

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
BENITO H. LOPEZ, DEFENDANT AND APPELLEE.***G.R. No. 18007. March 30, 1963*

Ponente: REYES, J.B.L., J.

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This is an appeal interposed by the government from the order of 2 November 1960 of the Court of First Instance of Baguio (Judge Jesus de "Veyra, presiding) dismissing the complaint in a resolution, as follows:

"A motion to dismiss has been filed on the ground that the action has already prescribed. Defendant has attached to his motion a copy of his 'Waiver of the Statute of Limitations (Annex '9) wherein he waives the running of the statutory period for assessment and collection but not beyond December 31, 1957. It is admitted that this case refers to an assessment made in 1950. Under Section 332 of the National Internal Revenue Code, the government had until December 31, 1957, within which to make its assessment and collection. It is admitted that this assessment was made only on March 23, 1960-too late. The government assails this 'Waiver' on the ground that it is null and void. The government is in estoppel to attack this 'Waiver', and as this 'Waiver' was made on a form prepared by the Bureau of Internal Revenue and filed on demand of this same bureau.

"That action having prescribed, this case is hereby dismissed without pronouncement as to costs".

No brief was filed for appellee.

The record reveals that on 6 December 1950 Benito H. Lopez filed his income tax returns for 1950, for which an assessment was issued by the Bureau of Internal Revenue on 13 November 1952 demanding payment of P245,100.29 as deficiency income tax. Lopez, through counsel, in a communication dated 30 November 1952, requested for reconsideration. This was denied in plaintiff's letter of 14 July 1953-. Appellee reiterated his petition through counsel's letters of 14 November and 11 December 1953. This was given due course, and resulted in the reduction of the assessment to P120,346.14 on 29 May 1954. Apparently satisfied, defendant manifested in his letter of 1 July 1954 that he will settle the obligation by the end of the month. Without complying thereto, on 9 July 1955, Lopez pleaded for another reinvestigation, which was granted by the BIR. As a result thereof, an assessment was issued demanding payment of P6,019.00 as additional deficiency income tax for 1950, the total (P26,365.14) of which he did not pay, notwithstanding repeated demands. . . .

On 16 January and 11 February 1956, appellee prayed for a third reinvestigation, which, strangely enough, was acceded to by the BIR in its letter of 25 February 1956, provided he waives the statute of limitations. Ironically, however, instead of executing an unconditional waiver, defendant imposed a deadline of 31 December 1957 within which the government should finish the third reinvestigation. Ignoring the same, on 23 March, 1960, the BIR issued an assessment demanding the same amount of P26,365.14 as deficiency income tax for 1950. For nonpayment, a collection suit was filed with the court on 15 August 1960. On 30 September 1960, defendant-appellee filed a motion to dismiss the complaint, which, as has already been stated, was sustained. :

Obviously, the first issue is: Would the time limit of. 31 December 1967, enjoined by appellee in the contemplated "Waiver of the Statute of Limitations", be binding and operative? We believe, and hold, that it is not, on several grounds.

It is now a settled rule in our jurisdiction that (1) the five-year prescriptive period fixed by section 332 (e) of the Internal Revenue Code within which the Government may sue to Collect an assessed tax is to be counted from the last revised assessment resulting from a re-investigation asked for by the taxpayer xxxxx and (2) that where a taxpayer demands a reinvestigation, the time employed in reinvestigating should be deducted from the total period of limitation.xxxxx

An application of these rules will show that when action was brought by the Republic, the prescriptive period of 5 years had not elapsed from the revision of 1954. If from the period that intervened between the first revised assessment (29) May 1954) and the filing of the complaint (18 August 1960) is deducted the time consumed in considering and deciding the taxpayer's subsequent petition for reconsideration and reinvestigation (from 16 January 1956 to 22 April 1960), it will be seen that less than 5 years can be counted against the Government.

The first reinvestigation was granted, and a reduced assessment issued, on 29 May 1954, from which date-the Government had five years for bringing- an action to collect.

The second reinvestigation was asked on 16 January 1956, and lasted until it was decided on 22 April 1960, or a period of 4 years, 3 months, and 6 days, during which the limitation period was interrupted.

Deducting this interval from the period intervening between the first revised (and executory) assessment to the filing of the complaint (i.e., from 29 May, 1954 to 13 August 1960, which is a total of six (6) years, two (2) months, and fifteen (15) days) leaves only one (1) year, three (3) months, and six (6) days, counted against the government.

The fixing by the taxpayer of a prescriptive period "not beyond December 31, 1957" operates to reduce the time available to the government for the collection of the tax from 29 May 1954 to 31 December 1957 only, which is much less than the 5 years prescribed by law [Revenue Code sec. 332 (c)]. Even though we disregard the lack of written conformity thereto by the Collector of Internal Revenue,, it is seriously to be doubted-that the said official could validly agree to reduce the prescriptive period to less than that granted by law to the detriment of the state, since it diminishes the opportunities of collecting taxes due to the Republic.

Even if we consider, that, because of the date fixed by the taxpayer, the second reinvestigation asked on 16 January 1956 should have been decided on 31 December 1957, and that the interruption due to the second reinvestigation was, therefore, only one (1) year, eleven (11) months, and sixteen (16) days, still it would appear that the government brought suit after only four (4) years, nine (9) months, and one (1) day, -and, therefore, well within the prescriptive 5-year period.

Another ground for reversing the dismissal of the complaint is that the proper remedy of the taxpayer against the assessment complained of was to, appeal the ruling: of the Collector to the Court of Tax Appeals. Section 1, paragraph 1, and section 11, first paragraph, of Republic Act No. 1125 (effective since. 1954) expressly provide:

"Sec. 7. Jurisdiction.—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."

"Sec. 11. Who may appeal; effect of appeal—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

The failure to appeal the Collector's ruling is a waiver of the defenses against it, and estops the taxpayer from subsequently raising those objections thereafter. Otherwise, the period of thirty days for appeal to the Tax Court would make little sense. (*Republic vs. del Rosario*, 105 Phil., 277; *Uy Ham vs. Republic*, L-13809, 20 Oct. 1959).

However, we feel it our duty to call attention to the extraordinary reduction by the revenue authorities of the taxes due in this case from the original P245,100.29 to less than one-tenth of it (P20,346.14) upon reinvestigation. Such a result is ample evidence that the first assessment was carelessly made, without regard to the true facts, and it strongly reflects upon the efficiency of the revenue examiner who made the grossly excessive assessment. Equally anomalous is the fact that after the taxpayer had promised to pay the computed tax, and after he had failed to keep his promise, the tax authorities should still agree to a further revision of the assessment. Irregularities of this kind inevitably provoke suspicion over the competency and honesty of the tax collecting operations, and it is expected that the competent authorities will take immediate and drastic steps to stop such deplorable practices.

Premises considered, the order of dismissal appealed from is revoked and set aside, and the records are ordered remanded to the court of origin for further proceedings conformable to this opinion.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon and Makalintal, JJ., concur.

[a] *Collector vs. Pineda*, L-14522, 31 May 3,961; *Querol vs. Collector*, L-16705, SO October 1962.

[b] *Suyoc Cons. Mining Co. vs. Collector*, 104 Phil., 819.

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