

## REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. FELIX B. ACEBEDO, DEFENDANT-APPELLEE.

*G.R. No. L-20477. March 29, 1968*

Ponente: MAKALINTAL, J.

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### MAKALINTAL, J.:

This is a suit for collection of deficiency income tax for the year 1948 in the amount of P5,962.83. The corresponding notice of assessment was issued on September 24, 1949. The complaint was filed on December 27, 1961. After the defendant filed his answer but before trial started he moved to dismiss on the ground of prescription. The court received evidence on the motion, and on September 1, 1962 issued an order finding the same meritorious and hence dismissing the complaint. The case is before us on appeal by the plaintiff from the order of dismissal.

The statute of limitations which governs this case is Section 332, subsection (c), of the National Internal Revenue Code, which reads:

"SEC. 332. Exemptions as to period of limitation of assessment and collection of taxes. -

"xxx xxx xxx

"xxx xxx xxx

"(c) Where the assessment of any internal-revenue tax has been made with the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

The present suit was not begun within five years after the assessment of the tax, which was in 1949. Was it, however, begun prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the defendant before the expiration of such five-year period? The only evidence of such written agreement, in the form of a, "waiver of the statute of limitations" signed by the defendant, is Exhibit U (also Exh. 4), dated December 17, 1959. But this waiver was, ineffective because it was executed beyond the original five-year limitation.

The plaintiff contends that the period of prescription was suspended by the defendant's various requests for reinvestigation or reconsideration of the tax assessment. The trial court rejected this contention saying that a mere request for reinvestigation or reconsideration of an assessment does not have the effect of such suspension. The ruling is logical, otherwise there would be no point to the legal requirement that the extension of the original period be agreed upon in writing.

To be sure, this legal provision, according to some decisions of this Court, does not rule out a situation where the

taxpayer may be in estoppel to claim prescription. Thus we said in *Commissioner of Internal Revenue vs. Consolidated Mining Co.*, L-11527, Nov. 25, 1958:

“ x x x There are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, per-suaded to postpone collection to make him feel that the demand was not un-reasonable or that no harassment or injustice is meant by the Government.” (underscoring supplied).

Likewise, when a taxpayer asks for a reinvestigation of the tax assessment issued to him and such reinvestigation is made, on the basis of which the Government makes another assessment, the five-year period within which an action for collection may be commenced should be counted from this last assessment. (*Republic vs. Lopez*, L-18007, March 30, 1963; *Commissioner v. Sison, et al.*, L-13739, April 30, 1963.)

In the case at bar the defendant, after receiving the assessment notice of September 24, 1949, asked for a rein-vestigation thereof on October 11, 1949 (Exh. A). There is no evidence that this request was considered or acted upon. In fact, on October 23, 1950 the then Collector of Internal Revenue issued a warrant of distraint and levy for the full amount of the assessment (Exh. D), but there was no follow-up of this warrant. Consequently, the request for rein-vestigation did not suspend the running of the period for filing an action for collection.

The next communication of record is a letter signed for the defendant by one Troadio Concha and dated October 6, 1951, again requesting a reinvestigation of his tax liability (Exh. 1). Nothing come of this request either. Then on February 9, 1954, the defendant's lawyers wrote the Collector of Internal Revenue informing him that the books of their client were ready at their office for examination (Exh. C). The reply was dated more than a year later, or on October 4, 1955, when the Collector bestirred himself for the first time in connection with the reinvestigation sought, and required that the defendant specify his objections to the assessment and execute "the enclosed forms for waiver of the statute of limitations." (Exh. E). The last part of the letter was a warning that unless the waiver "was accomplished and sub-mitted within 10 days the collection of the deficiency taxes would be enforced by means of the remedies provided for by law."

It will be noted that up to October 4, 1955 the delay in collection could not be attributed to the defendant at all. His requests in fact had been unheeded until then, and there was nothing to impede enforcement of the tax liability by any of the means provided by law. By October 4, 1955, more than five years had elapsed since the assessment in ques-tion was made, and hence prescription had already set in, making subsequent events in connection with the said assessment entirely immaterial. Even the written waiver of the statute signed by the defendant on December 17, 1959 could no longer revive the right of action, for under the law such waiver must be executed within the original five-year period within which suit could be commenced.

The order appealed from is affirmed, without pro-nouncement as to costs.

Reyes, Acting C.J., Dizon, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.  
Ruiz Castro, J., did not take part.

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