

**ILDEFONSO O. ELEGADO, AS ANCILLARY ADMINISTRATOR OF THE
TESTATE ESTATE OF THE LATE WARREN TAYLOR GRAHAM,
PETITIONER, VS. HON. COURT OF TAX APPEALS AND
COMMISSIONER OF INTERNAL R...**

G.R. No. 68385. May 12, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

What the petitioner presents as a rather complicated problem is in reality a very simple question from the viewpoint of the Solicitor General. We agree with the latter. There is actually only one issue to be resolved in this action. That issue is whether or not the respondent Court of Tax Appeals erred in dismissing the petitioner's appeal on grounds of jurisdiction and lack of a cause of action.

Appeal from what? That indeed is the question.

But first the facts.

On March 14, 1976, Warren Taylor Graham, an American national formerly resident in the Philippines, died in Oregon, U.S.A.[1] As he left certain shares of stock in the Philippines, his son, Ward Graham, filed an estate tax return on September 16, 1976, with the Philippine Revenue Representative in San Francisco, U.S.A.[2]

On the basis of this return, the respondent Commissioner of Internal Revenue assessed the decedent's estate an estate tax in the amount of P96,509.35 on February 9, 1978.[3] This assessment was protested on March 7, 1978, by the law firm of Bump, Young and Walker on behalf of the estate.[4] The protest was denied by the Commissioner on July 7, 1978.[5] No further action was taken by the estate in pursuit of that protest.

Meanwhile, on January 18, 1977, the decedent's will had been admitted to probate in the Circuit Court of Oregon.[6] Ward Graham, the designated executor, then appointed Ildefonso Elegado, the herein petitioner, as his attorney-in-fact for the allowance of the will in the Philippines.[7]

Pursuant to such authority, the petitioner commenced probate proceedings in the Court of First Instance of Rizal.[8] The will was allowed on December 18, 1978, with the petitioner as ancillary administrator.[9] As such, he filed a second estate tax return with the Bureau of Internal Revenue on June 4, 1980.[10]

On the basis of this second return, the Commissioner imposed an assessment on the estate in the amount of P72,948.87.[11] This was protested on behalf of the estate by the Agrava, Lucero and Gineta Law Office on August 13, 1980.[12]

While this protest was pending, the Commissioner filed in the probate proceedings a motion for the allowance of the basic estate tax of P96,509.35 as assessed on February 9, 1978.[13] He said that this liability had not yet been paid although the assessment had long become final and executory.

The petitioner regarded this motion as an implied denial of the protest filed on August 13, 1980, against the second assessment of P72,948.87.[14] On this understanding, he filed on September 15, 1981, a petition for review with the Court of Tax Appeals challenging the said assessment.[15]

The Commissioner did not immediately answer (in fact, as the petitioner stressed, no answer was filed during a delay of 195 days) and in the end instead canceled the protested assessment in a letter to the decedent's estate dated March 31, 1982.[16] This cancellation was notified to the Court of Tax Appeals in a motion to dismiss on the ground that the protest had become moot and academic.[17]

The motion was granted and the petition dismissed on April 25, 1984.[18] The petitioner then came to this Court on certiorari under Rule 45 of the Rules of Court.

The petitioner raises three basic questions, to wit, (1) whether the shares of stocks left by the decedent should be treated as his exclusive, and not conjugal, property; (2) whether the said stocks should be assessed as of the time of the owner's death or six months thereafter; and (3) whether the appeal filed with the respondent court should be considered moot and academic.

We deal first with the third issue as it is decisive of this case.

In the letter to the decedent's estate dated March 31, 1982, the Commissioner of Internal Revenue wrote as follows:

Estate of WARREN T. GRAHAM c/o

Mr. ILDEFONSO O. ELEGADO

Ancillary Administrator

Philex Building cor. Brixton &

Fairlane Sts.

Pasig, Metro Manila

S i r :

This is with regard to the estate of the late WARREN TAYLOR GRAHAM, who died a resident of Oregon, U.S.A. on March 14, 1976. It appears that two (2) letters of demand were issued by this Bureau. One is for the amount of P96,509.35 based on the first return filed, and the other in the amount of P72,948.87, based on the second return filed.

It appears that the first assessment of P96,509.35 was issued on February 9, 1978 on the basis of the estate tax return filed on September 16, 1976. The said assessment was, however, protested in a letter dated March 7, 1978 but was denied on July 7, 1978. Since no appeal was made within the regulatory period, the same has become final.

In view thereof, it is requested that you settle the aforesaid assessment for P96,509.35 within fifteen (15) days upon receipt hereof to the Receivable Accounts Division, this Bureau, BIR National Office Building, Diliman, Quezon City. The assessment for P72,949.57 dated July 3, 1980, referred to above is hereby cancelled.

Very truly yours,

(SGD.) RUBEN B. ANCHETA

Acting Commissioner[19]

It is obvious from the express cancellation of the second assessment for P72,948.87 that the petitioner had been deprived of a cause of action as it was precisely from this assessment that he was appealing.

In its decision, the Court of Tax Appeals said that the petition questioning the assessment of July 3, 1980, was "premature" since the protest to the assessment had not yet been resolved.[20] As a matter of fact it had: the said assessment had been canceled by virtue of the above-quoted letter. The respondent court was on surer ground, however, when it followed with the finding that the said cancellation had rendered the petition moot and academic. There was really no more assessment to review.

The petitioner argues that the issuance of the second assessment on July 3, 1980, had the effect of canceling the first assessment of February 9, 1978, and that the subsequent cancellation of the second assessment did not have the effect of automatically reviving the first. Moreover, the first assessment is not binding on him because it was based on a return filed by foreign lawyers who had no knowledge of our tax laws or access to the Court of Tax Appeals.

The petitioner is clutching at straws.

It is noted that in the letter of July 3, 1980, imposing the second assessment of P72,948.87, the Commissioner made it clear that "the aforesaid amount is considered provisional only based on the estate tax return filed subject to investigation by this Office for final determination of the correct estate tax due from the estate. Any amount that may be found due after said investigation will be assessed and collected later." [21] It is illogical to suggest that a provisional assessment can supersede an earlier assessment which had clearly become final and executory.

The second contention is no less flimsy. The petitioner cannot be serious when he argues that the first assessment was invalid because the foreign lawyers who filed the return on which it was based were not familiar with our tax laws and procedure. Is the petitioner suggesting that they are excused from compliance therewith because of their ignorance?

If our own lawyers and taxpayers cannot claim a similar preference because they are not allowed to claim a like ignorance, it stands to reason that foreigners cannot be any less bound by our own laws in our own country. A more obvious and shallow discrimination than that suggested by the petitioner is indeed difficult to find.

But the most compelling consideration in this case is the fact that the first assessment is already final and executory and can no longer be questioned at this late hour. The assessment was made on February 9, 1978. It was protested on March 7, 1978. The protest was denied on July 7, 1978. As no further action was taken thereon by the decedent's estate, there is no question that the assessment has become final and executory.

In fact, the law firm that had lodged the protest appears to have accepted its denial. In his motion with the probate court, the respondent Commissioner stressed that "in a letter dated January 29, 1980, the Estate of Warren Taylor Graham thru the aforesaid foreign law firm informed claimant that they have paid said tax liability thru the Agrava, Velarde, Lucero and Puno, Philippine law firm of 313 Buendia Avenue Ext., Makati, Metro Manila that initiated the instant ancillary proceedings" although he added that such payment had not yet been received.[22] This letter was an acknowledgment by the estate of the validity and finality of the first assessment. Significantly, it has not been denied by the petitioner.

In view of the finality of the first assessment, the petitioner cannot now raise the question of its validity before this Court any more than he could have done so before the Court of Tax Appeals. What the estate of the decedent should have done earlier, following the denial of its protest on July 7, 1978, was to appeal to the Court of Tax Appeals within the reglementary period of 30 days after it received notice of said denial. It was in such appeal that the petitioner could then have raised the first two issues he now raises without basis in the present petition.

The question of whether or not the shares of stock left by the decedent should be considered conjugal property or belonging to him alone is immaterial in these proceedings. So too is the time at which the assessment of these shares of stock should have been made by the BIR. These questions were not resolved by the Court of Tax Appeals because it had no jurisdiction to act on the petitioner's appeal from an assessment that had already been canceled. The assessment being no longer controversial or reviewable, there was no justification for the respondent court to rule on the petition except to dismiss it.

If indeed the Commissioner of Internal Revenue committed an error in the computation of the estate tax, as the petitioner insists, that error can no longer be rectified because the original assessment has long become final and executory. If that assessment was not challenged on time and in accordance with the prescribed procedure, that error - for error it was - was committed not by the respondents but by the decedent's estate itself which the petitioner represents. So how can he now complain?

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

Gancayco, J., on leave.

[1] Rollo, p. 9.

[2] Ibid., p. 40

[3] Id.

[4] Id.

[5] Id.

[6] Id., p. 65.

[7] Id., pp. 65-66.

[8] Id., p. 66; Sp. Proc. No. 8869.

[9] Id.

[10] Id.

[11] Id., p. 67.

[12] Id., p. 68.

[13] Id., pp. 47-50.

[14] Id., p. 69.

[15] Id., p. 50.

[16] Appendix B, Rollo, p. 35.

[17] Rollo, p. 50.

[18] Decision, penned by Judge Alex Z. Reyes, with Presiding Judge Amante Filler and Judge Constante C. Roaquin, concurring.

[19] Appendix B, Rollo, p. 35.

[20] Rollo, pp. 53-54.

[21] Ibid., p. 11.

[22] Id., p. 49.

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