

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. CARMEN CUENCO AND THE COURT OF TAX APPEALS, RESPONDENTS: THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. LOURDES CUENCO AND ...

G. R. Nos. L-9117-18. April 29, 1957

Ponente: PADILLA, J.

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PADILLA, J.:

These are petitions under section 19, Republic Act No. 1125, to review the resolutions of the Court of Tax Appeals in Cases Nos. 113 and 114, dated 26 April 1955, declaring null and void the warrant of distraint and levy issued by the petitioner on 23 March 1955 in the first case and on 26 March 1955 in the second, as well as the contemplated sale at public auction of the properties of the taxpayers set for 27 April, 1955.

G. R. No. L-9117—In a letter dated 14 December 1954 the petitioner served upon the respondent Carmen Cuenco assessments for deficiency income tax for the years 1946 to 1950, inclusive, in the total sum of P3,849.02, and for deficiency additional residence tax for the years 1948 to 1951, inclusive, with 25 per cent surcharge thereon, in the total sum of P21.25 (Appendix A). In view of the failure of the respondent to pay the aforesaid deficiency taxes as assessed, on 23 March 1955 the petitioner issued a warrant of distraint and levy upon the respondent's properties to enforce their collection (Exhibit E). On 20 April 1955 the respondent appealed to the Court of Tax Appeals under section 11, Republic Act No. 1125, from the ruling of the petitioner, contesting the validity of the assessments for deficiency income tax and deficiency additional residence tax with 25 per cent surcharge thereon above referred to and praying that the petitioner be restrained from executing the warrant of distraint and levy. The petitioner objected to the respondent's prayer for a writ of preliminary injunction. After hearing, on 26 April 1955 the Court issued a resolution, the dispositive part of which is:

Wherefore, finding the petition for injunction of the petitioner, Carmen Cuenco, well-founded and meritorious, the same is hereby granted on condition that the petitioner files, subject to the approval of this Court, a surety bond in the amount of P50 in favor of the Republic of the Philippines to guarantee the payment of respondent's claim for residence tax for the years 1948, 1949, 1950 and 1951 amounting to P21.25. The three year prescriptive period provided for in section 51 (d) of the National Internal Revenue Code applies only to income taxes and not residence taxes.

The respondent Collector of Internal Revenue is hereby ordered to refrain from proceeding with the collection by summary methods (of) the alleged deficiency income and residence tax liability of the petitioner for the years 1946 to 1950, inclusive, and the warrant of distraint and levy issued by him on March 23, 1956, upon the properties of the petitioner as well as the contemplated sale of such properties at public auction are hereby declared illegal and of no binding force and effect upon the petitioner's compliance of the conditions herein set forth. (C. T. A. Case No. 113)

On the same day, 26 April 1955, the respondent filed a bond in the sum of P50 in compliance with the above quoted dispositive part of the resolution, which was approved by the Court.

G. R. No. L-9118—The respondent in this case is Lourdes Cuenco. Except as to the amounts assessed for deficiency income tax and additional residence tax, and the date of issuance of the warrant of distraint and levy, the facts are similar to the preceding case. The amount of deficiency tax assessed in this case is P5,102.53 covering identical years. The deficiency additional residence tax for 1945 to 1950, inclusive, with 25 per cent surcharge thereon, is assessed at P47.50 (Appendix A). The warrant of distraint and levy was issued by the petitioner on 26 March 1955 (Exhibit E).

The dispositive part of the resolution in this case is as follows:

WHEREFORE, finding the petition for injunction of the petitioner, Lourdes Cuenco, well-founded and meritorious, the same is hereby granted on condition that the petitioner files; subject to the approval of this Court, a surety bond in the amount of P50 in favor of the Republic of the Philippines to guarantee the payment of respondent's claim for residence tax for the years 1945, 1946, 1947, 1948, 1949 and 1950 amounting to P47.50. The three year prescriptive period provided for in section 51 (d) of the National Internal Revenue Code applies only to income taxes and not residence taxes.

The respondent Collector of Internal Revenue is hereby ordered to refrain from proceeding with the collection by summary methods (of) the alleged deficiency income and residence tax liability of the petitioner for the years 19-15 to 1950, inclusive, and the "warrant of distraint and levy issued by him on March 26, 1955, upon the properties of the petitioner and well as the contemplated sale of such properties at public auction axe hereby declared illegal and of no binding' force and effect upon the petitioner's compliance of the conditions herein set forth. (C. T. A. Case No. 114.)

On the same day, 26 April 1955, the respondent filed a bond in the amount of 1*50 in compliance with the above quoted dispositive part of the resolution, which was approved by the Court.

The errors assigned in these cases are identical, to wit:

- Respondent Court of Tax Appeals erred in declaring null and void the warrant of distraint and levy (Exhibit E) issued by the petitioner, which in effect restrains the petitioner from collecting through summary administrative methods the deficiency income taxes assessed against the respondent Carmen Cuenco (in the first case and Lourdes Cuenco in the second), for the years 1946 to 1930, inclusive.
- Respondent Court of Tax Appeals erred in not requiring the taxpayer Carmen Cuenco (in the first case and Lourdes Cuenco in lh» second) to deposit the amount assessed by petitioner or to file a surety bond for not more than double the amount cf the assessment pursuant to the second paragraph of section 11 of Republic Act No. 1125.

Both respondents did not Hie income tax return for 1946 but they did file income tax returns for 1947, 1948, 1949 and 1950 on the same dates, as follows: 1 March 1948, 25 February 1949, 25 February 1950 and 27 February 1951, respectively (Exhibits A, E, C and D, in both cases). The warrants of distraint and levy to enforce collection of the assessed deficiency taxes were issued on 23 March and 26 March 1955, respectively, more than three years after the income tax return for each particular year had been fixed.

As regards the first error assigned, "this Court, in a long line,of decisions, has expressed the view that the government loses its right to collect the income tax by summary proceedings after three years have elapsed from the time that income tax return is filed, although it may still collect the tax by judicial action." [1]

On the second error assigned, in the case of Collector of Internal Revenue vs. Avelino, supra, this Court held that as the Collector of Internal Revenue cannot, after the lapse of three years from the time the taxpayer had filed his income tax return, make any summary collection of the deficiency income taxes by warrant of distraint and levy and that the distraint and levy as well as the contemplated sale at public auction of the properties of the taxpayer

are null and void being as they are in violation of section 51 (d) of the National Internal Revenue Code, it is illogical and inconsistent to require the filing of a bond as a condition precedent to the enjoining of such act or acts by the Collector which are held illegal.[2]

The writs of certiorari prayed for in the two cases are denied, without pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L., Endencia and Felix, JJ., concur.

[1] Collector of (Internal Revenue, vs. Avelino, 100 Phil., 327, 58 Off. Gaz. 645, citing the cases of Collector of Internal Revenue vs. Villegas, 56 Phil. 554-55!); Collector of Internal Revenue vs. Haygood, 66 Phil, 520; and Juan de lu Viña vs. El Gobierno de las Islas Filipinaa G. R. No. 42609, 20 January 1938. See also Collector of Internal Revenue w. Reyes, 100 Phil., 822; Collector of Internal Revenue vs. Zulueta, 100 Phil., 872, and Sambrano vs. Court of Tax Appeals, supra, p. 1.

[2]See also Collector of Internal Revenue vs. Reyes, supra.

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