be brought on appeal, not to the Court of First Instance of Cebu, but to the Court of Tax Appeals in view of Section 7 of Republic Act No. 1125, which provides:

"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 the Bureau of Internal Revenue;"

Upon careful examination of Appendix A of the petition, which is the complaint filed by Hao Giok San in Civil Case No. R—4514, we clearly find that therein Hao Giok San seeks not only to contest the right of petitioner to collect the deficiency percentage taxes, surcharges and compromise in question, but also the legality or propriety of the levy by distraint on his properties, if same is resorted to, all of which should really be brought on appeal to the Court of Tax Appeals, in view of the aforequoted Section 7 of Republic Act No. 1125.

It is our considered opinion that the determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the aforequoted provision of law, the Court of Tax Appeals has exclusive appellate jurisdiction to review on appeal any decision of the Collector of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.

Wherefore, petition is granted and the respondent Judge, Hon. Jose S. Rodriguez, is hereby prohibited from further taking cognizance of Civil Case No. R—4514; his orders mentioned in the petition are hereby set aside, and the preliminary injunction issued in this case made permanent, with costs against the respondent Hao Giok San. Paras, Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Felix, JJ., concur.

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