

CLARA DILUANGCO PALANCA, ET AL., PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE, ET AL., RESPONDENTS.

G.R. No. 16661. January 31, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Gliceria Diluangco died on April 18, 1947 and testate proceedings were filed with the Court of First Instance of Manila for her estate's settlement and distribution. Upon discovering that the executor failed to file the return required by law, the Commissioner of Internal Revenue required him to do so and on March 27, 1951 he filed the requested estate and inheritance tax return. The estate was tentatively assessed estate and inheritance taxes in the total sum of P9,705.61, including 25% surcharge for failure to file the return on time. Atty. Manuel V. San Jose, executor of the estate and counsel for the heirs of the deceased, requested reconsideration of the imposition of the 25%, which the Commissioner denied. Subsequently, Atty. San Jose again requested reconsideration of the imposition of the same surcharge.

In a report submitted on August 25, 1951, internal revenue examiner Francisco E. Testa stated that the estate subject to tax amounted to P150,657.40 and not P67,187.86 as reported in the return and, accordingly, an assessment notice was issued calling for the payment of P22,533.46 as deficiency taxes, Atty. San Jose requested a reinvestigation of this assessment which was referred for comment to examiner Testa who however reiterated his recommendation because of the executor's failure to prove his claim relative to the incorrectness of the valuation of the properties.

On March 5, 1952, the Commissioner of Internal Revenue issued a warrant of distraint and levy for the satisfaction of the deficiency, estate and inheritance taxes in the total amount of P24,790.21 informing thereof at the same time the register of deeds pursuant to the provisions of Section 104 of the National Internal Revenue Code. However, the warrant of distraint and levy was not executed because the executor of the estate asked for a reinvestigation of the case and for the placing of the real properties left by the deceased under constructive levy in order to obviate the necessity of having to file a surety bond to guarantee the payment of the assessed taxes. This request was granted and the case was again referred to examiner Testa for comment and recommendation. Considering the market value of the properties as appraised by C. M. Hoskins & Company, Inc. which was requested to do the appraisal by the heirs themselves, examiner Testa submitted a report on July 26, 1952, and on the basis thereof a new assessment was made calling for the payment of P10,437.76 on or before September 30, 1952. In view of this new assessment the Commissioner ordered the warrant of distraint and levy dated March 5, 1952 to be executed "except that the amount to be collected should be P10,437.76 instead of P24,790.21 stated therein."

In his indorsement dated May 20, 1955, agent Manuel F. del Rosario reported that Atty. San Jose refused to receive the said warrant of distraint and levy and instead requested the suspension of the execution of said warrant in view of certain discrepancies he allegedly found in the amount of the deficiency transfer taxes. In view of this objection, another warrant was issued on June 23, 1955, which was served on the secretary of Atty. San Jose, but

instead of paying the tax. Atty. San Jose sent a letter requesting that the heirs be informed of the amounts that are respectively due from each with the assurance that upon receipt of the information requested the heirs would immediately make arrangement for the settlement of their tax liabilities. In compliance with this request the Commissioner in a letter to Atty, San Jose dated April 28, 1956 explained the breakdown of the amounts due from the heirs the total of which amounted to P13,884.78, inclusive of surcharges, interests and penalties. Atty. San Jose wrote another letter requesting reconsideration of this assessment but the same was denied by the Commissioner.

In a letter dated September 23, 1957, the heirs again requested a revaluation of the properties of the deceased with the assurance that if the request is granted they would be willing to file the requisite surety bond and a waiver of limitations in accordance with the existing regulations, but before such request could be acted upon which they assured was not intended for delay, the heirs, thru counsel, made a turn-about by raising this time the defense of prescription alleging that the right of the Government to collect by summary method the estate and inheritance taxes in question had already prescribed. The answer of the Commissioner was that the right of the Government to collect has not as yet prescribed and that steps would be taken to sell the properties left by the deceased. On March 3, 1958, the heirs filed a petition for review with the Court of Tax Appeals disputing the right of the Government to collect the taxes in question on the ground of prescription.

On November 24, 1959, the Court of Tax Appeals rendered decision holding that the right of the Government to collect the sum of P10,437.76 has not prescribed and ordered petitioners to pay respondent said amount, plus the corresponding interest thereon to the date of payment. Petitioners have appealed.

Section 332 (c) of the National Internal Revenue Code provides in part: "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 * * *." It will be noted from this provision that all that is required to start the running of the period of limitation therein prescribed is to distraint or levy, or institute a proceeding in court, within 5 years after the assessment of the tax. A judicial action for the collection of a tax is begun by the filing of a complaint with the proper court of first instance, or where the assessment is appealed to the Court of Tax Appeals, by filing an answer to the taxpayer's petition for review wherein payment of the tax is prayed for (*Alhambra Cigar and Cigarette Manufacturing Company vs. The Collector of Internal Revenue*, G. R. Nos L-12026 & L-12131, May 29, 1959). And the summary remedy of distraint and levy is begun by the issuance of a warrant of distraint and levy. This has been the practice long observed in the Bureau of Internal Revenue, and this practice had been taken cognizance of by this Court in a number of cases, wherein it held that the right of the Commissioner of Internal Revenue to collect by summary method has the effect of stopping the running of prescription once a warrant of distraint and levy is issued. (*The Collector of Internal Revenue vs. Avelino, et al.* 100 Phil., 327; 53 Off. Gaz., 645; *The Collector of Internal Revenue vs. Zulueta, et al.* 100 Phil., 872; 53 Off. Gaz., [19] 6532; *Collector of Internal Revenue vs. Solano, et al.* L-11475, July 31, 1958). From such pronouncement it can be inferred that the issuance of the warrant of distraint and levy begins the summary remedy of distraint and levy and that it is not necessary that it be actually executed to be made effective.

Here it is admitted that the estate and inheritance taxes in question were finally assessed on August 18, 1952, and the warrant of distraint and levy was issued within the 5-year period prescribed in Section 331 of the National Internal Revenue Code from the time the return was filed. It is also admitted that the warrant of distraint and levy was issued by respondent on June 23, 1955, but that said warrant has not been fully executed in view of the request of counsel for petitioners for an itemized statement of the amount due from each heir and the assurance given by said counsel that upon receipt of respondent's reply the heirs will immediately make arrangement for the

settlement of their shares. We, therefore, hold that the right of the Government to collect the estate and inheritance taxes in question has not yet prescribed because the warrant of distraint and levy for their collection was begun within the 5-year period prescribed by law from the date of the assessment of said taxes.

Petitioners, however, contend that the issuance of the warrant in question cannot be considered as having begun the summary remedy of distraint and levy because (a) said warrant is defective and (b) it was not served upon the taxpayer in accordance with law. With regard to the first contention, petitioners allege that the warrant of distraint and levy is defective because (1) it does not contain any description of the property sought to be levied upon; (2) it was issued against the estate whose legal existence had long terminated; and (3) it states the amount due in lump sum and does not itemize the tax and penalty due from petitioners. And with regard to the second contention, the defect is made to consist in that the warrant was served not upon the taxpayer himself but upon one Arturo Cristi, secretary of Atty. Manuel V. San Jose, contrary to what the law provides that a warrant should be served upon the taxpayer himself except when he is absent from the Philippines.

Petitioners apparently confuse the warrant of distraint and levy with the certificate mentioned in Section 324 of the Tax Code. The warrant of distraint and levy is not the certificate referred to in said section. Said warrant is the order to distrain and levy upon the properties of the taxpayer. The certificate mentioned in Section 324 is one prepared and issued by the agent designated by the Commissioner of Internal Revenue to execute the order of distraint and levy. It is issued after the seizure of the property distrained and levied upon. In other words, the issuance of the warrant is merely the step that starts the summary proceeding while the seizure of the properties is the next step. It is for this reason that the warrant did not contain the details regarding the properties to be distrained or levied upon because they are only required in a certificate referred to in Section 324.

As regards the claim that the warrant was issued against the estate which has no longer legal existence because the testate proceedings were already closed, suffice it to state that said warrant is a mere order to an agent of the internal revenue office to collect the tax either from the estate or from the heirs if said estate is already closed. It is wellsettled that an estate or inheritance tax, whether assessed before or after the death of the deceased, can be collected from the heirs even after the distribution of the properties of the decedent (*Pineda vs. Court of First Instance of Tayabas*, 52 Phil., 805).

The contention that the warrant is ineffective because it was not served upon the taxpayers themselves is also untenable considering that the same was served upon Atty. Manuel V. San Jose, or his secretary, who has always acted right along not only in behalf of the estate but also of the heirs of the deceased. While the law provides that said warrant should be served upon the taxpayer except when he is absent from the Philippines when it may be served upon his agent or upon an occupant of the property, there is nothing therein that would prevent the service to be made upon his authorized representative. Here it is admitted that Atty. San Jose was the duly authorized representative of the estate and of the heirs.

With regard to the contention that the issuance of the warrant is not sufficient to begin the proceeding by summary method but that it is necessary that it be actually executed, the Court of Tax Appeals said the following on the point:

"Section 332 of the Revenue Code provides that the collection of an internal revenue tax may be made by distraint and levy if the proceeding is begun within five years after assessment. In this case, the distraint and levy proceeding was actually begun with the issuance of the corresponding warrant of distraint and levy and the service thereof to Attorney Manuel V. San Jose. It is true that the warrant has not been fully executed with the seizure and sale of any property subject to the lien, but it was not due to the voluntary desistance of respondent; rather it was because of the request of the then counsel for petitioners for a statement of the amount due from each heir and for an opportunity to make arrangement for the settlement of the obligation,

which request was considered reasonable by respondent. Under the law, it is not essential that the warrant of distraint and levy be fully executed in order that it may have the effect of suspending the running of the statute of limitation upon collection of the tax. It is enough that the proceeding be validly begun or commenced and that its execution has not been suspended by reason of the voluntary desistance of the respondent. In our opinion, the warrant of distraint and levy of June 23, 1955 was validly issued and was duly served upon counsel for petitioners and, therefore, the five-year period for collection of the state and inheritance taxes in question was suspended. And it continued to be suspended up to the date when the present appeal was filed by petitioners on May 3, 1958. Accordingly, the right to collect said taxes has not prescribed."

We agree to the foregoing view. Indeed, the record shows that the warrant was not actually executed or carried out with the seizure and sale of any property of the deceased, not because of any voluntary desistance on the part of respondent, but because of the many requests for postponement, reinvestigation, revaluation, or other matters which had the effect of delaying or postponing the execution of said warrant. Were it not for said requests for postponement or revaluation, the warrant would have been fully executed well within the period prescribed by law. Indeed, if by acceding to the request for postponement of a taxpayer the period of prescription would be allowed to run even if there is no voluntary desistance on the part of the tax collector, we would not only countenance the commission of an injustice but would place the collection of the tax at the mercy or caprice of the taxpayer to the prejudice of the Government. Such a theory certainly cannot be entertained.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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