

REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. JUAN S. ALANO, DEFENDANT AND APPELLEE.

G.R. No. 18865. September 28, 1964

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

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

The Republic appeals from an order of August 4, 1961 of the Court of First Instance of Rizal (Pasay City Branch), in its Civil Case No. 2128-P, dismissing its complaint to recover from Juan S. Alano deficiency income taxes for the years 1947 to 1951, for the reason that the assessment was made beyond the five-year period fixed by section 331 of the Internal Revenue Code.

From the record, it can be gathered that the complaint was filed on December 9, 1960, averring inter alia that on or about June 30, 1955, the examiners of the Bureau of Internal Revenue conducted an investigation of the correctness of the returns filed by Juan S. Alano for the years 1947 to 1951; that as a result of the inquiry, the Bureau of Internal Revenue, on January 13, 1956, assessed efficiency income taxes against said taxpayer in the total sum of P111,234.53, plus interest and 50% surcharge; the taxpayer protested, and requested reconsideration; and on November 11, 1957, the assessment was reduced to P15,863.18, plus 1% per month interest and a lowered surcharge of 5%. As the taxpayer failed to pay, this action was brought.

The defendant, Juan S. Alano, moved to dismiss on the ground that the assessment was barred by section 331 of the Internal Revenue Code, and after hearing the parties, the court below sided with defendant and dismissed the complaint for stating no cause of action.

Reconsideration having been asked and denied, the case was brought on appeal directly to this Court, alleging that it was error for the court a quo to have declared that the action was barred.

We find no such error. Section 331 of the National Internal Revenue Code prescribes the following:

"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 no 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."

Since the taxpayer is presumed to have filed his income tax returns not later than March 31 of each year, as required by law, and there is no proof to the contrary, the five-year period fixed by the above-quoted provision must be counted from March 31, 1951, and expired on March 31, 1956. Therefore, the final revised assessment of November 11, 1957 (which superseded and annulled the original assessment of January 13, 1956) is clearly beyond the statutory limiting period.

The state argues that the revised assessment having been the result of Alano's petition for reconsideration, it

should be deemed effective as of the date of the original assessment of January 13, 1956. We disagree. This Court has already ruled that a mere protest and petition for reconsideration of the assessment, without a resulting reinvestigation and introduction of new evidence on the part of the taxpayer, does not stop the running of the prescriptive period (*Collector vs. Pineda*, L-14522, May 31, 1961; *Collector vs. Solano*, L-11475, July 31, 1958; *Republic vs. Ablaza*, 108 Phil., 1105). The case before us differs from *Collector vs. Suyoc Consolidated Mining Co.*, (104 Phil., 819) in that here the taxpayer made no attempt to delay the assessment proceedings by repeated requests or other positive acts on his part; he only asked once for a reexamination on the same record and evidence that the revenue authorities already had before them, a petition that could have been resolved without any delay if the first assessment had been made according to the facts and the law.

As explained in the *Ablaza* case, the main objective of the statutory bar is to protect the taxpayer from harassment. This protection seems particularly called for in the case now before us. The reduction of the first grossly excessive assessment for P111,234.53 in deficiency income tax, later voluntarily reduced to only one-ninth (1/9) of that amount (P15,863.18) on the same facts and evidence, with elimination of the original 50% surcharge, is proof positive that said assessment was recklessly made without regard to the merits of the case, and only to intimidate the defendant-appellee into paying something beyond what was rightfully due. Such oppressive action can not be sanctioned by a court of justice.

WHEREFORE, the appealed order of dismissal is affirmed. No costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Paredes, Regala, and Makalintal, JJ., concur.

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