

IN RE ESTATE OF THE DECEASED DIEGO DE LA VIÑA, JOSE MA. DE LA VIÑA Y DE LA ROSA, EX-ADMINISTRATOR AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, CREDITOR AND APPELLEE.

G.R. No. 46242. October 20, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the ex-administrator, Dr. Jose Ma. de la Vina y de la Rosa, from the order of the Court of First Instance of Negros Oriental, the dispositive part of which reads:

"Wherefore, the Court reiterates the order of March 7, 1933, only in so far as the claim of the Insular Government is concerned, and orders the Administrator herein to pay from whatever available fund of the estate of the deceased Diego de la Vina the sum of P18,420.93 with the corresponding legal interests from August 20, 1929 plus costs, to the Commonwealth of the Philippines.

"It is also ordered that after the said claim shall have been fully paid, the administrator herein shall pay to Dr. Jose de la Vina y De la Rosa the sum of P19,342.93 and to other claimants their respective claims in the order established by law out of the residue."

In support of his appeal the appellant assigns three alleged errors committed by the trial court in its order, to wit:

"1. The trial court erred in holding that the income tax claimed by the Collector of Internal Revenue, should be paid before the administration expenses claimed by the appellant executor Dr. Jose Ma. de la Vina y de la Rosa.

"2. The trial court erred in applying article 1923 of the Civil Code and in not holding that the said article has been repealed by section 735 of the Code of Civil Procedure (Act 190).

"3. Granting for the sake of argument that the payment of income tax has preference over the payment of administration expenses, the trial court erred in holding that said preference has been abandoned and lost due to the time that has elapsed from 1925 to 1938."

The following are undisputed facts:

On April 8, 1920, after the death of Diego de la Vina, his brother, the herein appellant Dr. Jose Ma. de la Vina, was appointed by the Court of First Instance of Negros Oriental as special administrator of the estate of the deceased; and on the 20th of the same month and year he was appointed executor.

On January 23, 1926, this Court issued in civil case G. R. No. 23747, entitled "In re estate of Diego de la Vina, deceased, Jose de la Vina v. Narcisa Geopano et al.," an order approving the accounts of the said Dr. Jose de la Vina, as outgoing administrator of the estate of Diego de la Vina. It appears from the decision of this Court rendered in said Civil Case G. R. No. 23747 that the following items were approved:

Special per diems of Jose de la Viña as former administrator P12,552.00

Legal Commission 4,141.33

Total 16,693.33

In the bill of exceptions in said case it also appears that the following expenses of Jose de la Vina were approved:

Balance in his favor as executor P1,165.86

Balance on his aparceria 7,528.64

Total 8,694.50

On July 16, 1927, the said Court of First Instance of Negros Oriental ordered in the present case the payment to Dr. Jose de la Vina of the amount of 146.025 piculs of sugar belonging to him, which product was applied to the payment of the administration expenses of the estate of Diego de la Vina. The price of said sugar was fixed at P20 per picul by a subsequent order. Adding the sum of P2,925, the value of said 146.025 piculs of sugar, to the sum of P25,387.83, the result is a total of P28,312.83. As the amount of P9,228.65 has been paid on account, there remains a balance of P19,048.18 in favor of the appellant.

It also appears that on February 23, 1932, this Court rendered judgment in G. R. No. 33870, entitled "The Collector of Internal Revenue vs. Espiridion Villegas, as administrator of the estate of Diego de la Vina", ordering the said administrator to pay the Insular Government, by way of income tax for the year 1925, the sum of P18,420.93, with interest from August 20, 1939 until fully paid, and the costs.

The estate of Diego de la Vina does not have sufficient funds or property to pay fully both judgments. When the Insular Government attempted to collect the amount of the said judgment in its favor, Dr. Jose de la Vina objected on the ground that the judgments obtained by him are preferred under section 735 of Act No. 190, and should first be paid. After the corresponding trial, the trial court overruled the opposition and entered the above-quoted order.

The first question to be decided in this appeal, which is raised by the first assignment of error, is whether or not the trial court erred in holding that the income tax claimed by the Collector of Internal Revenue, should be paid before the administration expenses claimed by the ex-executor, Dr. Jose Ma. de la Vina y de la Rosa.

Section 735 of the Code of Civil Procedure, as amended by Act No. 3960, provides as follows:

"Sec. 735. Order of payment if estate insolvent.—If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

"1. The necessary funeral expenses;

"2. The expenses of the last sickness;

"3. What is owing to the laborer for salaries and wages earned and for indemnities due to him, for the last year;

"4. Debts due to the United States;

"5. Taxes and assessments due to the Government, or any branch or subdivision thereof;

"6. Debts due to the province;

"7. Debts due to other creditors."

In view of the legal provision just quoted, the question is whether the income tax which an estate owes the Insular

Government partakes of the nature of administration expenses for purposes of the order of payment established by section 735 of Act No. 190 above quoted. Section 680 of the same Code of Civil Procedure provides as follows:

"Sec. 680.—How allowed for services.—The executor or administrator shall be allowed necessary expenses in the care, management, and settlement of the estate, and for his services, two dollars per day for the time actually and necessarily employed, and a commission of three per cent upon all sums disbursed in the payment of debts, expenses, and distributive shares, if the amount of such disbursements does not exceed one thousand dollars. If the amount exceeds one thousand dollars and does not exceed five thousand dollars, then three per cent upon the first one thousand dollars and one and one-half per cent upon the first one thousand dollars and one and one-half per cent upon the excess, if the whole amount does not exceed five thousand dollars. If the total disbursements exceed five thousand dollars, then the percentage as above provided, and one per cent on the excess above five thousand dollars. But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed. But if objection to the fees allowed be taken, the allowance may be re-examined by the Supreme Court on appeal.

"When the administrator or executor is a lawyer, he shall not be allowed to charge against the estate any professional fees, as such, for services rendered by himself. When the deceased by will makes some other provision for compensation to his executor, that provision shall be a full satisfaction for his services, unless by a written instrument filed in the court he renounces all claim to the compensation provided by the will."

The legal provision just quoted enumerates the services for which the administrator should be paid and the commission to which he is entitled for collections and disbursements made by him. Among these payments, which constitute the expenses of administration, are not included pending debts of the estate, whatever may be their nature. According to the said legal provision, only payments which the executor or administrator may have made in the discharge of his office and the commissions to which he may be entitled, partake of the nature of administration expenses. The expenses of administration are due only to the executor or administrator, and he alone, and no other, may collect them.

The Collector of Internal Revenue contends that the tax of P18,420.93 which he seeks to collect, having been laid on the profits realized in the sale of the properties of the deceased Diego de la Vina, effected on September 29, 1925 by the judicial administrator of the estate, the said tax partake of the nature of administration expenses. As we have said, the necessary expenses of administration whose payment is given preference in the said section 735 of the Code of Civil Procedure are those which the administrator may have incurred in the care, administration and liquidation of the properties of the estate and the commissions due to him for collections and disbursements which he may have made, and not those which he could or might have wished to make out of his own pocket or out of the funds of the estate. "Administration expenses," says Corpus Juris, volume 24, page 424, "include expenditures in discovering and preserving assets, attorney's fees incurred in connection with the administration of the estate, costs recovered against the representative in an action to recover assets, to establish a claim against the estate, or to try title to land, and insurance premiums expended for the protection of the property and it has even been considered that expenditures in carrying on decedent's business may be regarded as expenses of administration." And Woerner, volume 2, page 1197, paragraph 362, third edition, of his work entitled "The American Law of Administration," under the heading "Expenses necessary in the Administration of the Estate," says the following:

"It has already been stated, that for the expenses attending the accomplishment of the purpose of administration growing out of the contract or obligation entered into by the personal representative he is to be reimbursed out of the estate, and that his claim to reimbursement must be superior to the rights of the beneficiaries. They are subject only to the lien of a mortgage executed on specific property by the deceased in his lifetime. The expenses under this category include those paid for probate of the will, as well in the Probate court as on

appeal, or other proceeding in a contest, if carried on in good faith; and the executor nominated in such will is entitled to a settlement of his account, and reimbursement for his expenses in preserving the estate and for the funeral, although the will be finally pronounced invalid; and, generally, all expenses necessary in the protection and preservation of the estate, which have been held to include the costs of establishing a claim against the estate. But the general rule seems rather to be that costs incurred by the administrator in defense of claims against the estate, or in prosecuting claims in favor of it, pertain to the administration, and are to be allowed in full; but costs incurred by claimants in establishing their claims stand on the same footing with the claims themselves. The allowance of counsel fees and costs is discussed in connection with the subject of accounting. Repairs necessary upon real estate of which the executor or administrator has lawful possession also constitute expenses of administration; if the expenses incurred is general, affecting all the property of the estate, it should be charged generally, but if attaching to a specific portion or piece of property, it should be charged against such portion or piece.

"The liability of the administrator as such cannot be treated as a continuation of a running account with the deceased in his lifetime; nor can the defendant in an action by an administrator upon a contract made by him as such, or to recover assets of the estate, set off or counterclaim a debt due him from the deceased. And it is held that one who renders services for a trust estate has no recourse against the trust, except to subject an equitable demand of the trustee to the payment of the debt."

The mere fact, therefore, that the income tax claimed by the Collector of Internal Revenue had been imposed upon the profits obtained by the administrator of the estate in the sale of certain properties of the deceased Diego de la Vina, after the latter's death, does not make the said tax a necessary expense of administration, unless the administrator had paid it either from his own pocket or out of the funds of the estate: in the first case the tax paid is converted into an expense of administration which the administrator may fully recover, plus his commission; in the second case, he may only collect his commission, which partakes of the nature of an expense of administration.

In the decision promulgated on May 18, 1938, in the Estate of the deceased Claude E. Haygood, The Collector of Internal Revenue, claimant and appellee, vs. Annie Laurie Haygood, administratrix and appellant, G. R. No. 44038, this Court said:

"In accordance with section 9, paragraph (a) of Act No. 2833, the assessment made by the Collector of Internal Revenue within three years after the discovery of an erroneous declaration shall be paid by the maker of the return immediately upon being notified of the assessment. The procedure prescribed by law is, therefore summary, and collection must be made from the person liable for the tax. Since this cannot be done when the person liable is already dead, collection must necessarily be made from the estate of the deceased, either in a testate or intestate proceedings instituted, before a competent court, by motion together with a sworn statement of the taxes due filed with said court, so that it may require the administrator to pay the claim if the latter has funds available therefor, that is, following the order of preference provided in section 735 of the Code of Civil Procedure in case the said estate should be insolvent. If the testate or intestate estate is solvent, the court may order the payment of the claim without necessity of its being substantiated by evidence since the sworn statement constitutes prima facie evidence of the existence of the unpaid taxes, and the administrator is under obligation to pay such claim, under protest if he is not agreeable, without prejudice to his right later to recover the taxes so paid, in the manner provided by law (Act No. 2711, sec. 1579, as amended by Act No. 3685)."

The Collector of Internal Revenue also contends that the income tax in question, being a lien created by law superior to any other existing upon the property on which it is imposed, under the provisions of section 1588 of the Revised Administrative Code, as amended, enjoys preference over the necessary expenses of administration.

The lien created by the said section 1588 of the Revised Administrative Code, having reference to all internal revenue taxes, including the income tax here in question, is general in character, and the order of its payment as a

lien is applicable to all properties subject to the payment of internal revenue tax; whereas the order of payment established by section 735 of the Code of Civil Procedure, as amended by Act No. 3960, is special in character and is only applicable to properties of deceased persons; consequently, in accordance with the cardinal rule of statutory construction, the latter provision of law should prevail over the former. In the section last mentioned, the taxes due the government or any branch or subdivision thereof occupy the fifth place in the order of payment; wherefore, the indebtedness of the estate of Diego de la Vina for income tax not being a necessary expense of administration, and the claim of the ex-administrator Dr. Jose Ma. de la Vina y de la Rosa being such necessary expense of administration, the latter has preference over the former.

The appellee denies that the first claim for P12,552 for special per diems partakes of the nature of necessary expenses of administration, for lack of allegation or proof to that effect. Section 680 of the Code of Civil Procedure already cited provides that "But in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed." There is no doubt that the estate of Diego de la Vina is large. The determination of whether the administration and liquidation thereof have been attended with great difficulty and have required a high degree of capacity on the part of the executor or administrator, rests in the sound discretion of the Court which took cognizance of the said estate. It not appearing that the lower court committed an abuse of discretion in granting a greater remuneration to the appellant, we do not feel warranted in interfering with the exercise of said discretion.

In view of the foregoing considerations, we are of the opinion and so hold: (1) that the income tax which an estate owes to the insular government for profits obtained in the sale of properties belonging to it, after the death of the testator, does not partake of the nature of necessary expenses of administration; (2) that the lien created by section 1588 of the Revised Administrative Code for internal revenue tax on properties subject to it, being general in character, yields to the preference established by section 735 of, the Code of Civil Procedure, as amended by Act No. 3960, in favor of the necessary expenses of administration of the estate of a deceased person; and, (3) that the claim of an administrator for the necessary expenses of administration enjoys preference over the claim for payment of income tax.

Wherefore, the remedy prayed for is granted, the appealed decision is reversed, and it is held that the claim of the appellant, Dr. Jose Ma. de la Vina y de la Rosa, as ex-administrator of the estate of the deceased Diego de la Vina, has preference over that of the Collector of Internal Revenue for income tax, without special pronouncement as to the costs. So ordered.

Diaz, Concepcion, and Moran, JJ., concur.

Avanceña and Laurel, JJ., concurs in the dissenting opinion of Justice Imperial.

Imperial, J., see dissenting opinion.

DISSENTING OPINION

IMPERIAL, J.:

This appeal has to do with the order of the Court of First Instance of Negros Oriental of October 6, 1937, rendered in Special Proceedings No. 7, entitled, Testate of the deceased Diego de la Vina, which directed the judicial administrator to pay preferentially out of any funds of the estate the sum of P18,420.93, with legal interest thereon from August 20, 1929, plus the costs, which the Collector of Internal Revenue claimed as income tax which the estate should pay on the profit which it obtained in the sale of certain property of the deceased; and after paying

said amount, to pay also the credit of Dr. Jose Ma. de la Vina y de la Rosa amounting to P19,342.93.

On April 8, 1920, the appellant Dr. Jose Ma. de la Vina was appointed special administrator of the estate of his deceased brother Diego de la Vina, Special Proceedings No. 7 of the Court of First Instance of Negros Oriental, and on the 20th of the same month he discharged the office of executor. In the decision rendered on January 23, 1926 in G. R. No. 23747 this Court held that Dr. Jose Ma. de la Vina was entitled to collect from the estate the following amounts:

Balance due in his favor as executor P1,165.86

Balance on his aparceria 7,528.64

Special per diem compensation 12,552.00

Legal commission 4,141.33

Total 25,387.83

On July 16, 1927 the Court ordered in the same proceedings that Dr. de la Vina be paid the amount of 146.025 piculs of sugar belonging to him, which amount, in money, he paid by way of expenses of administration of the estate. The price of the sugar was fixed at P20 per picul, the value thereof amounting to P2,925. Adding this amount to the credit approved in the decision rendered by this Court, the result is a total of P28,312.83. As Dr. de la Vina had been paid on account of his credit the sum of P9,228.65, a balance of P19,084.18 remained in his favor. On the other hand, on February 23, 1932 this Court rendered judgment in G. R. No. 33870, entitled *The Collector of Internal Revenue vs. Espiridion Villegas*, as administrator of the estate of Diego de la Vina, ordering the said administrator to pay the Insular Government, by way of income tax for the year 1925, the sum of P18,420.93, with legal interest from August 20, 1929 until fully paid, and the costs.

The government asked for immediate payment of its credit and as the estate did not have sufficient funds to meet all the credits admitted and allowed, Dr. de la Vina filed an opposition on the allegation that his credit is preferred to that of the Government because it represents expenses of administration. In the appealed order the Court held that the claim of the Government is preferred and should be paid before that of Dr. de la Vina. This appellant maintains in his brief that the Court erred: in holding that the tax sought to be recovered by the Government has preference over his claim and that it should be paid before the expenses of administration of the estate, such as his credit; in improperly applying article 1923 of the Civil Code, instead of section 735 of the Code of Civil Procedure; and in not holding that the preference of the credit of the Government has been abandoned and lost because of the time that has elapsed from 1925 to 1938, supposing that the said credit is really preferred.

To my mind the priority of the two credits depends upon the nature or concept which each has before the law. The appellant contends that his claim, for expenses of administration of the estate allowed and approved by the trial Court and by this Court, is preferred and should first be paid. The Government, in turn, argues that its credit, which consists in the tax due upon the profit which the estate obtained in the sale of one of its properties in 1925, is preferred not only because it has to do with a tax which constitutes a lien, but also because it partakes of the nature of administration expenses. As will be seen, independently of the lien relied upon by the Government, the first question to be decided is whether both credits should be considered as expenses of administration under the law.

It is admitted that the appellant's claim partakes of the nature of administration expenses, hence, it remains to find out whether the credit of the Government is of the same nature. Section 735 of the Code of Civil Procedure, as amended by Act No. 3960, reads:

"Sec. 735. Order of payment if estate insolvent.—If the assets which can be appropriated for the payment of debts are not sufficient for that purpose, the executor or administrator shall, after paying the necessary expenses of administration, pay the debts against the estate in the following order:

"1. The necessary funeral expenses;

"2. The expenses of the last sickness;

"3. What is owing to the laborer for salaries and wages earned and for indemnities due to him, for the last year;

"4. Debts due to the United States;

"5. Taxes and assessments due to the Government, or any branch or subdivision thereof;

"6. Debts due to the province;

"7. Debts due to other creditors."

Under this section, if the properties of a deceased person are insufficient to pay all his obligations, there shall be paid, in the first place, all the expenses of administration and thereafter his admitted indebtedness in the order therein mentioned. The said section, or any other section of the Code of Civil Procedure, does not define what is meant by expenses of administration; but in *Lizarraga Hermanos vs. Abada* (40 Phil., 124), it was said that by expense of administration should be understood the reasonable and necessary expense of caring for the property and managing it till the debts are paid, as provided by law, and of dividing it, if necessary, so as to partition and deliver it to the heirs. In this jurisdiction it has been invariably decided that the claims of the Government for income tax need not be filed with the committee on claim³ and should be paid directly by the executor or administrator out of the funds of the estate of the deceased (*Pineda vs. Court of First Instance of Tayabas*, 52 Phil., 803; *Government of the Philippine Islands vs. Pamintuan*, 55 Phil., 13; *Knowles vs. Government of the Philippine Islands*, 60 Phil., 461). And these claims need not be filed with the committee appointed by the Court because they partake of the nature of administration expenses. If they were ordinary credits against the estate of a deceased person, or debts of the latter, there is no doubt that they should be filed with and approved by the committee on claims. In the first of the cited cases it was held that income taxes due from a deceased person, assessed during his lifetime or after his death, are claims which need not be submitted to the committee and that they are proper and necessary expenses of administration of the estate of the deceased. In said case it was said:

"To reply to these contentions in turn, we observe that, while there are a few courts that have expressed themselves to the effect that a claim for taxes due to the Government should be presented like other claims to the committee appointed for the purpose of passing upon claims, the clear weight of judicial authority is to the effect that claims for taxes and assessments, whether assessed before or after the death of the decedent, are not required to be presented to the committee. (24 C. J., 325; *People v. Olvera*, 43 Cal., 492; *Hancock v. Whittemore*, 50 Cal., 522; *Findley v. Taylor*, 97 Iowa, 420; *Bogue v. Laughlin*, 149 Wis., 271; 40 L. R. A. [N. S.], 927; *Ann. Cas.* 1913 C., p. 1367.

"In the case before us the tax now claimed by the Government was not due until it was assessed; and this assessment was not made until after the individual against whom the tax was assessed had died. The claim therefore arose during the course of administration. The law imposes on the administrator of a deceased person the duty to pay taxes assessed against the property of the deceased; and as is well known, in case of insolvency, such taxes constitute a preferential claim in the distribution of assets over ordinary debts, under section 735 of the Code of Civil Procedure. In the case before us it is not suggested that the estate is insolvent, and there is therefore no danger of imperiling the payment of funeral expenses or expenses of last sickness by ordering the immediate payment of these taxes."

In the United States the same doctrine governs and incomes taxes have always been considered as expenses of

administration and not as debts of a deceased person which should be presented, for their approval, to the committee on claims. Thus in *People v. Olvera* (43 Cal., 492, 494), the Supreme Court of California said:

"Whatever may be the rule when taxes are assessed during the lifetime of the decedent—and we are not called upon to express any opinion in reference to it—it is clear that taxes assessed against the property of an estate, pending administration, and while it is in the possession and under the management and control of an administrator, are not 'claims' against the estate which must be presented, supported by an affidavit, and allowed or rejected, under the provisions of sections one hundred and thirty and one hundred and thirty-one of the Probate Act. The undivided property of the deceased persons may be listed to administrators, and the taxes assessed are charges upon the property, which should be paid as all necessary expenses in the care, management, and settlement of the estate are paid."

And in *Brown's Estate v. Hoge*, (199 N. W., 320, 323), the Supreme Court of Iowa said the following:

"We think the federal tax is a charge or expense for which the estate is liable. We think the lower court was right in holding that such tax was a part of the expense of administration and fell under said item 13 of the will.
* * *

"* * * The county court, in assessing the state inheritance tax on that property, refused to deduct the federal estate tax paid by the executor, amounting to P316,432.40. In this ruling the court erred. The federal estate tax is a charge or an expense against the estate of the decedent rather than against the shares of the legatees or the distributees, and as part of the expense of administration this tax should be deducted before computing the state inheritance tax."

And in *Corbin v. Townshend* (103 A., 647, 649; 92 Conn., 501), the Supreme Court of Connecticut said:

"The federal tax imposed by Revenue Act Sept. 8, 1916, c. 463, Sec. 201, 39 Stat. 777, as amended by Act Cong. March 3, 1917, c. 159, 39 Stat. 1000, on the transfer of the net estate of a decedent, being payable out of the estate before distribution, and inheritance taxes imposed by other states on the same basis, are expenses of administration, within Succession Act 1915, Sec. 5, providing for deduction of such expenses, to determine the net estate subject to the succession tax; any expense arising by operation of law which is a charge against or must be paid out of the estate being an administration expense."

It may perhaps be argued that if taxes and assessments owing to the Government or to any of its branches or offices were not debts against a decedent which should be filed with the committee on claims, section 735 would not have mentioned them as the fifth in the enumeration. The answer to this is that the taxes and assessments specified in the section are those which are not considered as administration expenses.

Considering what has already been decided by this Court in *Pineda vs. Court of First Instance of Tayabas*, *Knowles vs. Government of the Philippine Islands* and *Government of the Philippine Islands vs. Pamintuan*, supra, and the cited American precedents, I am of the opinion that the credit of the Government presented in this case partakes of the nature of necessary expenses of administration and as such enjoys preference; and under section 1588 of the Revised Administrative Code providing that an income tax creates a legal lien superior to any other, it should be paid before that of Dr. de la Vina.

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