

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. BLAS GUTIERREZ AND MARIA MORALES, RESPONDENTS.

G.R. No. 13819. May 25, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition to review the resolution of the Court of Tax Appeals dated March 26, 1958, which reads:

"In view of the foregoing, the 'Motion for Execution' against the petitioners Blas Gutierrez and Maria Morales in so far as it requires the satisfaction of the judgment in the sum of P5,654.00 only is hereby granted."

The facts are not disputed. In Court of Tax Appeals (CTA) Case No. 65, Blas Gutierrez and Maria Morales, petitioners in said case but respondents in the present case, appealed from a decision of the Collector of Internal Revenue, holding them liable for the payment of the amount of P8,481.00, said to be due as deficiency income tax, including surcharges for the calendar year 1950. The Court of Tax Appeals in a decision dated August 31, 1955, found Gutierrez and Morales liable for the payment of P5,654.00 as deficiency income tax. The dispositive part of said decision reads thus:

"For all the foregoing, we find and so hold that the assessment of the respondent should be as it is hereby modified and the petitioners are hereby required to pay the sum of P5,654.00 as deficiency income tax, with costs against the petitioners." (Annex D)

Both parties appealed to this Tribunal, which affirmed the decision of the Court of Tax Appeals. After our decision had become final and the case had been returned to the Court of Tax Appeals, the Collector of Internal Revenue filed a motion for execution wherein he sought to collect not only the amount of P5,654.00, included in the judgment, but also 5% surcharge and 1% monthly interest from the due date, March 31, 1953, until paid, pursuant to the provisions of Section 51 (e) of the Internal Revenue Code. Acting upon the petition for execution and the opposition thereto in so far as it sought to collect surcharge and interest, the Court of Tax Appeals granted the motion for execution but only in so far as it required satisfaction of the judgment in the amount of P5,654.00. In his appeal, the Collector attributes only one error to the Tax Court, namely:

"The Court of Tax Appeals erred in holding that the 5% surcharge and 1% monthly interest on the deficiency income tax of P5,654.00, pursuant to Section 51 (e) of the National Internal Revenue Code, cannot be collected from respondents Blas Gutierrez and Maria Morales simply because the decision sought to be executed does not expressly provide for the payment of the same." (Brief for the Petitioner, p. 1)

We quote with favor a portion of the appealed resolution which states the issue involved and at the same time gives the reason in support of said resolution:

"The real and only issue in the instant case, is whether or not petitioners may be made to pay respondent a sum greater than that adjudicated in the decision against them. Petitioners (respondents herein) claim that the imposition of the 5% surcharge and 1% monthly interests pursuant to section 51 (e) of the Revenue Code is not in accord with the decision of this Court as affirmed by the Supreme Court. They argue that since the affirmed

decision orders the payment of the sum of P5,654.00 only the additional amount of P3,505.48 which respondent now seeks to collect cannot therefore be collectible, for to do so would alter or amend a final and executory judgment. This, petitioners claim, is tantamount to a clear deprivation of property without due process of law.

"We believe that petitioners are correct in their contention. It is a cardinal rule of law that the execution cannot be wider in scope nor exceed the judgment or decision on which it is based.

"* * * Certain authorities apply strictly, in this respect, the general rule, that the execution must follow the judgment strictly and may only be commensurate therewith. Under this rule, it has been held that an execution may not require the collection of interest when the judgment upon which it is issued does not give it. * * *" (21 Am. Jur. Par. 56, p. 39 citing Hannan vs. Creamer, 101 Me. 222, 63 A. 736, 8 Ann. Cas. 165; Den ex dem. Collais vs. McLeod, 30 Nc. Ired. L. 221, 49 Am. Dec. 376)

"Moreover, our Supreme Court in a case of similar nature ruled:

"* * * The writ of execution should not require the collection of interest when the judgment on which it is issued does not give it and interest is not allowed by statute. This has been held to be the rule even where interest on judgments is allowed by statute, if the judgment does not include it.' (33 C.J.S. Execution, p. 216, citing several decisions, cited in Zamora vs. Medran, et al., 90 Phil., 339.)

"For the sake of clarity we quote once more the dispositive part of the decision in question, to wit:

"For all the foregoing, we find and so hold that the assessment of the respondent should be as it is hereby modified and the petitioners are hereby required to pay the sum of P5,654.00 as deficiency income tax, with costs against the petitioners.'

Nowhere in the above portion is there a pronouncement that interest and surcharge is to be collected, but the words thereof are definite imposing the collection of the sum of P5,654.00 plus costs and no more."

The Collector of Internal Revenue, however, contends that the payment of 5% surcharge and the 1% monthly interest on the deficiency income tax proper is implied in the judgment, for the reason that when the Tax Court in its decision modified the tax assessment made by the Collector by holding that the evidence did not warrant the imposition of the 50% surcharge, the modification applied only to the elimination of the 50% surcharge, but did not condone the payment of the 5% surcharge as well as the 1% monthly interest, which were part of the assessment. The Collector also maintains that the collection of 5% surcharge and 1% monthly interest is mandatory and self-executory under the provisions of Section 51 (e) of the Tax Code. However, as correctly contended by respondents, the payment or non-payment of these surcharge and interest had been put in issue in the original case where the parties had thoroughly ventilated the merits of their claims and defenses and the judgment had replaced the original assessment as the basis for liability, and so, only that which was awarded in the judgment may be enforced against it.

"* * * When a claim or demand has been put in issue and has passed on to final judgment, it is merged and swallowed up in the judgment and loses its vitality. All the particular qualities of the claim are merged in the judgment." (Contreras vs. Felix, 78 Phil., 570; 44 Off. Gaz., [11] 4312.)

It is the final judgment that determines and stands as the source of the rights and obligations of the parties. The judgment in this case made no pronouncement as to the payment of surcharge and interest, but specifically stated the amount for the payment of which respondents were liable. The Collector by virtue of the writ of execution, may not vary the terms of the judgment by including in his motion for execution the payment of surcharge and interest.

"The writ of execution must conform to the judgment which is to be executed, as it may not vary the terms of

the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which, gives it life and exceeds it, it has pro tanto no validity." (Moran, Comments on the Rules of Court, 1957 ed., Vol. I, p. 556, and authorities cited therein.)

The remedy of the Collector should have been an appeal from the judgment in so far as it failed to provide for the payment of the surcharge and interest, but according to our decision which confirmed that of the Court of Tax Appeals, although the Collector was also an appellant, he confined his appeal to the Tax Court exonerating respondents herein from the payment of the 50% surcharge imposed by him in the assessment.

In view of the foregoing, the resolution of the Court of Tax Appeals is hereby affirmed. No pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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