

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS.
DAMIAN P. RET, DEFENDANT-APPELLEE.***G.R. No. 13754. March 31, 1962*

Ponente: PAREDES, J.

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On February 23, 1949, Damian Ret filed with the Bureau of Internal Revenue his Income Tax Return for the year 1948, where he made it appear that his net income was only P2,252.53 with no income tax liability at all. The BIR found out later that the return was fraudulent since Ret's income, derived from his sales of office supplies to different provincial government offices, totaled P94,198.76. The BIR assessed him P34,907.33 as deficiency income tax for 1948, inclusive of the 50% surcharge for rendering a false and/or fraudulent return.

Defendant Ret failed to file his Income Tax return for 1949, notwithstanding the fact that he teamed a net income of P150,447.32, also from sale of office supplies. His income, as assessed for tax purposes, showed a deficiency tax of P68,338.40 for 1949, inclusive of the 50% surcharge.

On January 13, 1951, the Collector of Internal Revenue demanded from Ret the payment of the above sums, but he failed and/or refused to pay said amounts. On January 20, 1951, the Collector issued income tax assessment notices to Ret, urging him to pay the sums mentioned, but with the same result.

Upon recommendation of the Collector, Ret was prosecuted for a violation of Section 45 [a] 51 [d] and 72, of the N.I.R.C. penalized under Sec. 73, thereof (Crim. Cases Nos. 19037, and 19038. He pleaded guilty to the two (2) cases and was sentenced to pay a fine of P300.00 in each.

After his conviction, on September 21, 1957, the Republic filed the present complaint for the recovery of Ret's deficiency taxes in the total sum of P103,245.73, plus 5% surcharge and 1% monthly interest. Instead of answering, he presented a Motion to Dismiss on February 8, 1958, claiming that the "cause of action had already prescribed." The CFI handed down an Order, the pertinent portions of which are reproduced below:

"There is no question that the assessment of the income tax of the defendant for 1948 and 1949 was made within the period of limitation, that is, on or before January 20, 1951, but the present suit to collect the same was brought outside the five-year period, to wit, on September 5, 1957, counted from the date of the assessment of said tax.

There can be no question that the above-quoted provisions of Section 332, letter (c) of the National Internal Revenue Code, apply to all internal revenue taxes including income tax. The language therein used is all-embracing, and nowhere in said code is found any other provision governing collection of income tax by judicial action.

WHEREFORE, the five-year, period fixed by law for the filing of suit for the collection of income tax having already expired, the plaintiff has no cause of action against the defendant and the motion to dismiss should be and is hereby granted, and the case is dismissed without pronouncement as to costs."

Plaintiff's Motion for Reconsideration of the above Order, was denied on March 10, 1958. It appealed.

The dominant issue raised in this appeal is whether or not appellant's right to collect the income taxes due from appellee through judicial action has already prescribed.

The basis of the motion to dismiss is section 332 of the Revenue Code, which provides—

"(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.

xx xx xx xx

(c) Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if began (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the tax payer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

The position of the Government may be stated as follows :—

- The provisions of section 332(c) of the N.I.R.C. do not apply to income taxes. It premised its argument on the ruling in the case of Collector vs. Avelino and CTA (100 Phil., 327; 53 Off. Gaz., [3] 645), wherein it was held that sections 331 and 332 of the Tax Code "x x x merely apply to internal revenue taxes in general and not to income taxes, the collection of which is specifically provided for under a different title of the same law. x x x"; that the special provision alluded to is section 51 (d), Title II, of the Code, which refers only to the collection of income tax thru the summary remedies of restraint and levy within three years after the return was filed or should have been filed (Collector vs. Villegas, 56 Phil., 554; Collector vs. Haygood, 65 Phil., 520; De la Vina vs. Government, 65 Phil., 265; Phil. Sugar Estate, Inc. vs. Posadas, 68 Phil., 216; Collector vs. A. P. Reyes, 100 Phil., 822; Collector vs. Zulueta, 100 Phil., 872; 53 Off. Gaz.[19] 6532) and after the lapse of the three year period, collection of income taxes must be had thru judicial action (Sec. 316[b] N.I.R.C.); but in all these decisions, it is alleged, no mention of any period of limitation for the collection of income tax thru judicial action has been made.

- Even granting that section 332 (N.I.R.C.) is applicable, the Government is not barred from instituting the present action, as shown by the very wordings of said section. It is claimed that as appellee Ret had admitted that he filed a false and fraudulent income tax return for 1948 and unlawfully failed to file his income tax return for 1949, for which he pleaded guilty in the two criminal cases heretofore mentioned, the collection of the tax may be enforced by a proceeding in court within 10 years after the discovery of the falsity, fraud or omission (see also Avelino case, supra). And the present action was filed within 10 years from the discovery of the falsity, fraud or omission (sec. 332[a]) N.I.R.C.

- Further granting, that section 332, aforesaid is applicable, the Government claims that it is not barred from instituting the present action because the period within which to collect the taxes due was suspended upon the filing of the two informations against the defendant-appellee on May 29, 1952, and began to accrue again from the receipt of the decision on April 20, 1955. In support of this contention, plaintiff-appellant cites section 1, of Rule 107, Rules of Court and Sec. 333 of N.I.R.C. These provisions state;—

"Sec. 1. Rules governing civil actions arising from offenses.— Except as otherwise provided by law, the following rules should be observed:

"x x x x x x x x

(b) Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced, the civil action cannot be instituted until final judgment has been rendered in the criminal action;

(c) After a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended, in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered";

"Sec. 333. Suspension of running of statute.—The running of the statute of limitations provided in section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and for sixty days thereafter."

Under the above-quoted provisions, it is alleged that from January 20, 1951 (date of assessment) to May 29, 1952 {date of filing of the informations), there is an interval of 1 year, 4 months and 9 days, and from April 20, 1955 (date of decision in the criminal cases which plaintiff appellant assume to be the date of receipt, as this does not appear) to September 4, 1957 (date of filing of the complaint at bar), there is an intervening period of 2 years, 4 months and 15 days; and in all, the Government has only consumed a total of 3 years, 8 months and 24 days from the date the income tax assessment notice was issued to the date of filing of the complaint, of the 5 years prescribed by law. The government further alleged that the Collector was prohibited from going to court for the collection of the taxes due from the defendant-appellee, in view of the filing of the two criminal cases, the nature of which covered the subject-matter of the civil complaint and there was need for the criminal charges to be determined first by the lower court, before a civil action for the collection of the tax could be resorted to. In other words, it is contended, that the filing of the criminal actions constituted a prejudicial question which should be resolved before the Civil Action for collection could be filed. And this was the very thing the Government did in the instant case. Moreover, the period of prescription was suspended because of the written extra-judicial demand made by the Collector, citing Art. 1155 of the N.C.C. in support thereof.

- The Government submits also that the collection of income tax thru judicial action is imprescriptible, relying upon certain rules of statutory construction and the decision of this Court in the case of *Estate of De la Vina, vs. Government of the Philippine Islands*, 65 Phil. 263, holding that "x x x the statutes of limitations do not run against the State; and this principle is applicable to action brought for the collection of taxes (26 R.C.L., 388; 37 C. J., 711.)" The doctrine was reiterated in the case of *Philippine Sugar Estate Development Co. vs. J. Posadas, et al.*, 68 Phil., 216, declaring that "x x x when the taxpayer paid the additional tax under protest and brought the corresponding action to recover the protested additional payment, the collection became judicial and the right of the Collector of Internal Revenue to effect the collection through that means has not prescribed."

- Assuming arguendo, that the action is prescriptible then the provisions of Art. 1144 of the N.C.C. on prescription of actions is applicable, inasmuch as aside from sections 331, 332 and 51 (d), there is no provision in the Revenue Code which deals on the limitation of action for the collection of income tax thru judicial action. The plaintiff-appellant argues that the income tax liabilities of the defendant-appellee being an obligation created by law and that the right of action having accrued on January 20, 1951, the date of assessment, and the complaint at bar having been filed on September 5, 1957, within the ten year period, the cause of action has not prescribed.

After going over the law and jurisprudence pertinent to the issues raised, We have come to the conclusion that the cause of action has already prescribed.

It is true that this Court has declared in the *Avelino* case (1956, *supra*), that sections 331 and 332 of the Revenue Code do not apply "to income taxes, the collection of which is specifically provided for under a different title to

the same law." But plaintiff-appellant overlooked the fact that this Court was only referring to the collection of income tax by summary proceeding and not by court action. Clarifying this matter, in the more recent case of Collector vs. Solano and Court of Tax Appeals, G. R. No. L-11475, July 31, 1958, this Court held:—

"x x x The decision in the Avelino case was closely followed by our holding in the case of Collector vs. Zulueta, 53 Off. Gaz., No. 19, 6532, that the three-year prescriptive period provided for in section 51 (d) of the Code was meant to serve as a limitation on the right of the government to collect income taxes by the summary methods of distraint and levy, said period to be computed from the time the return is filed, or if there has been a neglect or refusal to file one from the date the return is due, which is March 1st of the succeeding year. Thus our decision makes it clear that prescriptive period of three years was intended to be a general limitation on the right of the government to collect income taxes by summary proceedings, irrespective of whether the tax-payer filed a return or not, or whether his return was true and correct or erroneous or fraudulent".

Again We declared:—

"We notice, however, that Section 51 (d) of the National Internal Revenue Code, which refers to the collection of income tax, does not provide for any prescriptive period insofar as the collection of income tax by judicial action is concerned, the prescriptive period therein mentioned being merely applicable to collection by summary methods, as interpreted by this Court. Considering this void in the law applicable to income tax, and bearing in mind that Section 331 of the Code which provides for the limitation upon assessment and collection by judicial action comes under Title IX, Chapter II, which refers to 'CIVIL REMEDIES FOR COLLECTION OF TAXES', we may conclude that the provisions of said Section 331 are general in character which may be considered suppletory with regard to matters not covered by the title covering income tax. In other words, Title II of the Code is a special provision which governs exclusively all matters pertaining to income tax, whereas Title IX, Chapter II, is a general provision which governs all internal revenue taxes in general, which cannot apply insofar as it may conflict with the provisions of Title II as to which the latter shall prevail, but that in the absence of any provision in said Title II relative to the period and method of collection of the tax, the provisions of Title IX, Chapter II, may be deemed to be suppletory in character. Hence, in our opinion, the Court of Tax Appeals did not err in holding that the right of the Government to collect the deficiency income taxes for the years 1945, 1946 and 1947 has already prescribed under section 331 of the National Internal Revenue Code.. x x x (Coll. of Int. Rev. vs. Bohol Land Trans. Co., G.R. Nos. L-13099 & 13453, Apr. 2, 1960)

From all of which, it may be reasonably inferred that section 332 of the Revenue Code does not apply to income taxes if the collection of said taxes will be made by summary proceedings, because this is provided for by Section 51 (d) aforementioned; but if the collection of income taxes is to be effected by court action, then section 332 will be the controlling provision. It is alleged, however, that this Court did not mention any period of limitation for the collection of income tax thru judicial action. To this, it may be observed that it was unnecessary to do so because the said section (332) has already so provided. In the Solano case, it was declared, "Even so, section 332 (c) of the National Internal Revenue Code provides that such action may be brought only within five years from the time of the assessment of the tax".

Plaintiff-appellant maintains that granting the applicability of section 332, still, according to paragraph (a) thereto (supra), it has 10 years from the discovery of the falsity, fraud or omission within which to file the present action. Under said section, the Collector is given two alternatives: (1) to assess the tax within 10 years from the discovery of the falsity, fraud or omission, or (2) to file an action in court for the collection of such tax without assessment also within 10 years from the discovery of the falsity, fraud, or omission. In the case at bar, an assessment had been made and this fact has taken out the case from the realms of the provisions of section 332 (a) and placed it under the mandate of section 332 (c), {supra}, which is the law applicable hereon and general enough to cover the present situation.

As heretofore stated, the plaintiff-appellant made the assessment on January 20, 1951 and had up to January 20, 1956 to file the necessary action. It was only on September 5, 1957, that an action was filed in Court for the collection of alleged deficiency income tax—far beyond the 5 year period. This notwithstanding, plaintiff-appellant argues that during the pendency of the criminal cases, it was prohibited from instituting the civil action for the collection of the deficiency taxes. This contention is untenable. The present complaint against the defendant appellee is not for the recovery of civil liability arising from the offense of falsification; it is for the collection of deficiency income tax. The provisions of Section 1, Rule 107 (supra) that "after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted", is not applicable. The said criminal cases would not affect, one way or another, the running of the prescriptive period for the commencement of the civil suit. The criminal actions are entirely separate and distinct from the present civil suit. There is nothing in the law which would have stopped the plaintiff-appellant from filing this civil suit simultaneously with or during the pendency of the criminal cases. Assuming the applicability of the rule, at most, the prosecution of the civil action would be suspended but not its filing within the prescribed period. Section 332 of the Tax Code provides: "the running of the statutory limitation x x x shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment, or beginning distraint or levy or a proceeding in court, and for sixty days thereafter". As heretofore stated, the plaintiff-appellant was not prohibited by any order of the court or by any law from commencing or filing a proceeding in court. It is also averred that the period of prescription for the collection of tax was suspended because of the written extra-judicial demand made by the Collector against the defendant-appellee, citing Art. 1155 N.C.C. Again, in the Solano case, (supra), We held that the only agreement that could have suspended the running of the prescriptive period was a written agreement between Solano and the Collector, entered before the expiration of the five (5) year prescriptive period, extending the period of limitations prescribed by law (sec. 332 [c] N.I. R.C.) which "Rule is in accord with the general law on prescription that requires a written acknowledgment of the debtor to renew the cause of action or interrupt the running of the limitation period (Act 190, sec. 50; new Civil Code, Art. 1155". In the instant case, there is no such written agreement, and there was nothing to agree about. The letter of demand by the Collector on January 13, 1951, was made prior to the issuance of the assessment notice to the defendant-appellee, made on January 20, 1951, from which date, the 5 year period was to be counted. The letter of demand could not suspend something that started to run only on January 20, 1951.

The very provisions of sections 331, 332 and 333 of the N.I.R.C. specially the last, heretofore quoted, support the theory of prescriptibility of a judicial action to collect income tax. To hold otherwise, would render said provisions idle and useless. It is true that in earlier decisions, there was a declaration to the effect that the action to collect income tax is imprescriptible (*Vina vs. Government*, 65 Phil, 262; *Phil. Sugar Dev. vs. Posadas*, 68 Phil. 216). More recent decisions, however, recognized the prescriptibility of such actions. Thus, it has been held: —

"The 'judicial action' mentioned in the Tax Code may be resorted to within five (5) years from the date the return has been filed, if there has been no assessment, or within five (6) years from the date of the assessment made within the statutory period, or within the period agreed upon, in writing, by the Collector of Internal Revenue and the tax-payer, before the expiration of said five-year period, or within such extension of said stipulated period as may have been agreed upon, in writing, made before the expiration of ; the period previously stipulated, except that in the case of a false or fraudulent return with intent to evade tax or for failure to file a return the judicial action may be begun at any time within ten (10) years after the discovery of the falsity, fraud or omission (Sections 331 and 332 of the Tax Code)" (*Gancayco vs. Coll. of Int. Rev.*, G.R. No. L-13325, April 20, 1961).

In view of the conclusions reached, it is deemed unnecessary to pass upon the other issues raised.

The decision appealed from is affirmed, without special pronouncement as to costs.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, and De Leon, JJ., concur.
Padilla, J., took no part.

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