

**IN RE ESTATE OF THE DECEASED DIEGO DE LA VINA. THE COLLECTOR OF INTERNAL REVENUE, PETITIONER AND APPELLANT, VS. ESPIRIDION VILLEGAS, ADMINISTRATOR AND APPELLEE.**

*G.R. No. 33870. February 23, 1932*

Ponente: VILLA-REAL, J.

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**VILLA-REAL, J.:**

The Collector of Internal Revenue appealed to this court from the order of the Court of First Instance of Oriental Negros dated April 29, 1930, denying the motion filed by him in the proceedings In re testamentary estate of Diego de la Viña, praying that the administrator of said estate be ordered to pay to the Government the amount of P18,420.93 as income tax, and that should there be no funds available for this purpose, a sufficient portion of the estate be ordered sold, to satisfy said tax.

In support of the appeal, the appellant assigns the following alleged errors as committed by the trial court in said order, to wit:

"1. The lower court erred in finding that the right to collect the tax in question has prescribed.

"2. The lower court erred in denying the motion of the Collector of Internal Revenue, dated November 21, 1929."

The relevant facts necessary to reach a decision on the points raised in this appeal, which are summed up in the order appealed from, and as to which neither party has raised any question, are the following:

"On the 13th of March, 1926, the administrator in these proceedings filed an income tax return for the year 1925 (Exhibit B) of the estate of the late Diego de la Vina; this income tax return was received and kept by the representatives of the Collector of Internal Revenue, from the time it was submitted to the year 1929; on August 7, 1929, Narciso Rosales and Pedro R. Dayao, auditors of the Bureau of Internal Revenue, while going over the income tax return filed by the administrator for the year 1925 (Exhibit B) discovered that it was erroneous and false, in that the space reserved for recording the sale of realty was not filled out, whereas the records of the Court of First Instance show that realty was sold during that year, 1925, and that the profit of P234,340 is not recorded. Through this examination the Collector of Internal Revenue discovered that the administrator, as such, owes the Government the sum of P18,420.93 (Exhibit D); that he was duly informed of such indebtedness and required to pay it before October 31, 1929, but he refused to do so."

The first question to decide in this appeal, in view of the facts set forth above, is that raised in the first assignment of error, to wit, whether the right of the Collector of Internal Revenue to collect the income tax in question has prescribed.

Section 9 of. Act No. 2833, which took effect on January 1, 1920, contains the following pertinent provision:

"Sec. 9 (a). All assessments shall be made by the Collector of Internal Revenue and all persons shall be

notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make such return and in cases of erroneous, false, or fraudulent returns, in which cases the Collector of Internal Revenue shall, upon the 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 law or by existing law, or require the necessary corrections, to be made, \* \* \*

The appellant contends that the phrase "at any time within three years after said return is due, or has" been made, make a return upon information obtained" refers to the discovery of "erroneous, false, or fraudulent returns" and not to the return, assessment or collection that the Collector of Internal Revenue must make with reference to the taxes according to information obtained, as the trial court and the appellee maintain.

The provision in question is similar to that contained in section 9, subdivision (a), of the United States Revenue Act of 1916, the pertinent part of which reads:

"In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Commissioner shall, upon the discovery thereof, at any time within three years after the return is due, or has been made, make a return upon information obtained as provided for in the law, or require the necessary corrections to be made, and in such cases the assessment made by the Commissioner thereon shall be paid by the taxpayer immediately upon notification of the amount of such assessment."

In his treatise on taxes, entitled *Federal Income Tax*, 2d edition, page 581, Holmes says the following:

"The 1916 Law authorized the Commissioner to make a summary assessment of the tax on undisclosed income, if the discovery was made within three, years after the return in which such income should have been reported was due. The assessment was not required to be made within three years, so long as the discovery was made within that time. Three years' limitation in this provision was not a limitation upon the right of the government to sue for unpaid taxes, but was at most a limitation upon the right of the collecting officers to make assessment and enforce the payment by the summary statutory proceedings. \* \* \*"

It is also similar to the provision contained in the fifth subdivision of section 38, chapter VI, of the United States Corporation Tax Law; of August 5, 1909, the relevant portion of which is as follows:

"\* \* \* All assessments shall be made and the several corporations, joint-stock companies or associations or insurance companies, shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said assessments shall be paid on or before the thirtieth day of June, except in cases of refusal or neglect to make such return, and in cases of false or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, make a return upon information obtained as above provided for, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such corporation, joint-stock company or association, or insurance company immediately upon notification of the amount of such assessment; \* \* \*."

The District Court of W. D. Michigan, S. D., in the case entitled *United States vs. Grand Rapids and I. Ry. Co.* (289 Fed., 153, 154), interpreting the legal provision we have just quoted, said:

"1. The three-year clause of the fifth subdivision of section 38 of the 1909 Excise Law is not a limitation upon the right of the government to sue for unpaid taxes, but, at most, is a limitation upon the right of the collecting officers to make assessment and to enforce payment by the summary statutory proceedings.

"2. In the collection of the taxes imposed by the statute, the government is not confined to the summary proceedings therein provided, but may resort to a plenary suit.

"3. Where a tax of a fixed percentage (like the one here sought to be recovered) is imposed by the statute on a subject or object which is so definitely described in the statute that its amount or value, on which the fixed per centum is to be calculated, can be ascertained and determined, on evidence, by a court, a suit for the tax will lie, without an assessment. (United States vs. Tilden, 28 Fed. Cas., 161, No. 16,519; United States vs. Hazard, 26 Fed., Cas., 251, No. 15,337; Dollar Savings Bank vs. United States, 19 Wall., 227; 22 L. ed., 80; United States vs. Chamberlain, 219 U. S., 250-264; 31 Sup. Ct, 155; 55 L. ed., 204; King vs. United States, 99 U. S., 229; 25 L. ed., 373; United States vs. Reading R. R., 123 U. S., 113; 8 Sup. Ct., 77; 31 L. ed., 138; United States vs. Cobb [C. C], 11 Fed., 76; United States vs. M. H. & O. R. Co. [C. C], 17 Fed., 719; 22 Cyc, 1670, and cases there cited; Eliot Nat. Bank vs. Gill [D. C], 210 Fed., 933, affirmed by Circuit Court of Appeals of First Circuit [December 21, 1914], 218 Fed., 600; 134 C. C. A., 358.)"

It is therefore a matter established by the American jurisprudence that the three-year prescription refers to the discovery of erroneous, false, or fraudulent returns, and to tax assessments and their summary collection, but not to their collection through judicial channels. The motion filed by the Collector of Internal Revenue in this case, is equivalent to a judicial action for the collection of the accrued income tax. Therefore, the fact that the omission of the net income from the administrator's return was discovered after the period of three years from the filing of such return, on March 13, 1926, does not prevent the collection of the proper tax assessed after such discovery.

It has been suggested that the Congress of the United States having, through section 250, subdivision (d), of the Act of 1918, amended section 9, subdivision (a), of the United States Revenue Act of 1916, by extending the period of prescription to five years, and making it applicable not only to the discovery of erroneous, false, or fraudulent returns, but also to the assessment the commissioner must make of the amount to be paid in accordance with that discovery, and to the action that may be brought to collect that amount—which points out the interpretation to be placed upon the amended provision—the provision with which we are now concerned should be interpreted to mean that both the discovery and the assessment of the amount that must be paid, as well as the action to enforce such payment, prescribe three years after the taxpayer has filed his income tax return or after such return has become due. We do not think this inference can be logically sustained, because, in providing that both the discovery and the assessment of the tax that must be paid as well as the action to enforce such payment, prescribe in five years, the Congress of the United States extended the time within which the officials charged with the collection of taxes are to detect erroneous, false, or fraudulent returns. As the amendment differs in its terms from the amended law, it cannot be looked upon as a legislative interpretation of the latter. Furthermore, Act No. 2833 with which we are now dealing, took effect on January 1, 1920, and is therefore subsequent to the Revenue Act of the Congress of the United States passed in 1918, amending the United States Revenue Act of 1916, from section 9, subdivision (a), of which section 9, subdivision (a), of the aforementioned Act No. 2833 is taken. Even admitting that an act amending another may be considered as interpreting the act so amended, this cannot be applied to said section 9, subdivision (a), of Act No. 2833, for the reason that this Act is posterior to the Act of Congress of 1918.

Then again, even in section 250, subdivision (d), of the Act of Congress of 1918, false or fraudulent returns made for the purpose of evading the payment of the tax are excepted from the five-year prescription.

In view of the foregoing considerations, we are of opinion and so hold that the three-year prescription established in section 9, subdivision (a), of Act No. 2833, refers to the discovery of erroneous, false, or fraudulent returns made by a taxpayer, and to the summary assessment and collection of said tax, but not to its collection by an action in court.

Wherefore, the order appealed from is reversed, and it is ordered that the administrator of the testamentary estate of Diego de la Vina pay the Government of the Philippine Islands the amount of P18,420.93, with interest from August 20, 1929 until it is fully paid, and the costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Romualdez, and Imperial, JJ., concur.

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**CONCURRING**

**STREET, J.**

I reluctantly yield my adherence to the conclusion reached in this case upon the ground that the rule here adopted has the support of decisions from the federal courts of the United States dealing with the law, or laws, from which our own has been adopted; and although, if the point were one of first impression, I would not hesitate to adopt a different view, yet, in dealing with revenue statutes of settled interpretation in the courts of the United States, it must be supposed that our Legislature intended to adopt the interpretation impressed upon such laws in America as well as their literal words. The conclusion to which we are thus driven is the more unfortunate for the reason that Congress has amended the statute from which our own has been copied so as to fix a definite period of prescription in favor of the taxpayer. But the amendatory provision has not yet been incorporated in our law.

**VILLAMOR, J.:**

I join in the concurring opinion of Justice Street.

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