

VALENTA ZABALLERO ET AL., PLAINTIFFS AND APPELLANTS, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G.R. No. 47080. June 27, 1940

Ponente: MORAN, J.

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MORAN, J.:

This is an action brought by the heirs and legatee of the deceased, Florentino Zaballero, against the Collector of Internal Revenue for the recovery of inheritance tax paid under protest. Both parties appealed from the judgment rendered by the trial court.

Florentino Zaballero died in Lucena, Tayabas, on May 18, 1932, leaving a will which was later admitted to probate. The probate proceedings were instituted on July 5, 1932, or within six months after the testator's death. Liquidation was made, and on May 29, 1935, a schedule of partition was presented, which was approved on August 8, 1935, or more than three years after the probate proceedings were instituted. On August 21, 1935, or within thirty days after the partition was approved, the administratrices, who were the two daughters of the deceased, filed an inheritance tax return with the Collector of Internal Revenue. This officer ruled that, as the administratrices failed to file the return within eighteen months following the commencement of the probate proceedings, they have violated subdivision (b) of section 1544 of the Administrative Code, as amended by section 3 of Act No. 3606. Accordingly, he assessed the tax and imposed penalties in the following manner:

Tax on the portion of Valenta Zaballero P2,996.66

Tax on the share of Teofila Zaballero 2,996.66

Tax on the share of legatee Ramon Lavarez 77.10 P6,070.42

Interests at 12 per cent per annum 1,220.15

Fine 10.00

Surcharge of 25 percent 1,517.61 2,747.76

Grand total 8,818.18

All this amount was paid under protest.

The heirs and the legatee brought this action on the following grounds: (1) that the interests, fine and surcharge were collected in violation of law, and (2) that the normal tax assessed is excessive, it having been computed on the basis of the assessed value of the property as of the decedent's death.

Section 1544 of the Administrative Code, as amended by section 3 of Act No. 3606, reads as follows:

"Sec. 1544. When return to be filed and tax to be paid.— In all cases of inheritance or transfers subject to tax, or

where though exempt from tax, the gross value of the estate exceeds three thousand pesos, the corresponding return shall be filed, and the corresponding tax paid as follows:

"(b) In other cases, within six months after the death of the predecessor, and the tax paid within twenty days after service of notice of assessment; but if judicial testamentary or intestate proceedings shall be instituted prior to the expiration of said period, the return must be filed by the executor or administrator within thirty days after the date of approval by the court of the schedule or partition and the tax paid within twenty days after service of assessment notice by the Collector of Internal Revenue. In cases where no schedule of partition is presented, or if presented, is not approved or acted upon by the Court of First Instance within a period of eighteen months from the filing of the action, the Collector of Internal Revenue shall assess the proper tax on the best evidence obtainable, file the return for the taxpayers, and demand payment of the taxes due from the executor or administrator within twenty days from the service of the notice of assessment. The difference between the tax assessed and paid and the amount found to be properly due as ascertained after the judicial proceedings are terminated shall be collected or refunded, as the case may be.

"If the tax is not paid within the time hereinbefore prescribed, there shall be added to the tax a surcharge of twenty-five per centum and an interest at the rate of twelve per centum per annum to be counted from the date of delinquency, or in case the return is not filed in due time, from the date when it should have been filed, until paid, both surcharge and interest to form a part of the tax."

This provision requires that, where no schedule of partition is presented within a period of eighteen months from the commencement of the proceedings, "the Collector of Internal Revenue shall assess the proper tax on the best evidence obtainable, file the return for the taxpayers, and demand payment of the taxes due from the executor or administrator within twenty days from the service of the notice of assessment." In the instant case, the Collector of Internal Revenue made no assessment of the tax, filed no return for the taxpayers, and made no demand for payment of the taxes thus assessed, and, therefore, no delay in payment can be attributed to the administrative. Section 25 of Regulations No. 45, as amended by section 5 of Regulations No. 65, of the Secretary of Finance, if construed to transfer the duty of filing the return from the Collector of Internal Revenue to the executor or administrator, would be against the law and would not accordingly be valid.

As regards the contention that the amount of taxes assessed by the Collector of Internal Revenue is excessive, because it is computed not on the lowest assessed value of the property as shown by the tax rolls, it is a well-settled rule that "the tax should be measured by the value of the estate as it stood at the time of the decedent's death, regardless of any subsequent contingency affecting value or any subsequent increase or decrease in value." (Lorenzo vs. Posadas, 35 Off. Gaz., 2393).

Judgment is affirmed, without costs in this instance.

Avanceña, C.J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Judgment affirmed.

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