

ALFREDO BOLLOZOS, PETITIONER, VS. COURT OF TAX APPEALS AND COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

G. R. No. L-16441. March 31, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for review of the decision of the Court of Tax Appeals, as well as of the order denying the motion for reconsideration filed therefor, ordering the petitioner to pay the respondent Commissioner of Internal Revenue the total sum of P3,624.77, "as deficiency fixed and percentage taxes and surcharge covering the period from the first quarter of 1950 up to and including the third quarter of 1955" plus costs.

The facts of this case are set forth in the partial "Stipulation of Facts," dated April 15, 1959, hereunder reproduced as follows:

"1. That during the years 1950 to 1955, inclusive, the petitioner engaged in business as operator of a shop for the construction and repair of mechanical devices at Cebu City;

"2. That during the said years, the petitioner paid the fixed tax of P10.00 a year imposed by Section 182 of the National Internal Revenue Code, except for the year 1952;

"3. That during the said years, it was ascertained by both parties that the petitioner failed to pay all the percentage taxes imposed by Section 191 of the Tax Code, thereby incurring deficiency percentage tax amounting to P3,111.52, instead of P4,254.67 computed as follows:

Year of Quarter

Gross Receipts

Tax Rate

Percentage Tax Paid

Deficiency Tax

1st Quarter 1950

P 9,315.00

2%

P144.98

P41.32

2nd Quarter 1950

9,091.50

2%

181.83

3rd Quarter up to September 21, 1950

6, 930.90

2%

138.62

4th Quarter 1950

10,109.80

3%

269.26

34.03

Total

P35,447.20

Total

395.80

1st Quarter 1951

P3,859.22

3%

115.78

2nd Quarter 1951

5,148.53

3%

154.46

3rd Quarter 1951

9,590.64

3%

287.72

4th Quarter 1951

6,985.30

3%

209.56

Total

P25,583.69

Total

P651.74

1st Quarter 1952

P6,117.96

3%

P183.54

2nd Quarter 1952

5,402.01

3%

162.06

3rd Quarter 1952

12,671.71

3%

380.15

4th Quarter 1952

5,009.48

3%

154.3

Total

P29,201.16

Total

P725.75

=====

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For 1953

P12,680.67

3%

P380.42

For 1954

12,680.67

3%

380.42

For 1955

19,246.20

3%

577.39

Total Percentage Tax

For 1953 to 1955 -----

P1,338.23

TOTAL DEFICIENCY PERCENTAGE

TAX for 1950 to 1955 -----

P3,111.52

"4. That the parties hereby reserve their right to present additional evidence not covered by this stipulation of facts in support of their respective contentions."

As stated in the decision of the Court of Tax Appeals, the petitioner and the respondent, by way of correcting the above-reproduced stipulation, also agreed in open court that for the year 1955, only three-fourths (3/4) of P19,246.20 or P14,434.65 should be considered as gross receipts in computing the percentage tax due, inasmuch as the decision appealed from covers only the period from the first quarter to the third quarter of 1955.

As may be observed, the petitioner admits his failure to pay the fixed and percentage taxes for the period in question. The only issue he raises in this appeal is his contention that the right of the Commissioner of Internal Revenue to collect the same has already prescribed.

In a documented account of the dates and incidents relevant to the issue raised, the appellee recites the following:

"This case arose from the information received by the Provincial Revenue Officer of Cebu City that appellant was operating a general repair shop since 1947 in Cebu City and was irregular in the payment of his taxes (Exhs. 1 & 2, pp. 1 & 2, BIR rec.). With this information, the said revenue officer assigned an agent to investigate the business activities of the appellant at C. Padilla St., Cebu City. On November 29, 1956, the said revenue agent submitted his report, together with his working sheet, on the gross receipts of the appellant covering the period from the first quarter of 1950 to the third quarter of 1955 (Exh. 3, pp. 3-5, BIR rec). On December 6, 1955, an assessment notice was sent to the appellant (p. 6, BIR rec.) by the Regional Office in Cebu City, signed by Group Supervisor Nector Espenilla, requesting the appellant to appear at the Regional Office in Cebu City and to explain his side of the case within ten (10) days from receipt of said letter. This request, however, was not complied with by the appellant (p. 7, BIR rec.). Another notice was sent to the appellant on April 19, 1956 (p. 8, BIR rec.) but he likewise failed to appear before the Regional Office Director or his representative.

"On June 13, 1956, the appellant authorized in writing Ernesto Ante, to represent him in his pending internal revenue case, and that said written authority was personally presented by Ernesto Ante to the Office of the Bureau of Internal Revenue in Cebu City on June 15, 1956 (Exh. B, p. 9, BIR rec; pp. 6-9, t.s.n., hearing on Apr. 8, 1959). In view of this representation, a formal letter of demand (No. 56-199), dated August 31, 1956, was issued to the appellant (Exh. 4; pp. 10-100, BIR rec.), addressed and mailed on September 1, 1956 to Ernesto Ante, the appellant's authorized representative at C. Padilla St., Cebu City (Exh. 5; P- 37, BIR rec.). (A copy of this letter of demand was, likewise, handed personally to the appellant upon suggestion of the Court of Tax Appeals during the hearing of this case on April 8, 1959; PP. 31-33, t.s.n.). A follow up letter was sent to said authorized representative of the appellant by the City Treasurer of Cebu City on September 10, 1956. (pp. 14 and 48, BIR rec.). The Chief Legal Assistant and Deputy, Office of the City Treasurer of Cebu City, made several direct requests to the appellant to pay the deficiency taxes assessed and demanded by the Bureau of Internal Revenue but the latter likewise ignored the demands for the payment of said assessment (p. 16, BIR rec., 1st indorsement dated April 25, 1958).

"On June 23, 1958, a 'Warrant of Distrainment and Levy' was issued by the Regional Office against the proFerties of the appellant (p. 19, BIR rec.; Exh. D), thru the City Treasurer of Cebu City (Exh. D-I; p. 20, BIR rec.) but the same was not executed in view of the appellant's request for reinvestigation. (See letters of counsel for petitioner dated August 5, 1958 and the 3rd indorsement of Deputy Treasurer of Cebu City dated August 8, 1958, and 2nd indorsement of Legal Assist, ft Deputy Office of the City Treasurer of Cebu City dated August 6, 1958, pp. 24, 22 & 21 respectively, BIR rec.).

"A waiver of the statute of limitations, signed by the appellant (pp. 17-18, BIR rec.), was executed and submitted to the Regional Office in Cebu City hut the latter refused to accept the same for the reason that it was defective (p. 25, BIR rec).

"On December 16, 1958, Regional Office answered the letter of the appellant's counsel dated October 18, 1958 with the information that the assessment in question as already final, the 30-day period within which to protest the same having elapsed (p. 29, BIR rec). Accordingly, on the same date, the Regional office returned the 'Warrant of Distrainment & Levy,' issued on June 23, 1958, to the City Treasurer of Cebu for immediate execution (p. 30, BIR rec).

"On January 24, 1959, appellant filed a petition for review with the Court of Tax Appeals."

In contending that prescription has set in his favor, appellant argues that it should be assumed that the required returns were filed on the dates they were due since the filing of the same are required by Sees. 208 and 209 of the revenue code and the presumption in law is that he has complied with its requirements, per Section 99 (ee), Rule 123, Rules of Court. (now Sec. 5 (ff, Rule 131.)

Consequently, he concludes that he "did not fail to fife his tax returns, or at least, the respondent collector did not prove his failure to file his returns." (p. 7, Petitioner's Brief.). And, proceeding from this premise that he did not fail to file his tax returns on time, the appellant insists that the provision applicable to this case is 331 of the Tax Code which 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 filed, and no proceeding in court without assessment for the collection on such taxes shall be begun after the expiration of such period. For the purpose of this section a return filed before the last day prescribed by law for the filing thereof shall be considered was filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

On the other hand, the appellees maintain that while it is true that the law is presumed to have been complied with, per the rule cited above, an assertion to the effect that the requirement of the law has not been complied with

sets aside the presumption and imposes upon the one asserting compliance therewith the burden of proving his assertion. It is claimed that in the instant case, the collector "has repelled appellant's defense of prescription with the assertion that the appellant did not comply with the requirements of Sec. 138 (a) of the Tax Code." Such being the case, and considering that the defense of Prescription in an affirmative defense, the burden of proof rests upon the appellant to present evidence upon the defense he has elected to set up.

In view of their contention, therefore, the appellees maintain that, contrary to the appellant's position, the applicable provision of the Tax Code is Sec. 332 and not Sec. 331. Sec. 332 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 assessments, at any time within ten years after the discovery of the falsity, fraud, or omission." (Underlining supplied by appellee.)

The issue in this case is fundamentally one of fact and not of law, to wit: Did the appellant file the return mentioned in Section 332 (a) of the tax code? If he has, then his contention that his tax liabilities has prescribed is meritorious. On the other hand, if he has not so filed the said return, then this case must unquestionably be governed by the provision of the above-mentioned Section 332 (a) to the end that appellant's claim of prescription must be denied.

The appellant has offered no proof whatsoever that he did file the said return. In the premises, he merely relies upon the rebuttable presumption established by the Rules of Court that he so filed the same. He argues that inasmuch as the respondents-appellees "did not prove his failure to file his return," he must be deemed or presumed to have complied with that requirement.

Against the above contention, however, is the factual finding of the Court of Tax Appeals that "from the record of the case at bar, it appears that the petitioner herein failed to file his tax returns, except for the first and fourth quarters of the year 1950." Furthermore, while it is true that the appellant is entitled to the presumption he invokes, it is likewise true that the same presumption no longer obtains in his case since it has been squarely and explicitly questioned or challenged. And, not only does the appellant no longer enjoy the above presumption; he is now charged with the burden of proving his assertion that he has complied with the law. It must be stressed that the defense of prescription is an affirmative allegation and the burden of proof is upon the party laying claim to it.

In brief, then, as appellant's failure to file the required returns was discovered only on November 29, 1955, the appellee has up to November 29, 1965 within which to collect the assessment in dispute. And, as the lower court held, "considering that the petitioner filed the instant appeal on January 24, 1959, and the respondent submitted his answer to the petition for review on March 13, 1959, which is equivalent to a court proceeding to collect the deficiency fixed and percentage taxes under review (Collector of Internal Revenue vs. Clement, G.R. No. Lr-18194, January 24, 1959; Collector of Internal Revenue vs. Soriano, G. R. No. Lr-11475, July 31, 1938). We believe and so hold that the right of the respondent to collect the disputed deficiency assessment for the periods not covered by any tax return has not yet prescribed. (Bisaya Land Transportation Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-12100, May 29, 1959)."

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby affirmed in full, with costs against the appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon J.P. and Zaldivar, JJ., concur.

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