

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. LILIA YUSAY GONZALES AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 19495. April 24, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Respondent Lilia Yusay Gonzales seeks reconsideration of Our decision holding her liable for the payment of P97,723.96 as estate and inheritance taxes plus delinquency penalties as administratrix of the intestate estate of Matias Yusay. The grounds raised by her, deserve this extended resolution.

Firstly, movant maintains that the issue of whether or not the estate and inheritance tax return filed by Jose Yusay on May 13, 1949 was sufficient to start the running of the statute of limitations on assessment, was neither raised in the Court of Tax Appeals nor assigned as error before this Court. The records in the Court of Tax Appeals however show the contrary. Paragraph 2 of the answer filed by the Commissioner of Internal Revenue states:

"2. That he likewise admits, as alleged in paragraph 1 thereof, having received the letter of the petitioner dated November 27, 1959 (Annex "A" of the Petition for Review), contesting the assessment of estate and inheritance taxes levied against the Intestate Estate of the Late Matias Yusay, Special Proceedings No. 459, Court of First Instance of Iloilo, on the ground that the said assessment has already prescribed, but specifically denies the allegations that the assessments have already prescribed, the truth of the matter being that the returns filed on May 11, 1949, cannot be considered as a true and complete return sufficient to start the running of the period of five (5) years prescribed in Sec. 331 of the Tax Code;"

This point was discussed in the memorandum of the Commissioner of Internal Revenue, thus:

"In the estate and inheritance tax return filed by Jose S. Yusay (Exhibits B & 1, pp. 14-20, B.I.R. records) the net value of the estate of the deceased was claimed to be P203,354.00 and no inheritance tax was shown as the heirs were not indicated. In the final computation of the estate by an examiner of the respondent, the net estate was found to be worth P410,518.30 (p. 105, B.I.R. records) or about more than twice the original amount declared in the return. In the subsequent investigation of this case, it was also determined that the heirs of the deceased were Jose S. Yusay, a legitimate son, and Lilia Yusay, an acknowledged natural child, (petitioner herein).

"Under the circumstances, we believe the return filed on May 11, 1949 was false or fraudulent in the sense that the value of the properties were under declared and that the said return was also incomplete as the heirs to the estate were not specified. Inasmuch as the respondent was not furnished adequate data upon which to base an assessment, the said return cannot be con-sidered a true and complete return sufficient to start the running of the period of limitations of five (5) years prescribed in Section 331 of the Tax Code."

In the lower court the defense of the Commissioner of Internal Revenue against Lilia Yusay Gonzales' plea of prescription, centered on the insufficiency and fraudulence or falsity of the return filed by Jose Yusay. The Court of Tax Appeals overruled the Commissioner of Internal Revenue. Said the Tax Court:

"The provision of Section 332(a) of the Tax Code cannot be invoked in this case as it was neither alleged in respondent's answer, nor proved during the hearing that the return was false or fraudulent with intent to evade the payment of tax. Moreover, the failure of respondent to charge fraud and impose the penalty thereof in the assessments made in 1953, 1955 and 1958 is an eloquent demonstration that the filing of petitioner's transfer tax return was not attended by falsity or fraud with intent to evade tax.

x x x x x

"But respondent urges upon us that the filing of the return did not start the running of the five (5) year period for the reason that the return did not disclose the heirs of the deceased Matias Yusay, and contained inadequate data regarding the value of the estate. We believe that these mere omissions do not require additional returns for the same. Altho incomplete for being deficient on these matters, the return cannot be regarded as a case of failure to file a return where want of good faith and intent to evade the tax on the part of petitioner are not charged. It served as a sufficient notice to the Commissioner of Internal Revenue to make his assessment and start the running of the period of limitation. In this connection, it must be borne in mind that the Commissioner is not confined to the taxpayer's return in making assessment of the tax, and for this purpose he may secure additional information from other sources. As was done in the case at bar, he sends investigators to examine the taxpayer's records and other pertinent data. His assessment is based upon the facts uncovered by the investigation (Collector v. Central Azucarera de Tarlac, G.R. Nos. L-11760 & L-11761, July 31, 1958).

"Furthermore, the failure to state the heirs in the return can be attributed to the then unsettled conflict raging before the probate court as to who are the heirs of the estate. Such failure could not have been a deliberate attempt to mislead the government in the assessment of the correct taxes."

In his appeal, the Commissioner of Internal Revenue assigned as third error of the Court of Tax Appeals the finding that the assessment in question was "made beyond the five-year statutory period provided in Section 332(a) of the Tax Code," and that the right of the Commissioner of Internal Revenue to assess the estate and inheritance taxes has already prescribed. To sustain his side, the Commissioner ventilated in his brief, fraud in the filing of the return, absence of certain data from the return which prevented him from assessing thereon the tax due and the pendency in this Court of L-11374 entitled "Intestate Estate of the late Matias Yusay, Jose C. Yusay, Administrator vs. Lilia Yusay Gonzales" which allegedly had the effect of suspending the running of the period of limitations on assessment.

Clearly, therefore, it would be incorrect to say that the question of whether or not the return filed by Jose Yusay was sufficient to start the running of the statute of limitations to assess the corresponding tax, was not raised by the Commissioner in the Court of Tax Appeals and in this Court.

Second. Movant contends that contrary to Our ruling, the return filed by Jose Yusay was sufficient to state the statute of limitations on assessment. Inasmuch as this question was amply discussed in Our decision sought to be reconsidered, and no new argument was advanced, We deem it unnecessary to pass upon the same. There is no reason for any change on Our stand on this point.

Third. Movant insists that since she administers only one-third of the estate of Matias Yusay, she should not be liable for the whole tax. And she suggests that We hold the intestate estate of Matias Yusay liable for said taxes, one-third to be paid by Lilia Yusay Gonzales and two-thirds to be paid by Florencia P. Vda. de Yusay.

The foregoing suggestion to require payment of two-thirds of the total taxes by Florencia P. Vda. de Yusay is not acceptable, for she (Florencia P. Vda. de Yusay) is not a party in this case.

It should be pointed out that Lilia Yusay Gonzales appealed the whole assessment to the Court of Tax Appeals. Thereupon, the Commissioner of Internal Revenue questioned her legal capacity to institute the appeal on the

ground that she administered only one-third of the estate of Matias Yusay. In opposition, she espoused the view, which was sustained by the Tax Court, that in co-administration, the administratrices are regarded as one person and the acts of one of them in relation to the regular administration of the estate are deemed to be the acts of all; hence, each administratrix can represent the whole estate. In advancing such a proposition, Lilia Yusay Gonzales represented the whole estate and hoped to benefit from the favorable outcome of the case. For the same reason that she represented her co-administratrix and the whole estate of Matias Yusay, she risked being ordered to pay the whole assessment, should the assessment be sustained.

Her change of stand adopted in the motion for reconsideration to the effect that she should be made liable for only one-third of the total tax, would negate her aforesaid proposition before the Court of Tax Appeals. She is now estopped from denying liability for the whole tax.

At any rate, estate and inheritance taxes are satisfied from the estate and are to be paid by the executor or administrator.[1] Where there are two or more executors, all of them are severally liable for the payment of the estate tax.[2] The inheritance tax, although charged against the account of each beneficiary, should be paid by the executor or administrator.[3] Failure to pay the estate and inheritance taxes before distribution of the estate would subject the executor or administrator to criminal liability under Section 107(c) of the Tax Code.

It is immaterial therefore that Lilia Yusay Gonzales administers only one-third of the estate and will receive as her share only said portion, for her right to the estate comes after taxes.[4] As an administratrix, she is liable for the entire estate tax. As an heir, she is liable for the entire inheritance tax although her liability would not exceed the amount of her share in the estate.[5] The entire inheritance tax which amounts to P39,178.12 excluding penalties is obviously much less than her distributive share.

MOTION FOR RECONSIDERATION DENIED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Sanchez, and Castro, JJ., concur.
Zaldivar, J., did not take part.

[1] Section 95(a)(1), Tax Code.

[2] *Baldwin v. Commissioner of Internal Revenue*, 94 F. 2d. 355, 20 AFTR 940.

[3] Jose Arañas, *Annotations and Jurisprudence on the National Internal Revenue Code, As Amended*, Second Edition, 1963, Vol. I, p. 630.

[4] Section 103, Tax Code.

[5] Section 95(c), Tax Code.

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