

**COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. BOHOL
LAND TRANSPORTATION CO., RESPONDENT. BOHOL LAND
TRANSPORTATION CO., PETITIONER, VS. COLLECTOR OF INTERNAL
REVENUE, RESPONDENT.**

G.R. Nos. L-13099 and L-13462. April 29, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This in an appeal from a decision of the Court of Tax Appeals dated September 25, 1957 ordering the Bohol Land Transportation Co., hereinafter referred to as company, to pay the amounts of P20,711.99, P18,728.21 and P30,155.09 as deficiency income taxes for the years 1948, 1949 and 1950.

The Bohol Land Transportation Co. is a domestic corporation engaged in the land transportation business with main office at Tagbilaran, Bohol. From 1945 to 1951 it had consistently filed its income tax returns and paid the corresponding income taxes due thereon as per said returns. Subsequently, a verification of its income tax returns was conducted by an examiner of the Bureau of Internal Revenue and as a result the following deficiency assessments were issued against it on August 4 and 5, 1953: for 1945 the deficiency income tax assessed is P15,275.31; for 1946, P15,768.20; for 1947, P11,732.90; for 1948, P20,711.99; for 1949, P18,728.21; for 1950, P30,155.09, and for 1951, P30,189.00.

Due to the company's failure to settle said deficiency income taxes, the Collector of Internal Revenue issued a warrant of distraint and levy on the property of the company on December 23, 1954. On March 8, 1956, the Collector garnished the sum of P53,910.13 deposited by the company with the Philippine National Bank, Manila Branch, and the current accounts and bank deposits it had with the Chartered Bank of India, Australia, and China, Cebu City, in the amount of P200,000.00.

On April 7, 1956, the company filed in the Court of Tax Appeals an appeal contesting the validity of the deficiency assessments made by the Collector as well as of the warrant of distraint and levy issued by him. On May 7, 1956, the Collector filed his answer praying that the company be ordered to pay the deficiency income taxes for the years 1945 to 1951, plus the delinquent penalties that have accrued thereon, in accordance with the assessments made by him.

On January 10, 1957, the company filed with the Court of Tax Appeals an urgent motion for mandatory injunction praying that the Collector be required (1) to revoke the warrant of distraint and levy and/or garnishment issued against its properties consisting of 79 motor buses, lands, buildings and office and shop equipment, and against its deposits in the Philippine National Bank, Manila, and the Chartered Bank of India, Australia, and China, Cebu City; and (2) to enjoin him from collecting by summary methods the aforesaid deficiency income taxes for the years 1945 to 1951, inclusive.

At the hearing on the injunction, the Collector admitted that pursuant to several decisions of the Supreme Court he

has no authority to collect by summary methods the income taxes assessed against the company for the years 1945 to 1950, inclusive, it appearing that the warrant of distraint and levy and the warrant of garnishment were issued beyond the period of three years from the time the income tax returns were filed. Consequently the parties entered into an agreement dated February 23, 1957 whereby the Collector agreed to withdraw the warrant of distraint and levy against the properties of the company as well as the warrant of garnishment issued against its deposit with the Chartered Bank of India, Austria, and China, Cebu City in the amount of P200,000.00, but "leaving the cash deposit with the Philippine National Bank in Manila, in the amount of P53,910.13, subject to said garnishment to guarantee the interest of the Government with respect to the collection of the tax assessment for the year 1951."

At the hearing of the case on the merits, the company in spite of the suggestion of the court did not present any evidence to show the incorrectness of the deficiency income tax assessments with respect to the years 1945 to 1950, inclusive, and so the court considered such failure fatal in view of the theory that the assessment made by the Collector is presumed to be prima facie correct unless controverted. Hence, the Court of Tax Appeals held the petitioner liable for deficiency income taxes for the years 1948, 1949 and 1950. However, the court found and held that the collection of deficiency taxes from 1945 to 1947 has already prescribed for the reason that the assessments corresponding to said years had been made beyond the 5-year period, counted from the time the returns for said years were filed. From this decision, both parties have appealed.

The Collector of Internal Revenue is appealing from that portion of the decision which holds that the right of the Government to assess and collect by judicial action the income taxes for the years 1945 to 1947, inclusive, has already prescribed, invoking our ruling in the case of *Collector of Internal Revenue vs. Jose Avelino, et al.*, 100 Phil., 327; 54 Off. Gaz. [3] 645, November 10, 1956, the pertinent portion of which reads:

"It is true that under section 331 and 332 of the National Internal Revenue Code the Collector of Internal Revenue may assess an internal revenue tax within five years after the return was filed, and in case of a false or fraudulent return he may also assess such tax as may be found to be due at any time within ten years after the discovery of the falsity, fraud or omission, and their collection may be enforced either by distraint or levy or by a proceeding in court; but said sections merely apply to internal revenue taxes in general and not to income taxes the collection of which is specifically provided for under a different title of the same law. Thus, when the National Internal Revenue Code was codified and enacted in 1939, the whole Act No. 2833, commonly known as the Income Tax Law, was incorporated therein and became Title II thereof, which is exclusively devoted to income tax, section 51 (d) of said Code, which refers to the assessment and payment of income tax, being merely a reproduction of section 9(a) of the former Income Tax Law, but there is nothing provided in the new Code from which it may be inferred that the provisions of said section 51 (d) were deemed repealed or modified by the provisions of sections 331 and 332 thereof. Since repeals by implication are not favored, unless the contrary clearly appears, and it is a well known rule that conflicting provisions should be harmonized and reconciled so that both may be given force and validity, it is our duty to harmonize and reconcile them if only to give effect to the clear intent of our legislative body. A cursory reading of the provisions of our National Internal Revenue Code regarding the collection of income tax as distinguished from internal revenue taxes in general clearly reveals the intention of our legislative body to preserve in toto the procedure and method of collection originally adopted with regard to the former considering its nature and peculiarities in spite of the adoption of a similar method of collection with some variation with regard to the latter. And because of this manifest intent of Congress, we have no other course of action than to hold that the two provisions are valid and binding, one being special, particularly applicable to income tax, and the other general, applicable to other kinds of internal revenue taxes. To hold otherwise would be to render, nugatory and meaningless section 51 (d) of our National Internal Revenue Code, a conclusion not warranted by the circumstances, since it cannot be presumed that Congress has adopted it merely through an oversight. We find no sufficient justification for such conclusion."

In other words, because in the aforesaid case we said that Sections 331 and 332 of the National Internal Revenue

Code apply to internal revenue taxes in general and not to income taxes the collection of which is specifically provided for under a different title of the same Code, particularly Title II which refers exclusively to income tax, the Collector concludes that the right of the Government to assess and collect income taxes by judicial action has no definite period of limitation and so the deficiency income taxes for 1945, 1946 and 1947 which the Government is seeking to collect has not as yet prescribed.

But it should be noted that in expressing the opinion that the right to collect by summary methods can only be exercised within the period of three years from the time the return is filed, otherwise the right can only be enforced by judicial action, this Court did not say that the right to collect by judicial action is unlimited or inprescriptible. The only question on which we have been called upon to determine is whether Section 51 (d) of the National Internal Revenue Code, which refers to the collection of income taxes, shall be deemed to have been repealed by implication by Sections 331 and 332 of the same Code, which refers to internal revenue taxes in general, in view of their apparent conflicting provisions. We held then that said Section 61 cannot be deemed to have been repealed because it refers exclusively to income tax which is covered by a separate title of the Code and which Congress has intended to preserve in toto by incorporating it therein. This view is reflected in the following portion of our decision:

*** A cursory reading of the provisions of our National Internal Revenue Code regarding the collection of income tax as distinguished from internal revenue taxes in general clearly reveals the intention of our legislative body to preserve in toto the procedure and method of collection originally adopted with regard to the former considering its nature and peculiarities in spite of the adoption of a similar method of collection with some variation with regard to the latter. And because of this manifest intent of Congress, we have no other course of action than to hold that the two provisions are valid and binding, one being special, particularly applicable to income tax, and the other general, applicable to other kinds of internal revenue taxes. To hold otherwise would be to render nugatory and meaningless section 51 (d) of our National Internal Revenue Code, a conclusion not warranted by the circumstances, since it cannot be presumed that Congress; has adopted it merely through an oversight. We find no sufficient justification for such conclusion." (The Collector of Internal Revenue V. Avelino, supra)

We notice, however, that Section 51 (d) of the National Internal Revenue Code, which refers to the collection of income tax, does not provide for any prescriptive period insofar as the collection of income tax by judicial action is concerned, the prescriptive period therein mentioned being merely applicable to collection by summary methods, as interpreted by this Court. Considering this void in the law applicable to income tax, and bearing in mind that Section 331 of the Code which provides for the limitation upon assessment and collection by judicial action comes under Title IX, Chapter II, which refers to "CIVIL REMEDIES FOR COLLECTION OF TAXES", we may conclude that the provisions of said Section 331 are general in character which may be considered suppletory with regard to matters not covered by the title covering income tax. In other words, Title II of the Code is a special provision which governs exclusively all matters pertaining to income tax, whereas Title IX, Chapter II, is a general provision which governs all internal revenue taxes in general, which cannot apply insofar as it may conflict with the provisions of Title II as to which the latter shall prevail, but that in the absence of any provision in said Title II relative to the period and method of collection of the tax, the provisions of Title IX, Chapter II, may be deemed to be suppletory in character. Hence, in our opinion, the Court of Tax Appeals did not err in holding that the right of the Government to collect the deficiency income taxes for the years, 1945, 1946 and 1947 has already prescribed under Section 381 of the National Internal Revenue Code.

Coming now to the appeal of the company, the following are the errors ascribed to the trial court: (1) in holding that the proceeding for review instituted by the company is equivalent to a judicial action within the purview of Section 332 (c) of the Tax Code; (2) in holding that under the facts and circumstances of this case, the tax

assessments for the years 1948, 1949 and 1950 are presumptively correct; (3) in holding the company liable for the payment of the 1948, 1949 and 1950 tax assessments; and (4) in denying its motion for reconsideration and reopening to enable it, in the interest of justice, to introduce further evidence to prove the errors committed in the assessments for 1948, 1949 and 1950.

In holding that the appeal interposed by the company with the Court of Tax Appeals is equivalent to a judicial action within the purview of Section 332 (c) of the Tax Code, the Court of Tax Appeals made the following comment :

"We find his theory not well taken. The judicial action contemplated may refer not only to the civil case instituted by the government to collect the tax but also to a case where the taxpayer takes the initiative to contest the validity of the assessment or collection of taxes by the Collector of Internal Revenue. The objective in both cases is the same—the validity and correctness of the determination and collection of the tax. Thus, a single claim filed by the Collector of Internal Revenue against the estate of a deceased in a probate case has been recognized as tantamount to the judicial collection of taxes. (Collector vs. Annie Laurie Haygood, 65 Phil., 520). On the other hand, in a claim for refund instituted against the Collector of Internal Revenue, the Supreme Court considered the taxpayer's suit for refund as sufficient judicial action for the collection of taxes on the part of the former (see Phil. Sugar Estate Development Co., Inc. vs. Posadas, 65 Phil., 216)."

We agree with the foregoing view. Indeed, had the company not taken the matter to the Court of Tax Appeals, the Collector would have reasonably taken a similar action for, as it should be noted, he has already taken the preliminary step, which is the collection by distraint and levy, to insure the effective collection of the tax assessed against the company. And when the company appealed the Collector's decision, the Collector was placed in the alternative of sustaining his decision, which is tantamount to a judicial action. As the Court of Tax Appeals well observed, "The objective in both cases is the same—the validity and correctness of the determination and collection of the tax." Indeed, the action of the Collector cannot be taken in any other light. It is a judicial action pure and simple.

The company argues that its failure to substantiate its defense insofar as the years 1945 to 1950 are concerned should not be held against it for there is no validity to the prima facie correctness of the Collector's findings since the assessments are signed not by the Collector, nor by the chief of income tax division, but by one Casto Ayeras, who did not even reveal his position, nor state if he had any authority to sign for his chief. This contention is untenable, for a cursory examination of the assessment notices will show that they were duly signed by Ayeras in behalf of his chief, the Collector. Under the set-up of the Bureau of Internal Revenue, the chief of the income tax division as regards tax assessments is possessed of delegated powers to issue assessment notices in behalf of the Collector of Internal Revenue. And in such a case, we may not infer that the decision is not the decision of the Collector himself. Nor is the fact that the tax assessments were not duly sworn to of any consequence, because tax assessments are not required by law to be under oath.

With regard to the second issue raised, what transpired during the trial is as follows: When the turn of the company to present its evidence with regard to the alleged errors committed in the assessment of the deficiency income taxes for the years 1948, 1949 and 1950 came, its counsel informed the court that he was abstaining from presenting any evidence in view of the theory he entertained that the interposition of the present appeal is not equivalent to a judicial action within the purview of the law, and he adopted this attitude in order that he may not be taken as having waived his right to press that legal question.

But counsel for the company took the action we have related above in spite of the suggestion of the court that he present his evidence without prejudice to having that legal question determined when the case is decided on the merits, but he remained adamant and desisted from presenting his evidence. And when the decision came contrary

to his theory it was only then that he filed a motion for reopening in order that he may be given his chance to present evidence invoking the interest of justice. We agree with the Solicitor General that such honest mistake on the part of counsel cannot be considered a ground for reopening the case for he has taken such action at his own risk. This is especially so when the court has already suggested that he present his evidence without prejudice of pressing the issue later and he disregarded the suggestion.

Since no evidence was presented to substantiate the errors that are claimed to have been committed by the Collector in making the assessments for the years 1948, 1949 and 1950, the trial court had no other alternative than to resort to the legal truism that "all presumptions are in favor of the correctness of tax assessments". The burden of proof is on the taxpayer to show the contrary. This the company failed to do. This action finds support in the following authorities:

"All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate, the duties imposed upon them by law.

"As a logical outgrowth of the presumption in favor of the, validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it.' (61 Am. Jur. pages 620-621)." (Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil., 290; 52 Off. Gaz., [2] 791.)

"When an importer challenges by legal steps the correctness of the assessment of a duty by the Collector of Customs, the question to be decided is not whether the Collector was wrong but whether the importer was right, the burden being on the latter to establish the correctness of his own contention." (Behn, Meyer & Co. vs. Collector of Customs, 26 Phil., 647)

"That the determination of the tax deficiency by the Government has prima facie, validity and the burden rests upon the taxpayer to overcome this presumption and to show to the satisfaction of the Tax Court that the determination was not correct." (Perez vs. Court of Tax Appeals, et al., G. R. No. L-10607, May 30, 1958)

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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