

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
RITA LIM DE YU, DEFENDANT AND APPELLEE.***G.R. No. 17438. April 30, 1964*

Ponente: MAKALINTAL, J.

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Appellee Rita Lim de Yu filed her yearly income tax returns from 1948 through 1953. The Bureau of Internal Revenue assessed the taxes due on each return, and appellee paid them accordingly. On July 17, 1956 the Bureau issued to appellee deficiency income tax assessments for the years 1945 to 1953 in the total amount of P22,450.50. She protested the assessments and requested a reinvestigation. On August 30, 1956 she signed a "waiver" of the statute of limitations under the Tax Code as a condition to the reinvestigation requested. Thereafter, or on July 18, 1958, the Bureau issued to her income tax assessment notices for the years 1948 to 1953, totalling P35,379.63. This last assessment, like the one issued in 1956, covered not only the basic deficiency income taxes, but also 50% thereof as surcharge. Upon appellee's failure to pay, an action for collection was filed against her in the Court of First Instance of Cotabato on May 11, 1959. After trial the suit was dismissed, and the Government appealed to the Court of Appeals, which forwarded the case to thi3 Court, the issues involved being purely legal.

Appellant claims that the lower court erred (1) in ruling that the deficiency income taxes due from appellee for the years 1948, 1949 and 1950 were not assessed on time; and (2) in dismissing the case on the ground that the right of appellant to collect the deficiency income tax assessments had already prescribed.

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 710 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 ease 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 Commissioner of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may ba assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon 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 Commissioner 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."

The first issue raised by appellant is whether or not the returns filed by appellee for the years 1948 to 1953 are false and fraudulent. Appellant maintains they are because the yearly net incomes reported in her returns are much less than as computed by the Bureau, and consequently, under par (a). Section 332 of the Tax Code, it has ten years from the date of the discovery of the fraud or falsity, i.e., May 25, 1955, within which to assess the taxes or to file a suit for collection without assessment. And since, it is further contended, appellee can no longer question the correctness of the assessment in view of her failure to ask the Court of Tax Appeals to review the same, she should be ordered to pay the amounts being collected.

But while fraud is alleged in the complaint, the same has not been established. It is one thing to say that the correctness of the last assessment made by appellant, on July 18, 1958, may no longer be challenged on the technical ground just stated and quite another thing to say that appellee committed a deliberate fraud in declaring smaller incomes for the years in which she filed her returns. Indeed the Bureau itself appears none too sure as to the real amounts of her net incomes for those years. On three different occasions it arrived at three highly different computation. First, it accepted appellee's yearly statements of income from 1945 to 1953 and assessed her a total tax of P2,732.37, which she paid. Then in 1956 the Bureau came up with a different set of figures for the same period, considerably higher than those stated in the returns, and using such figures as a basis assessed her deficiency taxes in the total amount of P22,450.50. Finally, in 1958 the Bureau made another computation of appellee's net income for the years 1948 to 1953, and assessed her deficiency taxes in the sum of P35,379.63. Note that the disparity between the 1956 and the 1958 assessments is really much greater than what appears at first glance, as the latter do not include the taxes corresponding to the years 1945, 1946 and 1947. Attention may likewise be drawn to the fact that in paragraph 3 of the complaint appellant seeks to collect from appellee the sum of P28.53, plus a surcharge of 50%, as unpaid tax for the year 1948, notwithstanding the fact admitted in the stipulation, that appellee filed her return for that year and duly paid the said amount.

Fraud not having been proven, the period of limitation for assessment or collection was five years from the filing of the return, according to Section 331 of the tax code. The right to assess or collect the income taxes for the years 1948 to 1950 had already prescribed, therefore, when the Bureau of Internal Revenue issued the deficiency income tax assessments on July 17, 1956.

The tax years 1948 to 1950 cannot be deemed included in the "waiver of the statute of limitations under the National Internal Revenue Code" executed by appellee on August 30, 1956. The five-year period for assessment, counted from the date the return is filed, may be extended upon agreement of the Commissioner and the taxpayer, but such agreement must be made before, not after, the expiration of the original period (Section 332 [b], Tax Code). The clear import of the provision is that it does not authorize extension once prescription has attached.

The waiver validly covers only the tax years 1951 and 1952, with respect to which the five-year period had not yet elapsed when the said waiver was executed. With respect to the tax year 1953, as to which the return was filed by appellee on March 1, 1954, the waiver was not necessary for the effectivity of the assessment made on July 18, 1958, since such assessment was well within the original five-year period provided by law. After the assessment on July 18, 1958, appellant had five years within which to file suit for collection pursuant to Section 332 (c) of the tax code. Appellee's theory that collection could be made only up to the end of the period of extension stated in the waiver, namely, December 31, 1958, is without merit. Assessment and collection are two

different processes.

An assessment is not an action or proceeding for the collection of taxes. It is merely a notice to the effect that the amount therein stated is due as tax and a demand for the payment thereof. It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for judicial action as the phrase is used in section 816 of the Tax Code * * * (Alhambra Cigar and Cigarette Manufacturing Company vs. The Collector of Internal Revenue, L-12026, May 29, 1959)

Section 331 gives the Government five years from filing of the return (which is not false or fraudulent) within which to assess the tax due. Paragraph (b) of Section 332 allows the extension of this period by means of a written agreement between the taxpayer and the Commissioner of Internal Revenue. On the other hand, paragraph (c) of the same section is concerned with the collection of the tax after assessment, regardless of whether the assessment was made during the original five-year period or within an agreed period of extension. Collection then may be effected within five years after assessment or within the "period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period." Thus, although under the waiver appellee consented to the "assessment and collection" if made not later than December 31, 1958, such expiration date must be deemed to refer only to the extension of the assessment period. Insofar as collection is concerned, the period does not apply, for otherwise the effect of the waiver would be to shorten, not extend, the legal period for that purpose. Appellant therefore had five years from 1958 within which to file his action, which was actually filed in 1959.

Wherefore, the appealed decision is modified by ordering appellee to pay appellant the sum of P26,182.00 as deficiency income taxes for the years 1951, 1952 and 1953, plus 5% surcharge and 1% monthly interest thereon from July 31, 1958 until payment of the full obligation, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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