

CELESTINO C. JUAN, PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 18383. May 30, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Petitioner filed his income tax returns for 1947, 1948, 1949, 1950 and 1951 within the periods prescribed by law and paid the corresponding taxes assessed against him on the basis of said returns. Sometime in 1952 his returns for 1950 and 1951 were examined and verified by a revenue agent, who then assessed petitioner a deficiency tax of P5,007.35. Petitioner asked for a reinvestigation, which was granted. The reinvestigation actually conducted, however, included the years 1947, 1948 and 1949, and as a result petitioner was found deficient for all the five years in the total sum of P75,585.18. The assessment for this amount was dated January 5, 1953.

In a letter of January 23, 1953, addressed to the Commissioner of Internal Revenue, petitioner protested the assessment and again requested a reinvestigation and/or verification. The Commissioner replied on May 11, 1954, saying that the matter had been submitted to the conference staff for consideration and asking that petitioner submit: (1) an outline of the grounds for his objection to the assessment; (2) an outline of the evidence to be submitted by him; and (3) a waiver of the defense of prescription.

Petitioner complied with the first two requirements by letter dated May 29, 1954, but declined to waive the defense of prescription.

On May 13, 1957 a new assessment was made, decreasing the total amount of the alleged deficiency to P73,522.67 by deleting the 1948 assessment and disallowing service charges with respect to other years. On December 20, 1957 petitioner again asked for reinvestigation and for that purpose signed a waiver of the statute of limitations, as follows:

"CELESTINO C. JUAN, in consideration of the approval by the Collector of Internal Revenue of the request for reinvestigation of the case involving an assessment/demand for P4,354.58, P9,318.29, P3,789.00 & P54,991.50, as Income taxes, for the year 1947, 1949, 1950 and 1951, hereby waives the statute of limitations prescribed in section 51 (d), or sections 331 and 332 of the National Internal Revenue Code, and consents to the assessment and collection of the tax for said year/period which may be found due after reinvestigation at any time before or after the lapse of the period of limitations fixed by said section 51 (d), or sections 331 and 332 of the National Internal Revenue Code.

"The intent and purpose of this waiver is to afford the Collector of Internal Revenue ample time to carefully consider the instant protest of the undersigned taxpayer against such assessment/demand. It is understood, however, that the undersigned taxpayer does not, by the execution of this waiver, admit in advance the correctness of the assessment/demand which may be made against him for the said year/period 1947, 1949, 1950 & 1951; nor does he waive his right to use any of the legal remedies afforded him by law to secure a credit or refund of such tax 1950 & 1951, pursuant to sections 306 and 309 of the National Internal Revenue

Code."

It does not appear that any reinvestigation pursuant to the last request was made; and on December 15, 1959 respondent Commissioner issued a warrant of distraint and levy to effect the summary collection of the taxes in question. Subsequent requests for administrative relief having been denied, petitioner appealed to the Court of Tax Appeals on May 4, 1960.

On July 20, 1960 petitioner filed with the said Court a "motion for suspension of collection of tax" by execution of the warrant of distraint and levy on the ground that such collection would jeopardize his interests and cause him incalculable harm. The court, finding the ground alleged to be meritorious, granted the motion on condition that a bond in the amount of P75,000 be filed by petitioner in favor of the Republic of the Philippines. The resolution to that effect, dated January 4, 1961, was expressly predicated on section 11, Republic Act No. 1125, which provides:

"No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing laws; Provided, however, That when in the opinion of the Court the Collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceedings may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file; a surety bond for not more than double the amount with the Court."

Not satisfied with the resolution granting his motion, petitioner moved that it be reconsidered by including therein a declaration that the warrant of distraint and levy issued by respondent Commissioner was null and void and eliminating the requirement of a bond. Relied upon as ground for the second motion was that the assessment of January 3, 1953 was illegal because it was made beyond the period provided by law insofar as the tax years 1947 and 1948 were concerned; and that since said assessment had been set aside and modified by the assessment of May 13, 1957 it was equally illegal with respect to the tax years 1949, 1950 and 1951. Section (d) of the Tax Code (before it was amended by Republic Act No. 2343) was cited by petitioner, as follows:

"Sec. 51. Assessment and payment of income tax.—* * * (d) Refusal or neglect to make returns, etc.—In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amounts of the assessment."

By resolution dated March 13, 1961 the Tax Court denied the motion for reconsideration on the ground that when the warrant of distraint and levy was issued by the Commissioner of Internal Revenue on December 15, 1959 Section 51 (d) of the Revenue Code had been repealed by Republic Act No. 2343 (enacted June 20, 1959), and that the law applicable was Section 332 (c) of said Code, which provides that where the assessment has been made on time the tax may be collected by distraint and levy or by proceeding: in court if begun within five (5) years after such assessment. Since, according to the court, the last revised assessment against petitioner was made on May 13, 1957, the attempted summary collection in question was legal.

The instant appeal has been interposed by petitioner from the two resolutions aforementioned, dated January 4 and March 13, 1961, respectively. We are of the opinion that this appeal is premature. An appeal is authorized only from a final award, order or decision (Rule 44, Section 1). The resolutions in question are interlocutory in character. The first one precisely granted petitioner's motion before the Tax Court "for suspension of collection of tax" by distraint and levy, and ordered the Commissioner of Internal Revenue "to refrain from proceeding with the

collection by summary methods of the alleged deficiency income taxes and surcharges assessed against-petitioner." The same resolution deemed the warrant of distraint and levy lifted upon petitioner's filing a bond of P75,000.00. The requirement of the bond was in accordance with Section 11 of Republic Act No. 1125.

The second resolution was merely a denial of petitioner's motion for reconsideration seeking a declaration that the warrant of distraint and levy was illegal because the assessment on which it was based had been made beyond the statutory period of prescription. The denial did not resolve certain other questions raised in the main petition before the Tax Court, such as the correctness of the assessment itself; the necessity for a recomputation of petitioner's tax liabilities, which was prayed for alternatively by petitioner; and the legal effect of the waiver of the statute of limitations signed by him on December 20, 1957, which, according to the petition below, had been obtained by means of duress. Needless to say, these other questions can be decided only after proper proceedings in the Tax Court. On the other hand, the issue of prescription raised by petitioner in his motion for reconsideration before the Tax Court may, and should properly be, taken up in an appeal from the final decision which said Court may render on the main petition.

Wherefore, the petition for review is dismissed and the case is remanded to the Court of Tax Appeals for the continuation of the proceedings therein. Costs against petitioner.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Petition dismissed.

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