

ANTONIO E. QUEROL, PETITIONER, VS. COLLECTOR OF INTERNAL REVENUE, RESPONDENT.*G. R. No. L-16705. October 30, 1962*

Ponente: REYES, J.B.L., J.

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Review of a decision of the Court of Tax Appeals sentencing petitioner to pay a deficiency income tax of P753.51 for the year 1947, plus 5% surcharge for late payment and interest at the rate of 1% per month from March 16, 1955.

On February 28, 1948, petitioner filed his income tax return for the year 1947. Subsequently, he also filed income tax returns for the years 1948 to 1950. Sometime in 1951, respondent Collector issued an income tax assessment notice charging petitioner an income tax on the amount of P9,004.22, representing expenses incurred by petitioner for the repair of his house, and which petitioner claimed as deductible expense in his 1947 returns. On December 14, 1951, in a letter addressed to respondent Collector, petitioner requested reconsideration of this opinion of the Collector on the ground that there was nothing added to the house to increase its original value, and, therefore, said amount cannot be made part of the asset. On May 25, 1953, without having received a reply to his first request, petitioner reiterated his request for exemption from the income tax mentioned in respondent's assessment notice in another letter addressed to the Municipal Treasurer of San Fernando, La Union. On July 10, 1954, the Examiner assigned to investigate the case submitted his report recommending denial of petitioner's request, and charging as disallowances the costs of repairs, but recommending instead that said repairs be capitalized and depreciated yearly. On February 9, 1955, respondent Collector issued a tax assessment notice of P753.51 for 1947. He also issued assessment tax notices for the years 1948 to 1950. On February 19, 1955, petitioner returned assessment notices from 1947 to 1950, with a request for information how the computation of his tax liability had been arrived at.

On September 14, 1956, respondent Collector issued a warrant of distraint and levy against petitioner's properties to satisfy the amount of P1,808.10, petitioner's total income tax liability for the years 1947 to 1950, plus its legal increments. On September 19, 1956, the municipal treasurer distrained and levied on petitioner's residential house. On September 22, 1956, petitioner filed a petition for review, seeking to declare the warrant of distraint and levy null and void, and to enjoin respondent from executing the warrant. On appeal to the Tax Court, that Court held that the right to collect summarily had already prescribed, and declared the warrant null and void. Appeal by the respondent Collector to this Court was later dismissed.

On March 18, 1959, petitioner filed an amended petition for review to the end that the real matter in dispute may be completely determined in a single proceeding; and on October 7, 1959, the Tax Court rendered the decision, modifying respondent Collector's decision in the sense stated above, and from which petitioner is now appealing.

Petitioner argues that the Tax Court erred in holding that an initial assessment notice for the year 1947 was sent to petitioner sometime in 1951 and in finding that his requests for reconsideration suspended the running of the

prescriptive period, thus upholding the non-prescriptibility of the right of the Collector to collect from petitioner a deficiency income tax for 1947; the respondent claims, in turn, that the evidence on record regarding the initial assessment is clear, as admitted in petitioner's requests for reconsideration (letters of December 14, 1951 and May 25, 1953), which evidence the Tax Court can take cognizance of since evidence not formally offered may be taken into account in deciding a case; that since the period from the first request for consideration to the date of the respondent's receipt of the result of the investigation suspended the running of the period for the running of prescription, the tax assessment notices issued on February 9, 1955 were on time, and so was the judicial action for collection, which was considered filed when respondent Collector filed his answer to the amended petition for review on April 8, 1959.

The issue is here concentrated by the appellant taxpayer on his defense of prescription of the action to collect the tax due on his income during 1947.

Starting from the ruling of the Tax Court that the irregularities in his return do not make it false or fraudulent, the appellant first contends that the Collector's 1955 revised assessment is void, because it was not made within the five years prescribed by section 331 of the Internal Revenue Code, from and after the filing of his income tax return (Exhibit A) on February 28, 1948. We agree with the court below that this contention is not tenable, because there had been a preceding assessment in 1951. In his own letter of December 14, 1951 (Exhibit O or 11-A), Querol stated:

"With reference to the income tax assessment notice No. 24-A-36-51/47, I have the honor to request reconsideration of your opinion charging me an income tax for the amount of expenses I incurred for the repair of my house."

These words necessarily import that the taxpayer had received a tax assessment notice before the date of the letter. That such assessment referred to his 1947 income tax return is shown by his reference to the value of the repairs made to his house, that he had claimed as deduction in his 1947 return (Exhibit A). No similar claim appear? in any other tax return made by him. Now, from February, 1948 (when the return was filed) to December, 1951 is less than four years; hence, the first assessment was made on time.

It is true that the Collector revised the original assessment on February 9, 1955; and appellant avers that this revision was invalid in that it was not made within the five-year prescriptive period fixed by law (Collector vs. Pineda, 112 Phil., 321). But the fact is that the revised assessment was merely a result of petitioner Querol's requests for reconsideration of the original assessment, contained in his letters of December 14, 1951 and May 25, 1953. The records of the Bureau of Internal Revenue show that after receiving the letters, the Bureau conducted a reinvestigation of petitioner's tax liabilities, and, in fact, sent a tax examiner to San Fernando, La Union, for that purpose; that because of the examiner's report, the Bureau revised the original assessment, and that while it still refused to allow full deduction of the repairs to the taxpayer's residence as a business expense, it allowed him to capitalize the amount, and permitted him to deduct a reasonable depreciation for 1947. In other words, the reconsideration was granted in part, and the original assessment was altered. Consequently, the period between the petition for reconsideration and the revised assessment should be subtracted from the total prescriptive period (Republic vs. Ablaza, 108 Phil., 1105).

We have also ruled that once the assessment has been reconsidered at the taxpayer's instance, the five-year period for filing of the court action for collection should begin to run from the date of the reconsidered or modified assessment (Collector vs. Pineda, supra). The judicial action to recover the taxes in the present case was made when the Collector, countering the taxpayer's suit in the Court of Tax Appeals, asked the Court, in April of 1959, to order payment thereof, less than 5 years after the revised assessment was made.

Much is made by appellant of the fact that no clear evidence exists on the date when the original tax assessment was issued by the Collector or when it was received by the taxpayer. But it must be remembered that prescription is a matter of defense; hence, the burden is on the taxpayer to prove that the full period of limitation has expired, and this requires him to positively establish the date when the period started running, and when the same was fully accomplished.

Finding no cogent reason to vary the ruling of the Tax Court, its decision is hereby affirmed, with costs against appellant.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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