

THE PROVINCIAL TREASURER AND THE PROVINCIAL ASSESSOR OF NEGROS OCCIDENTAL, PETITIONERS VS. JOSE AZCONA, ETC., ET AL., RESPONDENTS.

G. R. No. 13654. July 31, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Victorias Milling Co., Inc., thru its Vice-president J. J. Osorio, on December 17, 1947, declared under oath for purposes of taxation that the true value of some of its old and new machineries after deducting 50% for depreciation was P2,979,080.00, to which the provincial assessor added P1,033,100.00 as value of other not declared properties, thus raising the total assessment of the machineries in 1948 to P4,012,180.00. On the basis of the aforesaid declaration, the provincial assessor assessed a tax of P41,121.80, which the company paid under protest in 1948. This assessment became final and conclusive, as no appeal therefrom was taken by the company to the Local Board of Tax Appeals, as provided by Section 17 of the Assessment Law and by Section 1 of Commonwealth Act 530.

In 1949, the provincial assessor assessed the same machineries at only P3,904,310.00 (arrived at by deducting from P4,012,180.00 approximately 3% as estimated annual depreciation due to ordinary wear and tear) and the corresponding tax of P39,043.10 was paid under protest in the same year. In 1950, together with other machineries, the company was assessed at P4,101,490.00 and paid under protest the tax thereon of P1,014.90; in 1951, the same machineries were assessed at P4,060,000.60, in 1952 P3,273,930.00, and in 1953, P3,023,910.00, and the company paid under protest the taxes of P40,600.60, P32,729.30, and P30,239.10, in 1951, 1952 and 1953, respectively.

After more than five years since it paid under protest the taxes mentioned in the preceding paragraphs and though the assessment made of said taxes had long become final and conclusive for lack of appeal to the then Board of Tax Appeals as abovementioned, the company filed on April 24, 1953 a complaint before the Court of First Instance of Negros Occidental against the collection officials of said province demanding from them an additional 24% depreciation of its pre-war machineries computed at the rate of 3 per cent a year for eight years retroactive from 1940 to 1947, thereby claiming that it be entitled to a total of 74% depreciation of its machineries as of 1948 based on the so-called "straight line method" of computing depreciation, and praying that the 1948 assessment be correspondingly reduced and the proportionate partial refund of the tax be made based on the reduced assessment. The company made a similar request with regard to the assessment made of the machineries for the year 1949, 1950, 1951, 1952 and 1953 so that the corresponding partial refunds may be made based on the reduced assessments in line with the so-called "straight line method."

On May 11, 1953, the defendants filed a motion to dismiss on the ground that the court a quo had no jurisdiction over the subject matter thereof, to which plaintiff filed an opposition, and after plaintiff and defendants had filed their reply and rejoinder, respectively, the court a. quo denied the motion declaring itself with jurisdiction over the

case.

On June 23, 1953, the defendants filed an answer wherein as a special defense they reiterated their plea that the court a quo had no jurisdiction over the case.

The parties submitted the case on a partial stipulation of facts, since most of the allegations in the pleadings were not disputed, the issues involved being purely of law, and on January 24, 1956, the court a quo rendered decision sustaining in toto the issues formulated by the plaintiff. In substance, the decision ordered the defendants to employ the "straight line method" of depreciation in the assessment of plaintiff company's machineries at the rate of 3% a year for eight years retroactive to 1940 thru 1947, thus granting an additional 24 % depreciation as of 1948, aside from the 50% depreciation already deducted by the company for the same years, which decision likewise ordered the defendants to refund to the plaintiff the amount of P134,969.70 representing over-collections for six years from 1948 to 1953.

This decision became final and executory in view of the failure of the provincial fiscal to file on time the brief for appellants (Resolution of this Court of June 11, 1975 in G. R. No. L-11523). And acknowledging his responsibility, the provincial fiscal now offers as an excuse that his failure is due to the confusion that arose when all the records of the case were forwarded to the Office of the Solicitor General in connection with the appeal taken in Civil Case No. 2670.

Since the decision become final and executory as above-stated, on petition of the plaintiff company, the court a quo issued on September 28, 1957 an order directing the issuance of a writ of execution, and, complying therewith, the clerk of court issued the writ on October 3, 1957. But before said writ could be carried out, the defendants interposed the present petition for certiorari wherein they pray for the nullification of the decision and the order of execution issued in the original case and for the issuance of a writ of preliminary injunction to prevent the execution from being carried out pending the disposition of the instant special action. This Court granted the writ upon the posting of a bond of P5,000.00.

It should be noted that on June 16, 1954, or eighteen (18) months before the decision in the main case was rendered by the court a quo Republic Act No. 1125 was enacted granting to the Court of Tax Appeals exclusive appellate jurisdiction to review by appeal the decisions of the Collector of Internal Revenue, Commissioner of Customs, and Provincial or City Boards of Assessment Appeals in all cases involving disputed assessments of internal revenue taxes, customs duties, and real property taxes, and providing that all said cases that were then pending determination in the courts of first instance shall be certified and remanded by the respective clerk of court to the Court of Tax Appeals for final disposition thereof. However, in spite of the fact that when said Act was approved the present assessment case was still pending decision by the Court of First Instance of Negros Occidental, the latter court, in open disregard of the mandatory provisions of said Act, decided the same on the merits, instead of remanding it to the Court Tax Appeals. It is for this reason that the validity of said decision is now impugned. It is on this ground that petitioners have resisted the enforcement of the writ of execution issued by the court a quo.

We declare that the provisions of Section 22 of said Act which postulate that "All cases involving disputed assessment of Internal Revenue taxes or customs duties pending determination before the Court of First Instance shall be certified and remanded by the respective clerk of Court to the Court of Tax Appeals for final disposition thereof", are mandatory. Their open disregard by a court of first instance renders its decision null and void.

It is true that said Section 22 seemingly limits its scope as regards the cases to be remanded to the Court of Tax Appeals to those involving assessment of internal revenue taxes and customs duties, while the "present case admittedly refers to an assessment of land tax, but this is of no moment for in interpreting the context of said

Section 22 we should not ignore Section 7 of the same Act which defines the extent and scope of the jurisdiction of the Court of Tax Appeals. Thus, in a recent case wherein a similar issue was raised, we laid down the following ruling:

"It is true that under section 22 of said Act the only cases that are required to be certified and remanded to the Court of Tax Appeals which upon its approval are pending determination before a court of first instance are apparently confined to those involving disputed assessment of internal revenue taxes or customs duties, and the present case admittedly refers to an assessment of land tax, but it does not mean that because of that apparent omission or oversight the instant case should not be remanded to the Court of Tax Appeals, for an interpreting the context of the section above adverted to we should not ignore section 7 of the same Act which defines the extent and scope of the jurisdiction of said court. As we have held in a recent case, 'section 22 of Republic Act No. 1125 should be interpreted in such a manner as to make it harmonize with section 7 of the same Act and that the primordial purpose behind the approval of said Act by Congress is to give to the Court of Tax Appeals exclusive appellate jurisdiction "over all tax, customs, and real estate assessment cases throughout of the Philippines and to hear and decide them as soon as possible" ' (Ollada vs. The Court of Tax Appeals, 99 Phil, 604; 52 Off. Gaz., 4667). Considering this interpretation of the law, it logically follows that the lower court did not act properly in denying) the motion to remand the instant case to the Court of Tax Appeals. (Bislig Bay Lumber Company, Inc. vs. The Provincial Government of Surigao, 100 Phil, 303; 52 Off. Gaz., 7242.)

Nor can it be contended that the instant case should, not be remanded to the Court of Tax Appeals because it does not involve an appeal from, the decision of a Board of Assessment Appeals upon the theory that said court is merely given appellate jurisdiction to review by appeal, while the present case is an original action instituted to test the legality of an assessment on the strength of our ruling in the case of Roxas vs. Rafferty, 27 Phil., 957, the reason therefor being that the of repeated Section 22 refers to all cases involving disputed assessment without distinction.

And with regard to the issue that certiorari does not lie when a petitioner can avail of any other plain, speedy and other adequate remedy in the ordinary course of law, such as an appeal, which petitioners have failed to avail of because of their failure to file their brief within the reglementary period, suffice it to state that the instant petition impugns not only the validity of the decision rendered in Civil Case No. 2670, but also the order of execution issued by respondent judge on September 8, 1957 which, it is claimed, was issued with grave abuse of discretion, or in excess of the court's jurisdiction on the matter. This claim certainly constitutes one justification for the filing of the present petition.

It appearing that the decision rendered in Civil Case No. 2670 is null and void for having been rendered in disregard of Section 22, Republic Act 1125, it follows that the order of execution issued by respondent judge on September 28, 1957 is likewise null and void. The attempt, therefore, on the part of respondent officials to execute said decision is unwarranted.

Wherefore, petition is granted. The decision of respondent judge rendered on January 24, 1966, as well as his order issued on September 28, 1956, are hereby set aside. It is ordered that Civil Case No. 2670 be remanded to the Court of Tax Appeals for appropriate action. The writ of preliminary injunction issued by this Court is declared permanent. No costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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