

RICARDO DE MESA, PLAINTIFF AND APPELLEE, VS. COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.*G.R. No. 31024. August 22, 1929*

Ponente: STREET, J.

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This action was instituted by Ricardo de Mesa in the Court of First Instance of the Province of Pampanga for the purpose of recovering from the Collector of Internal Revenue the sum of P1,000 for taxes paid under protest to the municipal treasurer of the municipality of Angeles, in the Province of Pampanga. From a judgment, entered in the trial court, requiring the defendant to repay said sum, without costs, the defendant appealed. The original plaintiff having died during the course of the litigation, he has been substituted by Jose F. Santos, as administrator.

For a number of years prior to December, 1921, the additional municipal tax imposed by the municipal council of Angeles, Pampanga, for the maintaining of a cockpit in the municipality was fixed at the sum of P600. But on December 11, 1921, the municipal council of said municipality approved ordinance No. 14, raising the municipal license tax for a cockpit of the first class from P600 to P800 a year, and this ordinance received the approval of the provincial board on December 29 of the same year. This increase in the amount of the cockpit tax appears to have been brought about by a circular letter dated September 15, 1921, emanating from the office of the Executive Secretary, in which it was recommended to municipal councils that they should revise their municipal ordinances relative to imposts and licenses, and especially licenses issued to cockpits and dance halls, with a view to increasing the available funds for public works and other local activities. In the same circular the desire was expressed that no ordinance should be adopted lowering the tax for licenses to cockpits.

As a consequence of the adoption of said ordinance by the municipal authorities of Angeles, it would have been proper thereafter to collect P800, instead of P600, for the cockpit license in said municipality. Nevertheless, during the year 1922 and thereafter until the middle of the year 1926, the said Ricardo de Mesa paid only P600 per annum for his cockpit license in said municipality, without any demand for a larger amount having been made upon him by the municipal authorities. But later he was required to pay, and did pay, under protest, the sum of P1,000, demanded by the municipal treasurer as past due taxes upon said account, that is to say, an additional P200 per annum for five years, over the amount that he had previously paid.

In the year 1926, however, the ordinance No. 14, above-mentioned, was amended, by ordinance No. 6, series 1926, by reducing the cockpit license to the old amount, namely, P600 per year; and on June 18, 1927, the municipal council of Angeles informed the Insular Auditor and Collector of Internal Revenue that an error had been made in old ordinance No. 14, in fixing therein the sum of P800, instead of P600, per annum. The resolution conveying this information was indorsed by the provincial board of Pampanga to the Insular Auditor, through the Collector of Internal Revenue, and at the same time these officials were advised that the amendatory ordinance No. 6, series 1926, had been approved by the municipal board. It is not clear whether the municipal council of Angeles intended, in its resolution, to suggest that the error supposed to have been made in fixing the cockpit tax in ordinance No. 14 at P800, consisted of a clerical error or a mere error of legislative wisdom on the part of the

council, though the surmise would probably be safe that the error, if any, was of the last-named kind, that is to say, the municipal board doubtless discovered, after the ordinance was adopted, that the increase was more than the business would bear. In view of the recommendation to the municipal authorities from the Executive Bureau, it is almost a moral certainty that the increase in the tax was due to said recommendation and that no mistake was made other than that of overestimating the capacity of the business subject to the license. But this consideration is a matter apart from the vital issue in the case; and it is better, we think, and as the trial judge indicated, to consider ordinance No. 6, of 1926, as a condonation of the prior license tax. In this view the case presents the simple question whether a municipal council, with the approval of the provincial board, can lawfully condone, release, or remit a license tax already accrued. Upon this point we are constrained to hold the power in question has been withheld from the municipal councils.

To prevent abuse the lawmaker has very carefully guarded the right of the lawmaking authorities to release taxpayers from liability for a tax already accrued. Of course the Legislature has general power to authorize the release of claims against the debtors of the Government; and in sections 384 and 385 of the Assessment Law, Administrative Code of 1917, the Governor-General is given power to remit or reduce the real property tax for any year, in any province, if he deems that the public interest so requires, and the provincial board, with the approval of the Secretary of the Interior, is given a qualified authority to the same end.

No such power has been confided by law to the municipal councils. On the contrary, by section 2309 of the Municipal Law, it is declared that a municipal license tax already in existence shall be subject to change only by ordinance enacted prior to the 15th of December of any year for the next succeeding year. This means that ordinances imposing license taxes must be prospective only; and no authority is anywhere given to the council to condone taxes previously accrued. The American jurisprudence, though not very explicit, points to the conclusion that counties, towns and municipal corporations cannot compromise or release claims for taxes once legally assessed, at least so long as the debtor is able to pay. (37 Cyc, 1171; Connecticut vs. Fyler, 48 Conn., 145; Territory vs. Gaines, 11 Ariz., 270; Debolt vs. Ohio Life etc. Co., 1 Ohio St., 563.) It may be worth observing that if the power of municipal councils to remit taxes is once admitted, the exercise of this power might afford a means of introducing inequality in the incidence of taxation, which would be obnoxious to the rule of uniformity prescribed in section 3 of the Philippine Autonomy Act; and although this argument has less force in dealing with essentially monopolistic licenses, like cockpit licenses, nevertheless the same considerations point to the impropriety of the exercise of such power.

It is therefore declared that ordinance No. 6 and resolution No. 101, series of 1926, did not have the effect of relieving the owner of this cockpit license from liability for the full tax for the five years prior to the adoption of said ordinance and while the prior ordinance No. 14 was in force.

The judgment must therefore be reversed and the defendant absolved from the complaint. So ordered, without costs.

Avanceña, C. J., Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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