

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.  
LIM TIAN TENG SONS & CO., INC., DEFENDANT AND  
APPELLANT.***G.R. No. L-21731. March 31, 1966*

Ponente: BENGZON, J.P., J.

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Lim Tian Teng Sons & Co., Inc., a domestic corporation with principal office in Cebu City, engaged in 1951 and 1952, among others, in the exportation of copra. The copra was weighed before shipment in the port of departure and upon arrival in the port of destination. The weight before shipment was called copra outturn. To allow for loss in weight due to shrinkage, said exporter collected only 95% of the amount appearing in the letter of credit covering every copra outturn. The 5% balance remained outstanding until final liquidation and adjustment.

On March 30, 1953 Lim Tian Teng Sons & Co., Inc. filed its income tax return for 1952 based on accrued income and expenses. Its return showed a loss of P55,109.98. It took up as part of the beginning inventory for 1952 the copra outturn shipped in 1951 in the sum of P95,500.00 already partially collected, as part of its outstanding stock as of December 31, 1951.

In the audit and examination of taxpayer's 1952 income tax return, the Collector of Internal Revenue eliminated the P95,500.00 outturn from the beginning inventory for 1952 and considered it as accrued income for 1951. This increased taxpayer's 1952 net income by P95,500.00 which, considering disallowances in the sum of P9,980.85, raised the taxpayer's net taxable income for 1952 to P50,370.87. Accordingly, in a letter dated January 16, 1957 (Exhibit C), received by Lim Tian Teng Sons & Co., Inc. on January 30, 1957, the Collector of Internal Revenue assessed a deficiency income tax of P10,074.00 and 50% surcharge thereon amounting to P5,037.00 and demanded payment thereof not later than February 15, 1957.

On January 31, 1957 Lim Tian Teng Sons & Co., Inc. requested reinvestigation of its 1952 income tax liability. The Collector of Internal Revenue did not reply; instead, he referred the case to the Solicitor General for collection by judicial action.

On September 20, 1957 the Solicitor General demanded from Lim Tian Teng Sons & Co., Inc. the payment of P15,111.50 within five days, stating that otherwise judicial action would be instituted without further notice. In a letter dated October 5, 1957, received by the Collector of Internal Revenue on October 7, 1957, Lim Tian Teng Sons & Co., Inc. reiterated its request for reinvestigation. It also wrote the Solicitor General on October 8, 1957 requesting that it be allowed to present its explanation together with supporting papers relative to its income tax liability. The Solicitor General transmitted the letter to the Collector of Internal Revenue. Thereupon, the Deputy Collector of Internal Revenue, by his letter dated October 15, 1957, informed the taxpayer that its request for reinvestigation would be granted provided it executed within ten days a waiver of the statute of limitations as required in General Circular V-258 dated August 20, 1957. In his letter dated December 10, 1957, the Deputy Collector of Internal Revenue extended the period within which to execute and file with him the waiver of the

statute of limitations to December 31, 1957, but advised that if no waiver is forthcoming on or before said date, judicial action for collection would be instituted without further notice. Receipt of this letter is denied by appellant company.

As Lim Tian Teng Sons & Co., Inc. failed to file a waiver of the statute of limitations, the Collector of Internal Revenue instituted eight months after, specifically on September 2, 1958, an action in the Court of First Instance of Cebu for the collection of deficiency income tax.

After hearing the parties, the court below rendered the following judgment:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered, declaring the assessment (Exhs. D, D-1) of income tax in the sum of P15,111.00 due from the defendant to the plaintiff for the year 1952 valid, final and executory; condemning the defendant to pay the same to the plaintiff with interest at one (1) per centum monthly from October 8, 1957 until fully paid.

"With costs against the defendant.

"IT IS SO ORDERED."

Not satisfied with the decision, the Collector of Internal Revenue moved for its reconsideration on the ground that it did not include the 5% surcharge for late payment of tax. The motion was denied for the reason that the taxpayer has already been ordered to pay a surcharge of 50%.

Both parties appealed, raising only questions of law.

Plaintiff cites as errors the non-imposition of the 5% surcharge for late payment of tax and the computation of delinquency interest from October 8, 1957.

Defendant, on the other hand, assails the jurisdiction of the lower court, its finding that the assessment in question has become final and executory, the correctness of the assessment and the imposition of the 50% surcharge.

We will discuss first the taxpayer's appeal. It maintains that the lower court has no jurisdiction to entertain this case on the ground that the Collector of Internal Revenue has not yet issued his final decision on its requests for reinvestigation. The taxpayer's stand is that final decision of the Collector of Internal Revenue on the disputed assessment is a condition precedent to the filing of an action in the Court of First Instance for the collection of a tax. This argument has no merit. The Collector of Internal Revenue is authorized to collect delinquent internal revenue taxes either by distraint and levy or by judicial action or both simultaneously.[1] The only requisite before he can collect the tax is that he must first assess the same within the time fixed by law.[2] And in the case of a false or fraudulent return with intent to evade the tax or of a failure to file a return, a proceeding in court for the collection of such tax may be begun without assessment.[3]

Nowhere in the Tax Code is the Collector of Internal Revenue required to rule first on a taxpayer's request for reinvestigation before he can go to court for the purpose of collecting the tax assessed. On the contrary, Section 305 of the same Code withholds from all courts, except the Court of Tax Appeals under Section 11 of Republic Act 1125, the authority to restrain the collection of any national internal-revenue tax, fee or charge, thereby indicating the legislative policy to allow the Collector of Internal Revenue much latitude in the speedy and prompt collection of taxes. The reason is obvious. It is upon taxation that the government chiefly relies to obtain the means to carry on its operations, and it is of the utmost importance that the modes adopted to enforce collection of taxes levied should be summary and interfered with as little as possible. No government could exist if all litigants were permitted to delay the collection of its taxes.[4]

Moreover, before the creation of the Court of Tax Appeals the remedy of a taxpayer who desired to contest an

assessment issued by the Collector of Internal Revenue was to pay the tax and bring an action in the ordinary courts for its recovery pursuant to Section 306 of the Tax Code.[5] Collection or payment of the tax was not made to wait until after the Collector of Internal Revenue has resolved all issues raised by the taxpayer against an assessment. Republic Act 1125 creating the Court of Tax Appeals allows the taxpayer to dispute the correctness or legality of an assessment both in the purely administrative level and in said court, but it does not stop or prohibit the Collector of Internal Revenue from collecting the tax through any of the means provided for in Section 316 of the Tax Code, except when enjoined by said Court of Tax Appeals. Section 11 of Republic Act 1125 states in part:

"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 or the Commissioner of Customs 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."

We will now resolve the issue of whether or not the court a quo erred in considering as final and executory the assessment contained in the letter of the Collector of Internal Revenue dated January 16, 1957. As stated, defendant received said assessment on January 30, 1957 and on the following day requested reinvestigation of its tax liability. The Collector of Internal Revenue however did not reply to the request for reinvestigation. Instead, he referred the case to the Solicitor General for collection of the tax. The lower court interpreted this action of the Collector of Internal Revenue as a denial of defendant's request for reinvestigation.

Said court, to our mind, committed no error. For what is more indicative of the Collector's decision against reinvestigation than his insistence to collect the tax? This decision was communicated to defendant in a letter dated September 20, 1957 of the office of the Solicitor General which must have been received by defendant not later than October 8, 1957 for on said date it acknowledged receipt thereof. It had thirty days from October 8, 1957 within which to appeal to the Court of Tax Appeals pursuant to Section 11 of Republic Act 1125.[6] Instead of appealing to the Tax Court, however, the defendant herein in a letter dated October 8, 1957 reiterated its request for reinvestigation.

On October 15, 1957 the Collector of Internal Revenue wrote defendant that its "request for a reinvestigation will be granted only upon compliance with General Circular No. V-258 dated August 20, 1957, which requires as a prerequisite to the grant of a reinvestigation the execution of a waiver of the statute of limitations". In a subsequent letter, he extended the period within which to submit the aforesaid waiver to December 31, 1957.

In effect, the Collector of Internal Revenue placed in the hands of the defendant the holding of a reinvestigation. However, no such reinvestigation was made inasmuch as taxpayer failed to submit a written waiver of the statute of limitations on or before December 31, 1957. Such omission automatically brought about the denial of the request for reinvestigation.

Taxpayer however questions the legality of requiring waiver of the statute of limitations before the grant of reinvestigation as provided for in General Circular No. V-258. This question was not raised in the Bureau of Internal Revenue. Suffice it to say in this connection that General Circular No. V-258 was promulgated pursuant to Section 338 of the Tax Code. The authority thereunder of the Secretary of Finance to issue rules and regulations for the effective enforcement of the provisions of the Tax Code has been sustained by this Court in previous cases.[7]

Even if we do not count the period from October 8, 1957 (the date when taxpayer received notice of the denial of its request for reinvestigation) to December 31, 1957 (the deadline for the submission of the written waiver of the statute of limitations) in reckoning the 30-day period within which the taxpayer may appeal to the Court of Tax Appeals, said period had long lapsed when the Collector of Internal Revenue filed the complaint in this case on September 2, 1958.

Taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable.[8] And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits.[9] Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense.[10]

In a proceeding like this the taxpayer's defenses are similar to those of the defendant in a case for the enforcement of a judgment by Judicial action under Section 6 of Rule 39 of the Rules of Court. No inquiry can be made therein as to the merits of the original case or the Justness of the judgment relied upon, other than by evidence of want of jurisdiction, of collusion between the parties, or of fraud in the party offering the record with respect to the proceedings.[11] As held by this Court in *Insular Government v. Nico*[12] the taxpayer may raise only the questions whether or not the Collector of Internal Revenue had jurisdiction to do the particular act, and whether any fraud was committed in the doing of the act. In that case, Doroteo Nico was fined by the Collector of Internal Revenue for violation of subparagraphs (d), (e) and (g) of Section 28 as well as Sections 36, 101 and 107 of Act 1189. Under Section 54 of the same Act the taxpayer was given the right to appeal from the decision of the Collector of Internal Revenue to the Court of First Instance within a period of ten days from notice of imposition of the fine. Nico did not appeal, neither did he pay the fine. Pursuant to Section 33 of the Act, the Collector of Internal Revenue filed an action in the Court of First Instance to enforce his decision and collect the fine. The decision of the Collector of Internal Revenue having become final, this Court, on appeal, allowed no further inquiry into the merits of the same.

For the satisfaction of defendant, however, it may be worth stating that on its merits, the assessment in question is correct. It is not controverted that, as appearing from its 1952 income tax return, Lim Tian Teng Sons & Co., Inc. employs the "accrual" method of accounting. Following such accounting method the copra outturn in the amount of P95,500.00 outstanding as of December 31, 1951, should have been treated as accrued income for 1951, instead of as stock on hand on January 1, 1952.

Defendant took up the copra outturn in question as copra on hand in the beginning inventory for 1952. Said beginning inventory, together with expenses, copra purchased during the year and copra on hand as of December 31, 1952 were deducted as "cost of goods sold" from the total gross sales for the purpose of determining the net sales. Since the P95,500.00 copra outturn formed part of the "cost of goods sold", it diminished the net sales by P95,500.00, thereby also decreasing defendant's net taxable income by the same amount. This procedure of treating the copra outturn in question is inconsistent with defendant's accounting method.

From the record, then, there is every indication that taxpayer's 1952 income tax return is fraudulent, as alleged in paragraph (7) of the complaint in this case. Firstly, taxpayer's beginning inventory for 1952 did not state the truth in considering the copra outturn as copra on hand, for on December 31, 1951 such copra was not any more in taxpayer's bodega. It was in transit to a foreign port. And the taxpayer no longer owned the copra. As a matter of fact, it already received payment for the same. Secondly, by observing regularly its own system of accounting, taxpayer had no choice but to account the copra outturn as accrued income. This it did not do. For such deviation, we see no other purpose than to lessen, if not obliterate as in fact it did, its income tax liability per its return. The lower court therefore did not err in imposing the 50% surcharge.

We now come to the appeal of the Government. It maintains that the lower court erred in not imposing on defendant's tax liability a surcharge of 5% for late payment. Subsection (e), Section 51 of the Tax Code states:

"SEC. 51. Assessment and payment of income tax.

"(e) Surcharge and interest in case of delinquency.—To any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) for the payment of the same, there shall be added the sum of five per centum on the amount of tax unpaid and interest at the rate of one per centum a month upon said tax from the time the same became due \* \* \*." (Italics supplied)

As may be gleaned from the above-quoted provision, the 5% surcharge is mandatory and automatically due once the tax is not paid on time. "Shall" is the word the law uses, a word normally imperative and a "language of command"[13]. Applicable herein is what has been said of a similar provision—the present Section 183 of the Tax Code—stating that:

"If the percentage tax on any business is not paid within the time prescribed above the amount of the tax shall be increased by twenty-five per centum, the increment to be part of the tax." (Italics supplied)

Said this Court in *Lim Co Chui vs. Posadas*:<sup>[14]</sup>

"This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment."

Finally, the Government questions the computation of the delinquency interest, due on the deficiency tax, from October 8, 1957. It insists that payment of such interest should commence from February 15, 1957. Such contention is well-founded. Pursuant to Section 51(d), "the assessment made by the Collector of Internal Revenue shall be paid \* \* \* immediately upon notification of the amount of such assessment." Now, the income tax assessment notice gave defendant up to February 15, 1957 to pay the deficiency tax in question. No payment was made. Hence, pursuant to Section 51(e), quoted earlier, interest on the unpaid tax fell due starting February 16, 1957 and continues to accrue until full payment of the tax.

Wherefore, the decision appealed from is modified. *Lim Tian Teng Sons & Co., Inc.* is hereby ordered to pay the sum of P10,074.00 as deficiency income tax for 1952 plus 50% and 5% surcharges thereon for fraud and late payment, respectively, and 1% monthly interest upon said tax of P10,074.00, computed from February 16, 1957 until the tax is fully paid. With costs against defendant-appellant. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Zaldivar, and Sanchez, JJ., concur.

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[1] Section 316, Internal Revenue Code.

[2] This rule prevailed prior to enactment of Republic Act 2343 which took effect on June 20, 1959.

[3] Section 332, Internal Revenue Code.

[4] *Churchill and Tait vs. Rafferty*, 32 Phil. 580, 585.

[5] *Sarasola vs. Trinidad*, 40 Phil. 252; *Alhambra Cigar & Cigarette Manufacturing Co. vs. Collector of Internal Revenue*, L-12026, May 29, 1959.

[6] *Baguio Country Club Corp. vs. Collector of Internal Revenue*, L-11419, April 22, 1959.

- [7] De Guzman vs. Lontok, 68 Phil. 405; Hilado vs. Collector of Internal Revenue, 53 O.G. (8) 2481.
- [8] Republic of the Philippines vs. Manila Port Service, L-18208, November 27, 1964.
- [9] Republic of the Philippines vs. Albert, L-12996, December 28, 1961.
- [10] Republic of the Philippines vs. Lopez, L-18007, March 30, 1963.
- [11] Compania General de Tabacos de Filipinas vs. Martinez and Nolan, 29 Phil. 515.
- [12] 14 Phil. 288.
- [13] Escoe vs. Zerbst, 295 US 490, 79 L. ed. 1566, 1569.
- [14] 47 Phil. 460; reiterated in Republic of the Philippines vs. Luzon Industrial Corporation, L-7992, October 30, 1957, 54 O.G. (13) 4037.

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