

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ILDEFONSO TIERRA, DEFENDANT AND APPELLANT.

G.R. Nos. 17177-80. December 28, 1964

Ponente: BENGZON, C. J.

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BENGZON, C. J.:

From the judgment of the Manila court of first instance finding him guilty of violations of the income tax law, Ildefonso Tierra brought this appeal to the Court of Appeals. However, it is now before us upon certification of said appellate court that it merely raises questions of law.

Four separate informations were filed against this defendant on December 12, 1955. The first information alleged:

"That on or about the first day of March, 1947, in the City of Manila, Philippines, the said accused, having a net income of P93,886.55 for the year ending December 31, 1946, willfully, unlawfully and feloniously filed a false and fraudulent income tax return for the said year by stating therein that he had only an income of P19,196.14 for the year 1946, and with deliberate intent did then and there willfully, unlawfully and feloniously refuse and still refuses to pay the Government of the Republic of the Philippines, the deficiency income tax in the sum of P30,632.51, x x x notwithstanding the repeated demands x x x."

The second information, substantially worded as the first, accused Tierra of having filed in March, 1948, a false and fraudulent return by making it appear that his net income for 1947 was P65,225.41 when, in truth, he actually earned a net income of P621,072.80.

The third information charged him with having filed in March, 1950, in his capacity as president of a corporation named "Ildefonso Tierra & Sons, Inc.", a false and fraudulent income tax return for said corporation by making it appear that the corporation had earned in 1949, a net income of P24,833.47 when as a matter of fact, its true net income for that year was P359,310.18, and that he refused and still refuses to pay the corresponding deficiency income tax.

The fourth information charge appellant, in his own personal capacity and as president of the "Ildefonso Tierra & Sons, Inc.", with the offense of failing to keep and to preserve his own books of account and those of the corporation, for a period of at least five years from the date of the last entry in each book, as required by section 337 of the National Internal Revenue Code.

The four cases were jointly tried by agreement between the prosecution and the accused, who conducted his own defense.

After trial, the Manila court found the accused guilty as charged, and sentenced him as follows:

"In Criminal Case No. 33595, the accused shall pay a fine of two thousand pesos (P2,000.00) and suffer imprisonment of four (4) months. He shall also indemnify the Republic of the Philippines in the sum of P30,632.51 and pay the costs.

"In Criminal Case No. 33596, the accused shall pay a fine of two thousand pesos (P2,000.00) and suffer

imprisonment of four (4) months, pay the costs and indemnify the Republic of the Philippines in the sum of P376,303.16.

"In Criminal Case No. 33597, the accused shall pay a fine of two thousand pesos (P2,000.00) suffer imprisonment of four (4) months, pay the costs and indemnify the Republic of the Philippines in the sum of P60,205.80.

"In Criminal Case No. 33598, the accused shall pay a fine of three hundred pesos (P300.00), suffer imprisonment of six (6) months and pay the costs."

Defendant appealed the judgment to the Court of Appeals and filed a "Motion for Dismissal" which, with his assent, was considered as his appeal brief. As already stated, the Court of Appeals elevated the record to this Court, because it raises questions of law only.

Statements of Facts:

The facts of the case are not much disputed. It was established that appellant was, during the years 1946 up 1949, engaged in the general merchandise business, including the buying and selling of school and office supplies. For the years 1946, 1947 and 1949, he filed his income tax returns, declaring in full all his gross sales, and paid income taxes due thereon in the respective sums of P2,557.54, P13,097.63 and P2,980.00.

Said returns were later verified by Valeriano Robles, an income tax examiner of the Bureau of Internal Revenue. And on December 16, 1950, examiner Robles reported his finding, that appellant had filed false and fraudulent returns for said years by overstating his purchases for 1946, 1947 and 1949, and overdeclaring his expenses for 1947, thereby reducing the net income subject to tax.

During the investigation, the appellant could not produce to examiner Robles, all the pertinent vouchers, sales invoices and other accounting records for the purpose of verifying the correctness of the returns. In view of the inability of the appellant to produce said books and records, examiner Robles resorted to the so-called "percentage basis" of computing net income. Under this method, net income was computed by the use of an average percentage method based on the returns of taxpayers engaged in the same line of business.

On the basis of the reports of examiner Robles, the Collector of Internal Revenue made a formal demand dated December 23, 1950, on the accused for the payment of his deficiency income taxes for 1946, 1947 and 1949, including surcharges thereon, in the respective sums of P30,632.51, P376,303.16, and P60,205.80, and asked him to show cause why he should not be prosecuted for his failure to preserve his books of accounts, vouchers and invoices for a period of five years from the date of the last entry therein. The Collector found that the income tax returns should have stated that his income was P93,886.55, P621,072.80 and P359,310.18 for years 1946, 1947 and 1949. On December 29, 1950, Income Tax Assessment Notices were sent to the appellant, giving him up to January 29, 1951 to pay the aforementioned deficiency income taxes plus surcharges. Appellant protested against the assessments. On February 26, 1951, the Collector of Internal Revenue reiterated the demand for payment by the appellant. Up to now, nothing was paid by the appellant on account of the above claims of the government.

The Issues: Appellant urges in his appeal the following propositions:

- The informations are void because they do not state any offense.
- The actions against appellant had already prescribed when the informations were filed.
- The criminal liability of the accused, if any, in the first three informations (L-17177-9) has been extinguished by reason of the extinguishment of his civil-liability to pay taxes.

- Section 51 (d) of the National Internal Revenue Code upon which the informations in the first three cases were based, has already been repealed, and therefore, he can no longer be prosecuted for its violation.

Discussion: Appellant urges at some length, that each of the informations in the above-entitled case, is fatally defective because it did not recite with definite particularity that he belongs to that class of persons to whom the statutory provisions violated are specially applicable. Thus, he argues, the first two informations failed to allege that he was a Filipino citizen or resident, that he is of lawful age, that he has a gross income of P1,800.00 or over, or that he is a non-resident, etc. The same objection he raises with respect to the third and fourth informations.

This objection merits no serious consideration. The information alleged the income. Age and residence or citizenship were not necessary to allege, the defendant having submitted his return of income, which implied he was bound to make it.

It is next contended that the right of the government to prosecute these actions has prescribed, since more than five years had elapsed from the alleged dates of commission of the offenses charged.

Again appellant's contention has no merit, Section 354 of the National Internal Revenue Code provides:

"All violations of any provision of this Code shall prescribe after five years.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. x x x."

Evidence was adduced to show, and the trial court so found, that the falsity of the returns filed by the appellant and his failure to preserve his books of accounts for at least five years from the date of the last entry in each book were all discovered only on December 16, 1950. Since the informations were filed on December 12, 1955, the trial court correctly ruled that the actions were well within the five-year period of limitation.

Appellant argues, however, that since the informations make no allegation that the offenses were not known at the time of the commission as to bring them within the exception to the statute of limitations, then the informations were necessarily defective for that reason, and this fatal defect cannot be cured by the introduction of evidence. Prescription is a matter of defense and the information does not need to anticipate and meet it. The defendant could, at most, object to the introduction of evidence to defeat his claim of prescription; but he did not. Anyway, the law says that prescription begins to run from x x x "the institution of judicial proceedings for its x x x punishment" (See above Sec. 354 cited).

In the third issue he raises, appellant contends that his criminal liability in the first three informations (L-17177-9) has been extinguished because of the failure, of the government to take any timely action, judicial or administrative, to collect his income tax liabilities, and because of this failure, the right of the government to collect the taxes was lost by prescription in accordance with section 332 of the National Internal Revenue Code. On the premise that his criminal liability arose from his failure to satisfy this civil liability, appellant argues that the extinguishment of this civil liability by prescription ipso facto extinguished any criminal action based thereon.

We can not uphold appellant's view. The filing of a false and fraudulent income tax return and the failure to pay the tax necessarily makes the delinquent taxpayer amenable to the penal provisions of Section 73 of the Code. Any subsequent satisfaction of the tax liability, by payment or prescription, will not operate to extinguish such criminal liability, since the duty to pay the tax is imposed by statute independent of any attempt on the part of the taxpayer to evade payment. Whether under the National Internal Revenue Code or under the Revised Penal Code, the satisfaction of civil liability is not one of the grounds for the extinction of criminal action. The failure of the government, therefore, to enforce by appropriate civil remedies the collection of the taxes, does not detract from

its right criminally to prosecute violations of the Code. The criminal actions subsist so long as there are no legal grounds that would bar their prosecution.

However, although appellant does not specifically assign this as error, we hold that the lower court erred in sentencing him in the first three cases to indemnify the government for the amounts of deficiency taxes plus surcharges which he failed to pay. This question was already laid at rest in the case of *People vs. Arnault* (92 Phil., 252; 48 Off. Gaz. 4805) wherein we held that there is no legal sanction for the imposition of payment of the civil indemnity to the government in a criminal proceeding for violation of the income tax laws. We said in that case:

"x x x While section 73 of the National Internal Revenue Code provides for the imposition of the penalty for refusal or neglect to pay income tax or to make a return thereof, "by imprisonment or fine, or both, it fails to provide for the collection of said tax in criminal proceedings. As well contented by counsel for appellant, Chapters I and II of Title IX of the National Internal Revenue Code provides only for civil remedies for the collection of the income tax and under section 316, the civil remedy is either by distraint of goods, chattels, etc., or by judicial action. It is commonly accepted principle of law that the method prescribed by statute for the collection of taxes is generally exclusive, and unless a contrary intent be gathered from the statute, it should be followed strictly." (3 Cooley, Law on Taxation, Section 1326, pp. 621-623)

Finally, appellant argues that section 51 (d) of the National Internal Revenue Code upon which the informations in the first three cases were based, had already been repealed by Republic Act No. 2343 which took effect on June 20, 1959, and that therefore, he can no longer be prosecuted and convicted for offenses based thereon. Prior to the present amendment, section 51 (d) provided:

"Refusal or neglect to make returns; fraudulent returns, etc.-In cases of refusal or neglect to make a return and in cases of erroneous, false or fraudulent returns, 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 code or by existing law or require the necessary corrections to be made and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assesment."

It is not now necessary to discuss the effect of the suppression of this provision by virtue of Republic Act No. 2343. Suffice it to say that the accused is charged not only for failure to pay deficiency taxes as assessed under section 51 (d) of the Revenue Code prior to its amendment, but also under sections 45 and 46 in relation to section 73 for filing false and fraudulent returns. Even without alleging a violation of section 51 (d), the indictments can still stand.

IN VIEW OF THE FOREGOING, and there being no assertion of error in the penalty imposed, the decision appealed from is hereby affirmed, with this modification: the portions regarding payment of monetary indemnity in favor of the Government are eliminated. With costs.

Bautista Angelo, Concepcion, Reyes, J. B. L. Barrera, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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