REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR), PETITIONER, VS. SALUD V. HIZON, RESPONDENT.

G.R. No. 130430. December 13, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review of the decision[1] of the Regional Trial Court, Branch 44, San Fernando, Pampanga, dismissing the suit filed by the Bureau of Internal Revenue for collection of tax.

The facts are as follows:

On July 18, 1986, the BIR issued to respondent Salud V. Hizon a deficiency income tax assessment of P1,113,359.68 covering the fiscal year 1981-1982. Respondent not having contested the assessment, petitioner, on January 12, 1989, served warrants of distraint and levy to collect the tax deficiency. However, for reasons not known, it did not proceed to dispose of the attached properties.

More than three years later, or on November 3, 1992, respondent wrote the BIR requesting a reconsideration of her tax deficiency assessment. The BIR, in a letter dated August 11, 1994, denied the request. On January 1, 1997, it filed a case with the Regional Trial Court, Branch 44, San Fernando, Pampanga to collect the tax deficiency. The complaint was signed by Norberto Salud, Chief of the Legal Division, BIR Region 4, and verified by Amancio Saga, the Bureau's Regional Director in Pampanga.

Respondent moved to dismiss the case on two grounds: (1) that the complaint was not filed upon authority of the BIR Commissioner as required by §221[2] of the National Internal Revenue Code, and (2) that the action had already prescribed. Over petitioner's objection, the trial court, on August 28, 1997, granted the motion and dismissed the complaint. Hence, this petition. Petitioner raises the following issues:[3]

> I. WHETHER OR NOT THE INSTITUTION OF THE CIVIL CASE FOR COLLECTION OF TAXES WAS WITHOUT THE APPROVAL OF THE COMMISSIONER IN VIOLATION OF SECTION 221 OF THE NATIONAL INTERNAL REVENUE CODE.
>
> II. WHETHER OR NOT THE ACTION FOR COLLECTION OF TAXES FILED AGAINST RESPONDENT HAD ALREADY BEEN BARRED BY THE STATUTE OF LIMITATIONS.

First. In sustaining respondent's contention that petitioner's complaint was filed without the authority of the BIR Commissioner, the trial court stated:[4]

> There is no question that the National Internal Revenue Code explicitly provides that in the matter of filing cases in Court, civil or criminal, for the collection of taxes, etc., the approval of the commissioner must first be secured. . . . [A]n action will not prosper in the absence of the commissioner's approval. Thus, in the instant case, the absence of the approval of the commissioner in the institution of the action is fatal to the cause of the plaintiff . . . .

The trial court arrived at this conclusion because the complaint filed by the BIR was not signed by then Commissioner Liwayway Chato.

> Sec. 221 of the NIRC provides:
>
> Form and mode of proceeding in actions arising under this Code. &mdash Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor General, or by the legal officers of the Bureau of Internal Revenue deputized by the Secretary of Justice, but no civil and criminal actions for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be begun without the approval of the Commissioner. (Emphasis supplied)

To implement this provision Revenue Administrative Order No. 5-83 of the BIR provides in pertinent portions:

> The following civil and criminal cases are to be handled by Special Attorneys and Special Counsels assigned in the Legal Branches of Revenue Regions:
>
> . . . .
>
> II. Civil Cases
>
> 1. Complaints for collection on cases falling within the jurisdiction of the Region . . . .
>
> In all the abovementioned cases, the Regional Director is authorized to sign all pleadings filed in connection therewith which, otherwise, requires the signature of the Commissioner.
>
> . . . .

Revenue Administrative Order No. 10-95 specifically authorizes the Litigation and Prosecution Section of the Legal Division of regional district offices to institute the necessary civil and criminal actions for tax collection. As the complaint filed in this case was signed by the BIR's Chief of Legal Division for Region 4 and verified by the Regional Director, there was, therefore, compliance with the law.

However, the lower court refused to recognize RAO No. 10-95 and, by implication, RAO No. 5-83. It held:

> [M]emorand[a], circulars and orders emanating from bureaus and agencies whether in the purely public or quasi-public corporations are mere guidelines for the internal functioning of the said offices. They are not laws which courts can take judicial notice of. As such, they have no binding effect upon the courts for such memorand[a] and circulars are not the official acts of the legislative, executive and judicial departments of the Philippines . . . .[5]

This is erroneous. The rule is that as long as administrative issuances relate solely to carrying into effect the provisions of the law, they are valid and have the force of law.[6] The governing statutory provision in this case is §4(d) of the NIRC which provides:

> Specific provisions to be contained in regulations. - The regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing, or defining:
>
> . . . .
>
> (d) The conditions to be observed by revenue officers, provincial fiscals and other officials respecting the institution and conduct of legal actions and proceedings.

RAO Nos. 5-83 and 10-95 are in harmony with this statutory mandate.

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As amended by R.A. No. 8424, the NIRC is now even more categorical. Sec. 7 of the present Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

> (a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;
>
> (b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;
>
> (c) The power to compromise or abate under §204(A) and (B) of this Code, any tax deficiency: Provided, however, that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000.00) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and
>
> (d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.

None of the exceptions relates to the Commissioner's power to approve the filing of tax collection cases.

Second. With regard to the issue that the case filed by petitioner for the collection of respondent's tax deficiency is barred by prescription, §223(c) of the NIRC provides:

> Any internal revenue tax which has been assessed within the period of limitation above-prescribed may be collected by distraint or levy or by a proceeding in court within three years[7]following the assessment of the tax.

The running of the three-year prescriptive period is suspended[8]-

> for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which the tax is being assessed or collected; provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the statute of limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

Petitioner argues that, in accordance with this provision, respondent's request for reinvestigation of her tax deficiency assessment on November 3, 1992 effectively suspended the running of the period of prescription such that the government could still file a case for tax collection.[9]

The contention has no merit. Sec. 229[10] of the Code mandates that a request for reconsideration must be made within 30 days from the taxpayer's receipt of the tax deficiency assessment, otherwise the assessment becomes final, unappealable and, therefore, demandable.[11] The notice of assessment for respondent's tax deficiency was issued by petitioner on July 18, 1986. On the other hand, respondent made her request for reconsideration thereof only on November 3, 1992, without stating when she received the notice of tax assessment. She explained that she was constrained to ask for a reconsideration in order to avoid the harassment of BIR collectors.[12] In all likelihood, she must have been referring to the distraint and levy of her properties by petitioner's agents which took place on January 12, 1989. Even assuming that she first learned of the deficiency assessment on this date, her

request for reconsideration was nonetheless filed late since she made it more than 30 days thereafter. Hence, her request for reconsideration did not suspend the running of the prescriptive period provided under §223(c). Although the Commissioner acted on her request by eventually denying it on August 11, 1994, this is of no moment and does not detract from the fact that the assessment had long become demandable.

Nonetheless, it is contended that the running of the prescriptive period under §223(c) was suspended when the BIR timely served the warrants of distraint and levy on respondent on January 12, 1989.[13] Petitioner cites for this purpose our ruling in Advertising Associates Inc. v. Court of Appeals.[14] Because of the suspension, it is argued that the BIR could still avail of the other remedy under §223(c) of filing a case in court for collection of the tax deficiency, as the BIR in fact did on January 1, 1997.

Petitioner's reliance on the Court's ruling in Advertising Associates Inc. v. Court of Appeals is misplaced. What the Court stated in that case and, indeed, in the earlier case of Palanca v. Commissioner of Internal Revenue,[15] is that the timely service of a warrant of distraint or levy suspends the running of the period to collect the tax deficiency in the sense that the disposition of the attached properties might well take time to accomplish, extending even after the lapse of the statutory period for collection. In those cases, the BIR did not file any collection case but merely relied on the summary remedy of distraint and levy to collect the tax deficiency. The importance of this fact was not lost on the Court. Thus, in Advertising Associates, it was held:[16] "It should be noted that the Commissioner did not institute any judicial proceeding to collect the tax. He relied on the warrants of distraint and levy to interrupt the running of the statute of limitations."

Moreover, if, as petitioner in effect says, the prescriptive period was suspended twice, i.e., when the warrants of distraint and levy were served on respondent on January 12, 1989 and then when respondent made her request for reinvestigation of the tax deficiency assessment on November 3, 1992, the three-year prescriptive period must have commenced running again sometime after the service of the warrants of distraint and levy. Petitioner, however, does not state when or why this took place and, indeed, there appears to be no reason for such. It is noteworthy that petitioner raised this point before the lower court apparently as an alternative theory, which, however, is untenable.

For the foregoing reasons, we hold that petitioner's contention that the action in this case had not prescribed when filed has no merit. Our holding, however, is without prejudice to the disposition of the properties covered by the warrants of distraint and levy which petitioner served on respondent, as such would be a mere continuation of the summary remedy it had timely begun. Although considerable time has passed since then, as held in Advertising Associates Inc. v. Court of Appeals[17] and Palanca v. Commissioner of Internal Revenue,[18] the enforcement of tax collection through summary proceedings may be carried out beyond the statutory period considering that such remedy was seasonably availed of.

WHEREFORE, the petition is DENIED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Patrocinio R. Corpuz.

[2] Now §220, as amended by Republic Act No. 8424.

[3] Petition, p. 7; Rollo, p. 13.

[4] Petition, Annex A, p. 3; Rollo, p. 37.

[5] Petition, Annex A, p. 3; Rollo, p. 37.

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[6] United States v<. Tupasi Molina, 29 Phil. 119 (1914); Teoxon v. Members of the Board of Administrators, 144 Phil. 592 (1970); Cena v. Civil Service Commission, 211 SCRA 179 (1992).

[7] As amended by R.A No. 8424, the period, under §222 of the present Code, has been extended to five years.

[8] §224, now §223 of the NIRC, as amended by R.A. No. 8424.

[9] Petition, p. 20; Rollo, p. 27.

[10] §228 of the NIRC, as amended by R.A No. 8424.

[11] Republic v. Court of Appeals, 149 SCRA 351 (1987).

[12] Comment, p. 4; Rollo, p. 143.

[13] Comment, Annex A, p. 2; Rollo, p. 149.

[14] 133 SCRA 765 (1984).

[15] 114 Phil. 203 (1962).

[16] Supra, note 14 at 771.

[17] Supra, note 14.

[18] Supra, note 15.

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