

JOSE MA. DEL ROSARIO, PETITIONER, VS. THE COURT OF TAX APPEALS, COMMISSIONER OF INTERNAL REVENUE AND THE REGIONAL DIRECTOR, REGIONAL OFFICE NO. 3, MANILA, RESPONDENTS.

G. R. No. L-17991. October 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a resolution of the Court of Tax Appeals dismissing a petition for the review of assessments made by the Commissioner of Internal Revenue against the petitioner imposing deficiency income taxes on the petitioner for the years 1950 to 1953.

Petitioner seeks the review of the assessments made by the Commissioner of Internal Revenue of deficiency income taxes from the years 1950 to 1953. Upon the filing of the petition the respondent Commissioner of Internal Revenue promptly presented a motion to dismiss, in view of section 11 of Republic Act No. 1125 providing that appeals against assessments of the Commissioner of Internal Revenue shall be brought to the Court of Tax Appeals within 30 days. The Court of Tax Appeals dismissed the petition, hence this appeal.

On June 25, 1955, the Commissioner of Internal Revenue sent income tax assessment notices to the petitioner for deficiency taxes for the years 1949 to 1953 inclusive (Annex "1", Annex "1-A", and Annex 1-B", attached to the motion to dismiss). On July 14, 1955 attorney for the petitioner herein requested the Collector of Internal Revenue to furnish him with the data used as a basis for the assessments, claiming that the petitioner had been paying his taxes punctually (Annex "2"). On August 4, 1955, the same attorney again asked for the investigation of the case of the petitioner (Annex "3"). On August 27, 1955, the Collector of Internal Revenue made a new assessment of the income tax deficiencies during the years 1949 to 1953 inclusive (Annex "4"). On August 4, 1955, counsel for petitioner again wrote a letter protesting against the assessment for the years 1949 to 1951 on the ground that the same were barred (Annex "5"). Answering said letter the Collector of Internal Revenue made another assessment of the taxes for a period of four years, from 1950 to 1953 inclusive (Annex "6"). On November 29, 1955, counsel for petitioner again replied to the assessment claiming that the petitioner had disposed of his palay not at the best price available in the Philippines but at prevailing prices in the vicinity and that the prescriptive period of three years prevented the reassessment of the taxes and that, therefore, the case for deficiency income taxes should be dismissed (Annex "7").

It appears that nothing was done between the date of the previous letter of November 29, 1955 and January 30, 1957, when (at the latter date) the Collector of Internal

Revenue wrote the counsel of the petitioner in the following terms:

"Mr. Oscar L. Uy
Suite 309, Samanillo Bldg.,
Escolta, Manila

"Sir:

"With reference to our letter to you dated December 29, 1955, concerning the deficiency income tax liabilities of your client, Dr. JOSE MA. DEL ROSARIO, for the year 1950 to 1953, inclusive, I regret to inform you that, in view of your consistent failure to submit the form for waiver of the statute of limitations duly accomplished by your client, this Office has finally decided to consider your request for reinvestigation of the said case as abandoned.

"In view thereof, it is requested that you urge your client to pay the amounts of P3,576.24, P5,515.50, P7,429.50, P6,738.00 and P5,941.50, plus the penalties incident to delinquency, to the City Treasurer of Manila or to the Cashier, Bureau of Internal Revenue, Boom 114, Finance Building, Manila, preferably to the latter, on or before February 28, 1957; otherwise the collection thereof will have to be enforced by means of the remedies provided for by law.

"Very respectfully,

JOSE ARAÑAS

Collector of Internal Revenue

By:

(SGD.) MISAEL P. VERA

Regional Director

Subsequent letters demanding payment are dated November 7, 1957 (Annex "9") and November 3, 1959 (Annex "10"). On November 24, 1959, the Commissioner of Internal Revenue again denied the petition for reinvestigation of the case of petitioner (Annex "11"). On March 9, 1960, the Commissioner of Internal Revenue answering a letter of counsel for the petitioner dated December 21, 1959, declared that there was nothing new in the contentions of counsel for the petitioner and, therefore, denied the request for reconsideration (Annex "12").

On July 19, 1960, petitioner herein filed a petition with the Court of Tax Appeals asking that the decision of the Commissioner of Internal Revenue dated March 5, 1960, ordering the petitioner to pay his deficiency income taxes, be set aside and that the warrant of distraint and levy issued be declared illegal. Upon the filing of the petition the Commissioner of Internal Revenue presented a motion to dismiss the petition on the ground that the same was filed out of time, alleging that even if the period of three months required for the filing of appeals from

assessments of the Commissioner of Internal Revenue to the Court of Tax Appeals be counted from December 7, 1959 to the date of the petition, July 20, 1960, seven months and 18 days had actually elapsed. The Court of Tax Appeals granted the motion to dismiss holding:

"While it is true that this Court had on several occasions recognized the right of and encouraged tax-payers to exhaust all possible administrative remedies before coming to it for the purpose of expediency and to avoid unnecessary court expense on the part of the litigants, this right is not without limit. Once the Commissioner of Internal Revenue has made clear to the taxpayer that his decision subject of a series of requests for reconsideration is final, as his letter of January 30, 1957 in the instant case, subsequent requests for reconsideration thereof made pro forma and for dilatory purposes should be ignored for the purpose of computing the running of the thirty-day period prescribed under Section 11 of Republic Act No. 1125. We cannot leave the running of the period of appeal entirely at the discretion of the taxpayer."

The order of the Court of Tax Appeals dismissing the case should be affirmed. A study of the various communications coursed between petitioner and the Commissioner of Internal Revenue discloses that as early as August 27, 1955, the Commissioner had already made a reassessment. Another reassessment was made on November 15, 1955. Although protest was made against this last assessment, it does not appear that the Commissioner of Internal Revenue was willing to cede to the petitioner for reconsideration of the assessment. But certainly when on January 30, 1957 the Commissioner of Internal Revenue sent counsel for the petitioner the letter quoted above, requesting the payment of the amounts stated therein, plus the penalties incident to delinquency, the Commissioner of Internal Revenue made it plain to counsel for petitioner that no further motions for reconsideration or for reassessment was possible, especially because, as indicated in the letter, counsel for petitioner had made no express waiver of the statute of limitations. But even conceding that these could still be subject to extension, at least the letter of the Commissioner of Internal Revenue dated March 9, 1960, declaring that the tax liabilities of petitioner were collectible through the use of summary methods provided in the tax code, should have been a warning that not further extensions for the purpose of reconsidering the assessments would be allowed. From that date, March 9, 1960 to July 19, 1960, more than three months had elapsed. We, therefore, find that the Court of Tax Appeals correctly dismissed the petition for review. The said decision is hereby affirmed, with costs against petitioner.

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

Note: The annexes are attached to the motion to dismiss.

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