

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CAPITOL SUBDIVISION, INC., RESPONDENT.

G.R. No. 18993. April 30, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of Tax Appeals (in CTA Case No. 711) reversing the decision of petitioner Commissioner of Internal Revenue which held respondent Capitol Subdivision, Inc. liable for deficiency income taxes for 1948, 1949, 1950, and 1951 in the amounts of P2,927.69, P3,952.12, P5,927.00 and P14,406.00 respectively, or a total of P27,212.88.

The case was submitted for decision to the Court of Tax Appeals, on the following stipulation of facts:

"1. That petitioner is a corporation, engaged in the business of purchase, sale, barter and exchange of urban estates, and their improvement and subdivision into residential lots for resale to public, * * *.

"2. That petitioner filed its income tax returns for the years 1948, 1949, 1950, and 1951, on February 28, 1949, March 31, 1950, March 31, 1951, and March 1, 1952, respectively, and the amounts assessed thereon as per return, were promptly paid.

"3. That in an investigation conducted by an examiner of the respondent, it was recommended in the memorandum report dated June 30, 1952 of the examiner, that petitioner should pay the following deficiency income tax, as follows:

For the year ended Dec. 31, 1948

..... P2,927.60

For the year ended Dec. 31, 1949

..... 3,952.19

For the year ended Dec. 31, 1950

..... 5,927.00

For the year ended Dec. 31, 1951

..... 14,406.00

"4. That respondent sent income tax assessment notices dated April 8, 1953, requesting payment of the aforesaid amounts due and collectible; the said taxes being based on disallowed deductions and overclaimed depreciations, as shown on pages 12, 19, 39, and 45, BIR records.

"5. That petitioner, upon receipt of the said Income Tax Assessment Notices, on May 30, 1953, requested for the breakdown of the amounts reflected under the heading "General Expenses" in the said notices, * * *.

"6. That on June 21, 1955, respondent sent petitioner circular letters making inquiry, as to whether payment was already made on Assessment No. 35-5-125329-48-2, No. 35-5-125371-49-2, No. 35-5-125346-50-2, No. 35-5-52-51-2 for the years 1948, 1949, 1950 and 1951; * * *.

"7. That on July 1, 1955, petitioner in reply to above circular letters of respondent, reiterated its quest of May 30, 1953 * * *.

"8. That on September 20, 1955, respondent replied to petitioner's letter dated July 1, 1955, and at the same time reiterated his demand for payment of the income tax assessments for the years 1948, 1949, 1950, and 1951, plus a surcharge of 5%, 1% monthly interest and compromise fees of P20.00 each for the years 1948, 1949, 1950, and P40.00 for 1951 * * *.

"9. That petitioner in the letter dated October 15, 1955 to respondent, explained the disallowed items and requested for re-investigation * * *.

"10. That after re-investigation, the examiner in a memorandum report dated October 26, 1955 submitted to the Acting Provincial Revenue Officer reiterated his findings and recommended that the previous assessments be affirmed.

"11. That in a letter dated September 2, 1959, respondent demanded of petitioner the payment of the said deficiency income taxes for the years 1948, 1949, 1950, and 1951, respectively * * *.

"12. That in its letter dated September 16, 1959, * * * petitioner invoked the defense of proscription, and on that ground, denied liability for the deficiency income taxes for the aforesaid years.

"13. That in the respondent's letter dated October 13, 1959, the original of which was received by petitioner on October 21, 1959, respondent denied the request for cancellation, alleging that the 5-year period was suspended by the various requests for re-investigation filed with respondent and demanded the payment of the deficiency income tax assessments from 1948 to 1951 * * *.

* * * * *

On the basis of the foregoing stipulation of facts, the Court of Tax Appeals rendered the decision above adverted to, in part stating:

"It appearing" that the deficiency assessments in question were made on April 8, 1953 and the respondent's answer to the instant petition for review, which is tantamount to a judicial action for collection (Collector vs. Solano, et al., supra; Collector vs. Clement, et al., 105 Phil. 51; Collector vs. Pineda, supra), was filed on December 29, 1959, or 6 years, 8 months and 21 days thereafter, it follows that the right of respondent Commissioner to collect said deficiencies has already prescribed."

The only question to be determined in this appeal is whether petitioner's right to collect respondent's deficiency income tax assessments in question has already prescribed under Section 332 (c) of the National Internal Revenue Code, which reads:

"SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.—* * *

"(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 Collector 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." (Italics supplied.)

It is not disputed that on April 8, 1953, petitioner demanded from respondent payment of deficiency income taxes

for 1948-1951. On May 30, 1953 respondent requested for a breakdown of the amounts reflected under the heading "General Expenses" in a letter reading as follows:

"This will acknowledge receipt of the Income Tax Assessment Notices for the years 1948, 1949, 1950 and 1951.

"In going over the items disallowed, we noted under the heading General Expenses, the following:—

1948 P695.00—35-ACR-125329-52/48

1949 1,615.00—36-ACR-125371-52/49

1950 2,075.30—S5-ACR-125S46-62/60

1951 4,219.50—35-ACR-52-52/51

"We have no way of determining the items composing above and we kindly request that we be furnished with an itemized information of the same for our study with the assurance that should we find them satisfactory, we will be much obliged to make initial payments, otherwise, we will give you our own explanation on the subject matter."

On June 21, 1955, petitioner sent respondent circular letters inquiring whether it has already paid said assessments. In reply to said letters, respondent, on July 1, 1955, reiterated its request of May 30, 1953. Petitioner replied to said letter on September 20, 1955 reiterating the demand for payment from respondent. Respondent, in its letter of October 15, 1955, explained the disallowed items in detail, and stated in closing:

"In view of the foregoing circumstances and reasons, we beg you to reconsider your stand and consider the above items as proper and ordinary expenses of the business. If necessary, we request re-investigation of the items under General Expenses to convince you of its reasonableness as expenses of the business." (Italics supplied.)

Whether a formal re-investigation pursuant to respondent's request was actually made by petitioner, is not shown by the records. It appears, however, that on October 26, 1955, BIR Examiner 103, submitted to the Acting Provincial Revenue Examiner, Bacolod City, a Memorandum, which in part states:

"The undersigned is submitting hereunder his comments on the disallowances he made on the income tax case of the Capitol Subdivision, Incorporated which is herein being contested.

"1. General Expenses disallowed consist of contributions and gifts to various persons, are not ordinary and necessary expenses of the company in carrying out their real estate business."

* * * * *

On September 2, 1959, petitioner made another demand on respondent for payment of the deficiency income tax assessment, with the warning that should the aforesaid obligation remain unsettled in 10 days, judicial action for collection thereof will be instituted immediately without further notice. On September 16, 1959, respondent taxpayer asked the Commissioner of Internal Revenue for the cancellation of the assessment in a letter in part reading as follows:

* * * * *

"Please be informed that from the time we received your deficiency assessments all dated April 8, 1953, we have contested the correctness of same, insisting all the time that the items being disallowed are ordinary, necessary, and legitimate expenses of the business. This stand of ours have been reiterated to various men from your office who called on us to collect. No action was taken by your office to dispute our contention, thus

making us believe you subscribe to our stand.

"From April 8, 1953 to date, more than six years have already lapsed, and we therefore submit that under Sections 331 and 333 C of the Internal Revenue Code your right to collect has already prescribed. This is in line with the decisions rendered in the cases of Santiago Gancayco vs. Collector of Internal Revenue, CTA Case No. 287, November 14, 1957; Manuel Pineda vs. The Collector of Internal Revenue, CTA Case No. 364, August 80, 1958; and Collector of Internal Revenue vs. Florencio Solano, G.R. No. L-11475, July 31, 1958 to mention a few.

"In view of the above, we respectfully request that your assessment be cancelled." (*Italics supplied.*)

Upon its denial, said respondent initiated the instant proceeding in the Court of Tax Appeals.

The right to enforce collection of the disputed assessment has not yet been lost. There is no question that the period commenced to run on April 8, 1953 when the assessment was made. The same, however, was interrupted when the respondent taxpayer, by letter of May 30, 1953, requested for an itemized information on the disallowed items. While it is true that the said letter did not specifically use the words "review" or "reconsideration", the request itself for an explanation of the disallowances made in the assessment in effect was an exception to the correctness thereof. That the taxpayer actually assailed the correctness of such assessment "from the start" was specifically admitted in the aforequoted letter of September 16, 1959. This request for reconsideration or review of the assessment was denied when petitioner demanded for payment of the alleged deficiency tax on June 21, 1955. The period for collection then started to run again, but it was tolled when the taxpayer reiterated its request for explanation of the disallowances on July 1, 1955 or after 10 days. This request was denied on September 20, 1955, and a span of 25 days elapsed until October 15, 1955 when the taxpayer explained the disallowed items and requested for a re-investigation of the same. On September 2, 1959, petitioner denies the request for re-investigation when it reiterated its demand for collection of the alleged deficiency tax. From this date until December 28, 1959, when the answer to the taxpayer's petition was filed in the Court of Tax Appeals, only 3 months and 26 days had passed. Clearly, although the assessment was sent on April 8, 1958, by respondent taxpayer's own requests for review or reconsideration of the disputed assessment, the period for collection thereof had been interrupted. Therefore, deducting from the total period from April 8, 1953 (date of the deficiency assessment) to December 29, 1959 (date of answer which is tantamount to a judicial action), or a total of 8 years, 8 months and 21 days, the period of interruption, from May 30, 1953 (when respondent filed its petition for clarification amounting to reconsideration or review of the assessment) to June 21, 1955 (when the petitioner in effect denied the petition by reiterating its demand for payment), or a total of 2 years and 21 days, there is left a period of 4 years and 8 months within which judicial collection may be effected. Since the law allows 5 years for this purpose, the collection herein sought by the petitioner is still timely.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Court of Tax Appeals is hereby set aside and the taxpayer's petition to declare null and void the deficiency income tax assessments for 1948, 1949, and 1950, is dismissed. Without costs.

SO ORDERED.

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

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