

**EDUARDO SAN JUAN, PETITIONER, VS. HONORABLE JUDGE
CONRADO VASQUEZ, ETC. ET AL., RESPONDENTS.***G.R. No. 16814. September 19, 1961*

Ponente: LABRADOR, J.

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This is a special civil action of certiorari and prohibition originally instituted in this Court by the petitioner against Conrado Vasquez of the Court of First Instance of Manila and the Commissioner of Internal Revenue, to prohibit the said judge of first instance from taking cognizance of Civil Case No. 39578, entitled "Republic of the Philippines vs. Eduardo San Juan," for the collection of the total amount of P19,704.50, alleged to be due from San Juan for income taxes for various years and deficiency tax and surcharges thereon.

The record discloses that on June 30, 1954, the Collector of Internal Revenue wrote the accountant of petitioner informing him that the latter is given a period of grace up to July 15, 1954, to pay the deficiency taxes without penalty, or until July 31, 1954, within which to submit evidence to show that the assessments of the respondent Commissioner are incorrect. (Annex "C"). In accordance with the said letter, the accountant of petitioner sent a communication to the Collector of Internal Revenue, dated July 30, 1954, explaining why the assessments of income tax and deficiency income tax were not due and owing from the respondent. At the end of the letter, the accountant begs the consideration of the Collector with respect to the penalties, assuring full payment upon receipt of the adjusted assessment (Annex "D"). Nothing was heard from the Collector of Internal Revenue on the matter except on February 25, 1959, when the Collector brought the action sought to be enjoined in the Court of First Instance of Manila against petitioner Eduardo San Juan. The defendant contested the assessments made in his answer, and as a special defense, he alleged that the action was filed after more than five years from the date of the return, and that the same had already prescribed. On January 25, 1960, petitioner moved to dismiss the action on the ground that the court had no jurisdiction to take cognizance of the action because the matter involved a disputed assessment, the jurisdiction of which fell upon the Court of Tax Appeals; and that there is a pending action in the Court of Tax Appeals, involving the same disputed assessment, which action in the Court of Tax Appeals was presented on November 30, 1959. The motion to dismiss having been denied, the defendant filed a motion for reconsideration, which was also denied. Hence the instant petition.

Petitioner reiterates before this Court the grounds relied upon by him in his motion to dismiss. In support of his claim that the lower court has no jurisdiction to try and decide the instant case because it involves a disputed assessment, he cites the provisions of Section 7 of Republic Act No. 1125 and the decision of this Court in the case of *Blaquerra vs. Rodriguez, et al.*, 103 Phil., 511; 55 Off. Gaz., 10686.

The complaint, Annex "A," is for the recovery of income taxes and deficiency tax in the total amount of P19,704.50, and the legality and correctness of said assessment is questioned by the petitioner herein in his answer. The same question was also raised by him in his accountant's letter of July 30, 1954 (Annex "D") addressed to the Collector of Internal Revenue and in his petition for review filed with the Court of Tax Appeals (Annex "F"). In his reply to said letter and in his answer to the petition for review filed with the Court of Tax

Appeals respondent Collector refused to correct the assessment, claiming the same to be in accordance with law. The claim is without foundation in law or in fact. The Collector may not overlook the fact that the assessment had been disputed as the objections to the assessment had been made at the opportune time. He may not ignore the positive dispute against the assessment by immediately bringing an action to collect, thus depriving the taxpayer of his right to appeal the disputed assessment. As the legality and correctness of the assessment is in dispute, the following provisions of Section 7 of Republic Act No. 1125 apply to the case:

"SEC. 7. The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided—

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;"

Furthermore, we have decided against the jurisdiction of the Courts of First Instance in a similar case, thus:

"It is our considered opinion that the determination of the correctness or incorrectness of a tax assessment to which the taxpayer is not agreeable falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the afore-quoted provision of law, the Court of Tax Appeals has exclusive appellate jurisdiction to review on appeal any decision of the Collector of Internal Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue." (Blaquera, vs. Rodriguez, 103 Phil., 611; 55 Off. Gaz., 10686.)

The respondent Collector cites in his answer to the instant petition for certiorari our decisions in the cases of Republic of the Philippines vs. del Rosario, et al., 105 Phil., 277; 57 Off. Gaz., 5543 and Republic of the Philippines vs. Uy Ham, L-13809, October 20, 1959. We have examined our decisions in these cases, and we find them not applicable to the case at bar, for the reason that they do and Salonga not involve disputed tax assessments, but enforcement of payments of income taxes.

The lower court, therefore, acted with grave abuse of discretion and in excess of its jurisdiction in denying the petitioner's motion to dismiss the instant case.

In view of the resolution of the first ground of the petition in the manner above set forth, it is not necessary to resolve the other ground presented.

Wherefore, the writ prayed for is hereby granted, and the orders of the lower court dated February 24, 1960 and March 12, 1960 are hereby set aside. Without costs.

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

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