

## THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. MATIAS H. AZNAR AND THE COURT OF TAX APPEALS, RESPONDENTS.

*G. R. No. 10370. January 31, 1958*

Ponente: FELIX, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10370/>

---

### FELIX, J.:

This is a petition filed by the Collector of Internal Revenue to review by certiorari the resolution of the Court of Tax Appeals dated February 8, 1956, in C.T.A. Case No. 109 enjoining him from enforcing collection of the alleged income tax liability of Matias H. Aznar through summary administrative method. The facts of the case are as follows:

In a letter dated November 28, 1952, the Collector of Internal Revenue, through the office of the City Treasurer of Cebu, demanded from Matias H. Aznar the payment of P732,032.66 allegedly representing the latter's income tax deficiencies for the tax years 1945 to 1951. It appears on record that the Collector of Internal Revenue also instructed the City Treasurer of Cebu to place the properties of said taxpayer under constructive distraint to guarantee the satisfaction of the taxes thus assessed (Exh. 9), and this instruction was supposedly complied with by the latter official in virtue of a warrant of distraint and levy dated February 17, 1953, and served on taxpayer Aznar on February 20, 1953 (Exh. 11). An exchange of communications between the Internal Revenue Office and the taxpayer ensued as a result of which a reinvestigation of the income tax assessment of the latter was made and the same was finally reduced from P723,032.66, as originally demanded, to P380,999.70. Aznar was correspondingly informed of this correction in a communication dated February 16, 1955, specifically stating that this later figure superseded the previous one sent by the Bureau of Internal Revenue.

Upon receipt of the corrected assessment, the taxpayer filed with the Court of Tax Appeals a petition to review the same and subsequently an urgent petition was also filed to restrain therein respondent Collector of Internal Revenue from proceeding with the collection of the alleged tax deficiencies by means of the summary methods of distraint and levy (Annex B of petition), on the ground that the right of the respondent Collector to effect the collection of the taxes demanded of said taxpayer by extrajudicial methods had already prescribed; that the employment of these means would cause petitioner injustice and irreparable injury; and that the petition was not merely intended to delay the payment of the taxes because petitioner stood on an even chance of winning the case if given a day in court (Annex B of the petition). The Collector of Internal Revenue set up an opposition against the grant of this petition and consequently, hearing on the matter was duly conducted by the lower Court. After the parties had filed their respective memoranda and rested their case, the lower Court, in a resolution dated February 8, 1956, issued the injunction prayed for enjoining the Collector of Internal Revenue from proceeding with the collection of the taxes by means of the summary methods of distraint and levy after finding that the warrant issued by the Treasurer of the City of Cebu dated February 17, 1953, placing the properties of Matias H. Aznar under constructive distraint and levy and which was supposedly received by said taxpayer on February 20, 1953, was not actually served on petitioner Aznar; that the warrant of garnishment served on the Philippine National Bank in Manila on August 14, 1953, was null and void in view of respondent's failure to furnish the

taxpayer with a copy of the same and that the placing of the properties of the taxpayer under constructive distraint and levy on April 28, 1955, was made beyond the 3-year prescriptive period as provided by Section 51-(d) of the National Internal Revenue Code. From this resolution, the Collector of Internal Revenue brought the matter to this Court in a petition to review by certiorari contending that collection of taxes cannot be restrained by injunction; and that even if the court a quo could have lawfully issued the same, said tribunal acted with grave abuse of discretion when it did not require the taxpayer to file a bond as exhorted by Section 11 of Republic Act No. 1125.

There appears no record as to when Matias H. Aznar filed his income tax returns for the years 1945 and 1946, but it is not controverted that his tax returns for 1947 was filed on March 1, 1948; for 1948 on February 28, 1949; for 1949 on March 1, 1950; for 1950, on March 1, 1951; and for 1951, on March 1, 1952. There is likewise no dispute that Matias H. Aznar's alleged income tax deficiencies were assessed at P723,032.66 on November 28, 1952, which was reduced to P380,999.70 on March 17, 1955. During the hearing had in the court below, the Collector of Internal Revenue, trying to establish the fact that the properties of the taxpayer were already placed under constructive distraint and levy as of February 20, 1953, offered in evidence Exhibit 11, purportedly a duplicate of the warrant dated February 17, 1953, and allegedly received by Aznar on February 20 of the same year. Aznar, however, disputed the authenticity of Exhibit 11 maintaining that it was never served on him. It appears on record that a warrant of garnishment to distraint the deposits Mr. and Mrs. Aznar had with the Philippine National Bank was also served on said banking institution on August 14, 1953, but the taxpayer once again interposed an objection to the use of this measure on the ground that he was not notified thereof pursuant to the provision of Section 319 of the Tax Code and asserted that the issuance of said warrant was null and void.

There is likewise no controversy that the City Treasurer of Cebu levied upon certain real properties belonging to the taxpayer on May 6, 1955, but Aznar took exception to the employment of this administrative method to effect collection of the taxes allegedly due by him, it having been issued 3 years, 2 months and 5 days after he had filed his income tax returns for the year 1951, and therefore beyond the 3-year prescriptive period required by Section 51-d of the Tax Code.

Actually, the questions at issue in the instant case are: whether the Collector of Internal Revenue could enforce collection of the alleged deficiency income taxes of Matias H. Aznar through the summary methods of distraint and levy and, consequently, whether the Court of Tax Appeals erred in issuing the injunction restraining said official from employing the same; and granting the Court of Tax Appeals could issue an Injunction, whether said tribunal erred in not requiring the taxpayer to make a deposit.

We agree with petitioner that Section 305 of the National Internal Revenue Code precludes the use of injunction to restrain the collection of taxes, but as this Court has already pronounced, in view of the existence of the provisions of Section 11 of Republic Act No. 1125 allowing the Tax Court to issue said writ of injunction subject certain limitations, the former (Sec. 305) must be deemed to have been modified by the later enactment—Republic Act No. 1125 (Collector of Internal Revenue vs. Avelino, 100 Phil., 327, 53 Off. Gaz., 645). And We have, since then and even before, adhered to the doctrine that the collection of income taxes, after the lapse of three years from the date the income tax return said to be false, fraudulent or erroneous had been filed, may no longer be effected by means of administrative methods but only through judicial proceedings (Collectors of Internal Revenue vs. Villegas, 56 Phil. 554; Collector of Internal Revenue vs. Haygood, 65 Phil. 520; Juan de la Vifla vs. El Gobierno de las Islas Filipinas, G. R. No. 42669, Jan. 29, 1938; Philippine Sugar Estate Development Co., Inc. vs. Posadas, 68 Phil. 216; Collector vs. Avelino, supra; Collector vs. A. P. Reyes, 100 Phil., 822; Collector vs. Zulueta, 100 Phil., 872; 53 Off. Gaz., [19] 6532; Sambrano vs. Court of Tax Appeals, 101 Phil., 1, 53 Off. Gaz., [15] 4839.

In the light of the aforementioned ruling, were We to consider as valid and in order the disputed warrant dated

February 17, 1953, placing the properties of the taxpayer under constructive distraint and levy, the collection of the taxes for 1949, 1950 and 1951 by extra-judicial methods would be proper and the resolution of the Court of Tax Appeals as far as it concerns this later period would be erroneous, although summary administrative means would no longer be the proper recourse for the collection of taxes corresponding to 1948 and the years previous to that as 3 years, 11 months and 22 days has already elapsed from the time the income tax return for that year was filed.

The respondent Court of Tax Appeals, however, made a finding that while it may be true that Exhibit 11 could have been prepared at the time referred to, probably through omission, oversight or negligence, same was not executed and thus actually the properties of the taxpayer were only placed under constructive distraint and levy on May 6, 1955. As Republic Act No. 1125 creating the Court of Tax Appeals keep silent as to matters left open to Us for review or the issues that We may take conizance of, and as courts have to construe statutes as they are found and not to amend or change them under the guise of construction (82 C.J.S. 530), this Court in passing upon petitions to review by certiorari decisions or rulings of the Court of Tax Appeals may review, revise, reverse, amend or modify not only the legal issues involved therein but also the findings of fact upon which said decision or ruling is based.

Notwithstanding the foregoing, it may be stated that any party adversely affected by any ruling, order or decision of the Court of Tax Appeals has by law two ways of elevating his case to the Supreme Court, i.e., first, by filing in the Court a quo a notice of appeal and with this Court a petition for review within 30 days from the date he receives notice of said ruling, order or decision adverse to him (Sec. 18, Rep. Act 1125), and second, by causing such ruling, order or decision of the Court of Tax Appeals likewise reviewed by Us upon a writ of certiorari in proper cases (Sec. 19, R.A. No. 1125). Premised on these provisions, it may be alleged that when a case is taken up to this Court by petition for review, We could go over the evidence on record and pass upon the questions of fact; but that in cases of review upon petition for a writ of certiorari, this Court could only pass upon issues involving questions of law. In answer to these possible arguments We may say that when the interest of justice so demands, We may interchangeably consider petitions for review as petitions for a writ of certiorari and vice-versa, and if We have the power to consider the evidence to determine the facts in cases of review, We find no plausible reason for depriving this Court of such power in petitions for certiorari specially if We consider that in the latter cases the petitioner oftenly charges the respondent Court with the commission of grave abuse of discretion the determination of which usually depends on the facts and circumstances of the points in controversy. Moreover, in the case at bar, We find that on March 1, 1956, respondent Collector of Internal Revenue filed with the Court of Tax Appeals a notice of appeal from the resolution of said Court that is now subject of this recourse (p. 466, CTA records) and no matter how inappropriate may be the wording of the petition filed in this instance, it could not conceal that respondent's intention was to appeal the matter to this Court, as otherwise he would not have filed said notice of appeal which is required in petitions for review (Sec. 18, R.A. No. 1125) and not in petitions for certiorari (Sec. 19, Id.). It is also to be noted that in the instant case the Solicitor General has not filed any motion for the reconsideration of said resolution, a requisite that is necessary in petitions for certiorari.

Having all these in mind, We are inclined to consider the question of facts involved in the present controversy, and in going over the evidence presented We find, contrary to the conclusion arrived at by the Court a quo, that there are proofs supporting petitioner's contention that Exhibit 11 was properly executed. The respondent Court refused to give credence to the employees of the City Treasurer's Office who claimed to have served the controverted warrant on the taxpayer on February 20, 1953, by reason of certain inconsistencies in their declarations during the extensive cross-examination conducted by counsel for respondent Aznar. We must remember, however, that considering the time that had lapsed when the incident took place and the date when they were questioned under oath as regard their affidavits recounting the event, it is but natural for the human

brain not to pick up certain details of an event that transpired sometime ago and thus expect minor inconsistencies in the testimonies of several witnesses. On substantial points— as to who and how the warrant in question was served, the person receiving the same, and other facts surrounding said service, the witnesses are in unison in their declarations. It is true that Exhibit 11 is merely a duplicate copy of the warrant and that the original thereof could nowhere be found. But the personnel of the office of the City Treasurer of Cebu admitted it was lost and for this reason their affidavits recounting said service were executed (Exhs. 13, 14, 15, 16 and 17-p. 68-79, CTA Records). Moreover, We find in the records a decisive factor that props up the contention of petitioner Collector of Internal Revenue, for We must not lose sight of the fact that Exhibit 11 contains a list of the properties of Matias H. Aznar which were levied upon by the City Treasurer of Cebu and which the Treasurer in turn placed in the possession of said owner for safekeeping, as acknowledged by the latter in said exhibit, and such properties could not have been mentioned in the document if said properties had not been taken from and returned to taxpayer Aznar who has not denied that same were his. We cannot simply disregard this form of evidence not only because affidavits are admissible to prove the service of a summons, notice or other papers in an action or special proceeding (See Wigmore on Evidence, Vol. 6, 3rd ed., p. 42-49,) but also because respondent taxpayer was given opportunity to cross-examine the affiants before the Municipal Court of Cebu.

The lower Court also placed much stress on the supposition that the Collector of Internal Revenue should not have sent the communications dated March 15 and March 28, 1955, inquiring as to what action the City Treasurer of Cebu had taken on the tax case of Matias H. Aznar if the latter had really sent the original of Exhibit 11 to respondent Collector. A close scrutiny of the letters referred to reveals that they were in connection with the corrected assessment sent by the Internal Revenue Office to Matias H. Aznar dated February 16, 1955 (p. 311, BIR records), of which the Treasurer's Office was also duly notified (p. 315, BIR Records) and not in connection with the assessment of November 28, 1952. The issuance of another warrant by the Treasurer's Office on April 28, 1955 and which was admittedly received by Aznar on May 6, of the same year was likewise taken by the Tax Court to contradict the existence of Exhibit 11. It is correct that a mistake was committed by said office in stating therein that the income tax deficiencies of Matias H. Aznar amounted to P723,032.07 because this figure as corrected should properly be P380,999.70, but it must be noted that this second warrant covers 2 buildings belonging to the taxpayer found in the province of Leyte which were not included among those listed in the first warrant, Exhibit 11. As explained, this warrant was issued because the properties covered by the first writ would not be sufficient to satisfy the amount demanded by the Government. Thus, piecing the evidence together, it is clear to our mind that the warrant placing the properties of Matias H. Aznar under constructive distraint and levy was served on the latter on February 20, 1953, which was 2 years, 11 months, and 19 days after the taxpayer had filed his income tax returns for the tax year 1949; 1 year 11 months and 19 days after he had filed his returns for 1950; and 11 months and 19 days after he did so for the tax year 1951.

Section 11 of Republic Act No. 1125 contains the following:

**Sec. 11. WHO MAY APPEAL; EFFECT OF APPEAL.—**

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs 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.

It may be seen that the Court is allowed by law to suspend the collection of taxes subject to certain limitations.

The second question posed herein is whether the Court of Tax Appeals could issue an injunction to suspend such collection without requiring the taxpayer to make a deposit or file a bond? This Court, resolving the same question in a similar case, held that the requirement of a bond before a writ of injunction could be issued by the Tax Court applies only to cases where the means sought to be employed for the enforcement of the collection of the tax are by themselves legal and not where same were declared null and void, as where the summary methods of distraint and levy would be utilized in the collection of deficiency income taxes, after the 3-year prescriptive period as provided by Section 51-d of the Internal Revenue Code has already elapsed (*Collector of Internal Revenue vs. A. P. Reyes*, supra; *Sambrano vs. CTA*, supra). The Court, in upholding this theory, explains:

"Section 11 of Republic Act No. 1125 is therefore premised on the assumption that the collection by summary proceedings is by itself in accordance with existing law; and then what is suspended is the act of collecting, whereas, in the case at bar what the respondent Court suspended was the use of the method employed to verify the collection which was evidently illegal after the lapse of the three-year limitation period. The respondent Court issued the injunction in question on the basis of its findings that the means intended to be used by petitioner in the collection of the alleged deficiency taxes were in violation of law. It certainly would be an absurdity on the part of the Court of Tax Appeals to declare that the collection by summary methods of distraint and levy was violative of the law, and then, on the same breath, require the petitioner to deposit or file a bond as a prerequisite for the issuance of a writ of injunction. Let us suppose, for the sake of argument, that the Court a quo would have required the petitioner to post the bond in question and that the taxpayer would refuse or fail to furnish said bond, would the Court a quo be obliged to authorize or allow the Collector to proceed with the collection from the petitioner of the taxes due by a means it previously declared to be contrary to law?" (*Collector vs. Eeyes*, supra).

As the Collector of Internal Revenue, through the Office of the City Treasurer of Cebu, placed the properties of the taxpayer under distraint and levy only on February 20, 1953, to secure the payment of alleged income tax deficiencies for the tax years 1945 to 1951, and as with respect to the taxes demanded for the year 1945, 1946, 1947 and 1948, the said warrant was issued beyond the 3-year period of limitations as prescribed by Section 51-d of the Tax Code, and following the ruling adopted by this Court as regards the issuance by the Tax Court of writs of injunction, the respondent Court did not err in enjoining the Collector from using summary administrative methods without requiring the taxpayer to post a bond or make a deposit as far as the tax years 1945, 1946, 1947 and 1948 are concerned. As regards 1949 to 1951, the answer is all too obvious, though We must have in mind that the court a quo acted on the erroneous assumption that the period for said summary administrative methods had already lapsed and that the effect of its ruling is a fait accompli.

Wherefore, the resolution of the Court of Tax Appeals dated February 8, 1956, is set aside and this case is hereby remanded to the lower Court for further proceedings so that it may determine the income tax liabilities of Matias H. Aznar that have not prescribed under the terms and period fixed by Sections 331 and 332 of the National Internal Revenue Code. Pending the disposition of this case in the lower Court, respondent Matias H. Aznar is ordered to deposit with said court the amount demanded from him for the years 1949 to 1951 or furnish a surety bond for not more than double said amount. Costs are taxed against respondent Matias H. Aznar. It is so ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., and Endencia, JJ., concur.  
Paras C. J., and Reyes, A. J., concur, in the result.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.