

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, ET AL., RESPONDENTS.

G.R. No. 11151. July 30, 1960

Ponente: PARAS, C.J.

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PARAS, C.J.:

From the records of this case it appears that the respondent Compañia General de Tabacos de Filipinas filed its income tax returns for the calendar years 1939 and 1940 on April 22, 1940 and April 19, 1941, respectively. On March 14, 1946, the petitioner assessed against said respondent the amounts of P90,664.43 and P51,457.27 as deficiency income taxes for said years and gave it until March 31, 1946 to show cause why said deficiencies should not be paid.

Between April 2, 1946 and October 29, 1948, several letters were exchanged between the petitioner and the respondent company resulting in revised assessments of P65,594.96 and P36,046.37 for the years 1939 and 1940, respectively. On March 20, 1951, said respondent requested the petitioner to countermand the assessments. On October 31, 1955, the petitioner wrote respondent's counsel, affirming the income tax assessment for 1939 in the sum of P65,594.96 but reducing the income tax assessment for 1940 to only P849.21. On January 26, 1956, a warrant of distraint and levy was issued by the petitioner against the properties of the respondent company which refused to accept the same. On May 19, 1956, notice of seizure and sale was issued by petitioner, announcing the sale of respondent company's two parcels of land and their improvements on July 16, 1956.

The Court of Tax Appeals, on motion of the respondent company, issued a preliminary writ of injunction, restraining the petitioner and any and all parties who may act in his behalf or under his orders from taking further action on or giving effect to the aforesaid notice of seizure and sale. The petitioner, the Collector of Internal Revenue, has filed the present petition for certiorari.

The Court of Tax Appeals, following the pronouncements of this Court, ruled that, pursuant to the provisions of Section 51 (d) of the National Internal Revenue Code, after the lapse of three years from the date the income tax returns are due or have been filed, the Collector of Internal Revenue may no longer proceed to collect income taxes by summary method. The petitioner does not dispute this ruling, but contends that the lower court should have held that the respondent company was estopped from interposing the defense of prescription. This contention is untenable.

The respondent Company filed its 1939 and 1940 income tax returns on April 22, 1940 and April 19, 1941, respectively. Under Section 51 (d) of the National Internal Revenue Code, the petitioner had three years from the date of the filing of said returns within which to determine the deficiencies and enforce their collection by summary remedies. Yet no such step was taken until 1956.

It is to be noted that it was only on March 14, 1946 that the determination of the deficiencies corresponding to 1939 and 1940 was made by the Collector of Internal Revenue. Even if summary collections were then made, the

petitioner would still have been barred therefrom pursuant to the provisions of Section 51 (d) of the National Internal Revenue Code. The alleged communications between the petitioner and the respondent company which, according to the petitioner, constituted a waiver of the defense of prescription, were exchanged long after the statutory three-year period had expired.

Regarding, the contention of the petitioner that the Court of Tax Appeals should have required the respondent company to put up a bond in accordance with Section 11 of Republic Act No. 1125 before granting the relief of injunction, we reiterate our ruling in the case of Collector of Internal Revenue vs. Jose Avelino, et al., 100 Phil, 327; 53 Off. Gaz. (3) 645, that since that court has found the action of the Collector to be contrary to law, to require a bond would indeed be illogical and improper.

Wherefore, the resolution appealed from is affirmed, without costs. So ordered.

Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.
Concepcion, J., reserves his vote.

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