

## THE COLLECTOR OF INTERNAL REVENUE, PETITIONER, VS. MANUEL B. PINEDA AS ONE OF THE HEIRS OF THE DECEASED ATANASIO PINEDA, RESPONDENT.

*G.R. No. 14522. May 31, 1961*

Ponente: CONCEPCION, J.

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### CONCEPCION, J.:

Petition for review of a decision of the Court of Tax Appeals reversing that of petitioner Collector of Internal Revenue with respect to deficiency income taxes for the years 1945, 1946 and 1947, as well as residence tax for the year 1945 and real estate dealer's fixed tax for the last quarter of 1946, and the whole year of 1947, allegedly due from the estate of Atanasio Pineda, deceased, without pronouncement as to costs.

Atanasio Pineda died on May 23, 1945. He was survived by his widow, Felicisima Bagtas, hereafter referred to as Mrs. Pineda, and fifteen (15) children, one of whom is herein respondent, Manuel B. Pineda. On August 30, 1945, proceedings for the settlement of the estate of the deceased were commenced in the Court of First Instance of Manila as Case No. 71129 thereof, in which Mrs. Pineda was appointed administratrix of the estate. Mrs. Pineda performed her duties as such administratrix until June 8, 1948, when said case was closed and she was relieved of her aforementioned duties. Over two (2) years and a half later, Internal Revenue examiner E.Z. Espinosa investigated the income tax liability of some heirs of the deceased. In the course of her investigation, she allegedly found that no income tax return for the years 1945, 1946, 1947 and 1948 had been filed on behalf of his estate. When Mrs. Pineda and her children, some of whom were minors, were contacted by examiner Espinosa, the latter was referred to respondent Manuel B. Pineda. Inasmuch, however, as Pineda could not be found in his residence and did not come to see her, although examiner Espinosa had left word for him to do so, she examined the records of said Case No. 71129 and pertinent records of other offices of the Government, and on the basis of the data thus gathered, she filed on January 29, 1951, income tax returns for the estate of the deceased corresponding to the aforementioned years 1945, 1946, 1947 and 1948. On August 1, 1951, income tax assessment notices Exhibits 3-A and 5-A (pp. 6 and 32, BIR rec.), for the years 1945 and 1946, were sent to said estate "c/o Manuel B. Pineda", respondent herein, who received said notices on September 8, 1951. Four (4) days later, he submitted to petitioner herein a "statement" contesting the accuracy of said assessment notices and alleging that the income of the estate had been included in income tax returns filed by Mrs. Pineda (pp. 25-28, BIR rec.).

Soon, thereafter, or on October 12, 1951, petitioner assessed and demanded from said estate, through respondent herein, the payment of P687.50 as real estate dealer's fixed tax from the last quarter of 1946 to 1950, plus P50.00 as compromise penalty. Respondent, who received this assessment and demand on October 22, 1951, contested the same in letters written by him to the petitioner on October 31, 1951 (p. 20, BIR rec.) and March 30, 1953 (Exhibit 11, p. 79, BIR rec.). Meanwhile, or on October 20, 1952, petitioner sent to the estate of the deceased, through respondent, income tax assessment notice, Exhibit 7-A (p. 49; BIR rec.), in the sum of P2,223.51, plus P555.58 as 25% surcharge and P20 as compromise, for the year 1947. This assessment was impugned by respondent in another "statement" dated December 2, 1952, upon the ground that the income of the estate had

been consolidated with that of Mrs. Pineda in the income tax return for 1947 filed by the latter (pp. 117-118, BIR rec.). Subsequently, or on August 24, 1953, respondent filed, on behalf of the estate of the deceased, its income tax returns Exhibits 2-A, 4-A and 6-A, for the years 1945, 1946 and 1947 (pp. 8, 34 and 56, BIR rec.).

Thereafter, upon reinvestigation made, owing to respondent's aforementioned communications denying the alleged tax delinquency of the estate of his father, the income tax assessment notices 3-A and 5-A, made on August 1, 1951, as well as the income tax assessment notice Exhibit 7-A, dated October 20, 1952, were cancelled and new income tax assessment notices (Exhibits 14, 15 and 16, pp. 10, 36 and 58, BIR rec.) were issued on October 19, 1953, charging the following:

"1. For the year 1945:

- a. Tax due P108.66
- b. 25% surcharge 27.17
- c. Compromise 20.00

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Total amount due and collectible P155.83

2. For the year 1946:

- a. Tax due P349.56
- 25% surcharge 87.39
- c. Compromise 20.00

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Total amount due and collectible P456.95

3. For the year 1947:

- a. Tax due P1,206.91
- b. Compromise 20.00

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Total amount due and collectible P1,226.91 "

Moreover, after another reinvestigation, on August 12, 1954, petitioner demanded from respondent the payment of P14.50, as basic and additional residence tax for 1945 and P207.50 as real estate dealer's tax for the fourth quarter of 1946 and the whole year of 1947, as well as payment of the sums due as income tax for 1945, 1946 and 1947, according to said assessment notices of October 19, 1953. On September 27, 1954, respondent appealed the matter to the Conference Staff of the Bureau of Internal Revenue, which upheld the latest assessments made by petitioner herein. On March 15, 1957, the latter demanded, therefore, payment of the following:

" 1. As deficiency income tax

- a. For 1945 P135.83
- b. For 1946 436.95
- c. For 1947 1,206.91

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Total P1,779.69

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Add: 5% surcharge 88.98

1% monthly interest from November 30,

1953 to April 15, 1957 720.77

Compromise for late filing 80.00

Compromise for late payment 40.00

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TOTAL AMOUNT DUE ON APRIL 15, 1957 P2,707.44 "

" 2. As additional residence tax for 1945 P14.50

3. As real estate dealer's tax for the fourth

quarter of 1946 and the whole year of 1947 P207.50 "

(Exhibit 19, p. 165, BIR record.)

Eventually, respondent appealed the case to the Court of Tax Appeals, where the issues raised were:

"1. Whether or not the right of the Collector (now Commissioner) of Internal Revenue to assess against and collect from the Estate of the deceased Atanacio Pineda the taxes in question has already prescribed?;

"2. Whether or not the series of assessments made by the respondent against the Estate of the deceased Atanacio Pineda, served on the petitioner Manuel B. Pineda in his personal capacity, are valid, considering the fact that the judicial administration of the estate was closed by order of the Court on June 8, 1948, long before the dispute-assessment were made and served?;

"3. Whether or not the assessments under review are supported by the facts of the case and the law applicable thereto?; and

"4. Whether or not the petitioner herein, Manuel B. Pineda, may be held liable for all the taxes assessed against the estate of his deceased father Atanacio Pineda?"

However, said Court did not deem it necessary to decide the last three issues, having settled the first in the affirmative, upon the ground that the income tax assessment notice for 1945, dated August 1, 1951, and received by respondent, Manuel B. Pineda, on September 8, 1951, was made more than five (5) years after the filing of the income tax return for 1945, and beyond the period fixed in section 331 of our Tax Code; that the present action must be deemed filed on August 7, 1957—when petitioner herein filed his answer in the Court of Tax Appeals—or nearly six (6) years after the income tax assessments for the years 1945 and 1946 and beyond the period fixed in section 332(c) of said Code; that, although the original income tax assessment notice for 1947 was made on November 12, 1952 (it was October 20, 1952)—within five (5) years from the filing of the income tax return for 1947, on March 1, 1948—said assessment was cancelled and substituted by another assessment made on October 19, 1953, or after the expiration of said period of five (5) years; that the residence tax for 1945 was assessed on September 22, 1954, or long after the expiration of the same period; and that, although the demand for payment of the real estate dealer's tax for the fourth quarter of 1946 and the whole year of 1947 was received by herein

respondent within the period aforementioned, or on October 31, 1951, the action for its collection was commenced on August 7, 1957, or more than five (5) years later.

Hence, this appeal by petitioner herein, who maintains that there is no evidence that an income tax return had been filed for the year 1945; that, although there is some evidence that Mrs. Pineda had filed an income tax return for the year 1946, it does not appear that said return had been submitted for and on behalf of the estate of the deceased; that the income tax return for 1947, filed by her on behalf thereof, was void, and should be considered as non-existent, because her own income was included therein, so that petitioner had "no means by which to determine which were the income of the widow, and which were the income of the estate".

Sections 331 and 332 of the Tax Code provide:

"SEC. 331. Period of limitation upon assessment and collection.—Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.—(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.

(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(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 begun (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 taxpayer 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."

We agree with petitioner herein that the filing of an income tax return for 1945 has not been established. The statement in the decision appealed from to the effect that said return had been filed on February 28, 1946, is based upon a mere allegation in a memorandum of respondent herein, which is not borne out by the record. Considering that the first income tax return for 1945, filed on behalf of the estate of the deceased, was that submitted by examiner Espinosa on January 29, 1951; that the first assessment of the income tax due for 1945 was made on August 1, 1951; that on August 24, 1953, respondent filed an income tax return for 1945, on behalf of said estate; that said first assessment was superseded by another one dated October 19, 1953; and that the action to recover the tax is deemed begun on August 7, 1957, it is clear that the said assessments and action were made and filed within the periods prescribed in sections 331 and 332 of the Tax Code.

As regards the income tax return for 1946, its photostatic copy (Exhibit E, p. 80, CTA record) shows that the original thereof was filed on February 27, 1947 and that it was submitted in the name of Felicisima B. Pineda, unlike the income tax return for 1947, which appears to have been filed "for and in behalf of the estate of the late Atanasio Pineda". Inasmuch as said return for 1946 makes no reference whatsoever to the estate of the late

Atanasio Pineda, petitioner could not have assessed, on the basis thereof, the income tax due from said estate. Hence, the period of 5 years, provided in said section 331 for the making of the assessment, should be computed, not from February 27, 1947, but from January 29, 1951, when examiner Espinosa filed the income tax return for 1946 on behalf of the estate of the deceased. This notwithstanding the Court of Tax Appeals held that the action for the collection of the income tax for 1946 is barred, under section 332(c) of said Code, more than five (5) years having elapsed from August 1, 1951, when the first assessment was made, to August 7, 1957, the date of commencement of said action. We must not overlook, however, that respondent filed an income tax return for 1946, on behalf of the estate of the deceased, on August 24, 1953; that a revised assessment of the income tax due for 1946, which took the place of the assessment dated August 1, 1951, was effected on October 19, 1953 (pp. 12 and 39, BIR rec.); and that less than five (5) years have elapsed, from either the date last mentioned, or that of the filing of said income tax return by respondent herein (August 24, 1953), to the institution of the present proceeding (August 7, 1957). In short, the right of the Government to collect the income tax for 1946 is not barred by the statute of limitations.

Referring now to the income tax return for 1947, filed by Mrs. Pineda on March 1, 1948, petitioner's theory to the effect that said return is void cannot be sustained. It is not true that petitioner could not have made an assessment of the income tax due, for the year 1947, from the estate of the deceased, because the income of Mrs. Pineda had been included in said return. The same having been explicitly filed by her "for and in behalf of the Estate of the late Atanasio Pineda", petitioner was entitled to consider all data contained in the return as pertaining to said estate, and hence, to assess, on the basis of said return, the income tax for 1947 due from that estate.

Was its assessment made within the period of five (5) years fixed in section 331 of the Tax Code? Although the original assessment (Exhibit 7-A), dated on October 20, 1952, was, another one substituted it on October 19, 1953, or after the lapse of said period. Petitioner contends, however, that respondent may not avail himself of the plea of prescription, the delay in making the revised assessment having been due mainly to his protest against the original assessment, thereby inducing petitioner herein to order several reinvestigations, the first of which was made by examiner Espinosa, who submitted her report on August 27, 1953, upon which the income tax assessment notice of October 19, 1953, must have been based. Petitioner relies, in support of his pretense, upon the case of *Commissioner of Internal Revenue vs. Suyoc Consolidated Mining Co.*, 104 Phil., 819; 56 Off. Gaz., [7] 1393 in which we held that

\* \* \* there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government." (Italics supplied.)

The *Suyoc* case is not in point, for respondent herein had not requested, or induced the petitioner by positive acts to delay the making of the revised assessment notice of October 19, 1953. Up to that time, respondent merely contended that the amounts sought to be collected by petitioner were not due from the estate of the deceased and gave his reasons therefor. Petitioner had a perfectly legitimate right to do this and the same does not suffice to estop him from invoking the statute of limitations. The rule applicable to the case at bar, with respect to the income tax liability for 1947, is that laid down in *Collector of Internal Revenue vs. Solano*, L-11475 (July 31, 1958). We quote from the decision therein rendered:

"\* \* \* the petitioner Collector urges that respondent Solano is estopped from putting up the defense of prescription because he repeatedly made verbal requests for extensions of time to pay his tax obligation for 1948, as allegedly shown by the testimony of Bureau of Internal Revenue agent Benjamin Z. Valenzuela. The argument is also untenable, first, because Valenzuela categorically declared that respondent Solano did not request for an extension of time within which to pay his 1948 income tax liability (t.s.n. pp. 49-50); and

second, the only agreement that could have suspended the running of the prescriptive period for the collection of the tax in question is, as correctly pointed out by the Court of Tax Appeals, a written agreement between Solano and the Collector, entered into before the expiration of the five-year prescriptive period, extending the period of limitation prescribed by law (sec. 332[c], N.I.R.C.). The 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). The Court of Tax Appeals found, and the records show, that no such written agreement was ever entered into between respondent Solano and the petitioner Collector."

It is true that in a letter to the petitioner, dated March 15, 1955 (pp. 138-139, BIR rec.), respondent had asked the former to defer action for the collection of the taxes in question, pending determination by the Conference Staff—to which respondent had appealed in September, 1954—and the petitioner of the legality of the assessment impugned by said respondent. This communication, it should be noted, was sent long after said assessment notice of October 19, 1953, and could not have delayed, therefore, the issuance thereof. Besides, said letter of March 15, 1955, referred to the "collection" of the taxes, not to the assessment thereof.

Having been made beyond the period fixed in section 331 of the Tax Code, the assessment of October 19, 1953, is void, therefore, insofar as the income tax for 1947 is concerned and its payment may not, accordingly, be enforced by action.

Let us now consider the real estate dealer's fixed tax for the last quarter of 1946 and the whole year of 1947, amounting altogether to P207.50. The Court of Tax Appeals sustained respondent's plea of prescription upon the ground that this action was instituted more than five (5) years after the assessment of said amount, which was allegedly made on October 12, 1951. Petitioner argues, however, that said assessment was not for P207.50, but for P687.50, and that it covered the period from the last quarter of 1946 to the year 1950, inclusive; that said assessment of October 12, 1951 was, upon reinvestigation, cancelled, and, in lieu thereof, another assessment, dated August 12, 1954, for the sum of P207.50, and covering only the period from the last quarter of 1946 to the whole year of 1947, was made; and that the present action was begun within five (5) years after said revised assessment. Although the latter was made more than five (5) years after the period to which it refers, this fact does not affect either the validity of the revised assessment or the right to enforce it by court proceedings, inasmuch as no return for the real estate dealer's fixed tax in question had been filed, and, accordingly, "a proceeding in court for the collection of such tax may be begun without assessment at any time within ten years after discovery of the \* \* \* omission" to file said return, pursuant to section 332(a) of the Tax Code (*Visaya Land Transportation Co. Inc. vs. Col. of Int. Rev. and Col. of Int. Rev. vs. Visaya Land Transportation Co., Inc.*, L-12100 and L-11812, May 29, 1959).

For the reason just stated, the government is entitled to collect the residence tax for 1945 within ten (10) years from discovery of the failure to pay it or to make the statement necessary therefor, which in this case, took place on November 21, 1951 (p. 51, BIR rec.). Consequently, the plea of prescription as regards said residence tax was erroneously sustained by the lower court.

The decision appealed from should, accordingly, be, as it is hereby reversed, insofar as it holds that the action for the collection of the income taxes for 1945 and 1946, the real estate dealer's fixed tax for the fourth quarter of 1945 and the year 1946 and the residence tax for 1945 is barred by the statute of limitation, and affirmed insofar as the income tax for 1947 is concerned. Inasmuch, however, as no findings have been made in said decision with respect to three (3) of the issues mentioned at the beginning of this decision, which are materials to the determination of respondent's liability, let the records of this case be remanded to the Court of Tax Appeals, for further proceedings not inconsistent with this decision, without special pronouncement as to costs.

It is so ordered.

Bautista Angelo, Labrador, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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