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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

August 15, 1960

CARLOS LEDESMA, JULIETA LEDESMA, VICENTE GUSTILO, JR. and AMPARO LEDESMA DE GUSTILO,
Petitioners,

- versus -

C.T.A. CASE NO. 226

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

DECISION

The respondent assessed against the Hacienda Fortuna the sum of ₱23,704.22 as income tax, including penalties, corresponding to the year 1949. As admitted by the parties, the assessment was made on March 22, 1950. The assessment was made on the basis of the finding of respondent that the Hacienda Fortuna was an unregistered general copartnership composed of the petitioners as the unregistered copartners, and therefore taxable as a corporation under Section 24 of the National Internal Revenue Code, in relation to Section 84(b), which defines "corporation" as including "partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations or insurance companies, but does not include duly registered general copartnerships (compañías colectivas)."

Petitioners contested the assessment, but it was only on December 20, 1955 when respondent finally decided the case upholding the assessment. On January 3, 1956, petitioners instituted the present appeal to review the decision of respondent. Before the filing of the appeal with this Court, respondent had already filed on March 22, 1955 an action with the Court of First Instance of Negros Occidental in Civil Case No. 3373 for collection of the disputed assessment, which case was still pending in said court when petitioners filed their appeal with this Court. Upon motion of respondent, this Court issued a resolution on July 31, 1956 dismissing the petition for review on the following grounds:

> "The said Court of First Instance having acquired jurisdiction over the assessment in controversy prior to the institution of this case, we therefore believe that such fact has deprived this Court of the right to entertain the present petition for review covering the same cause of action, for a judgment in Civil Case No. 3373 would constitute res adjudicata between the parties."

Petitioners instituted in the Supreme Court mandamus proceedings to compel this Court to proceed with the determination of their petition for review and to annul our resolution of July 31, 1956 dismissing said petition. The Supreme Court, in G. R. No. L-11343, January 29, 1958, set aside this Court's resolution of July 31, 1956, and directed it to proceed with the determination of this appeal. In setting aside our resolution, the Supreme Court expressed the opinion that this Court has exclusive jurisdiction over disputed assessments to the exclusion of the Courts of First Instance. Subsequently, the Court of First Instance of Negros Occidental dismissed Civil Case No. 3373.

Before trial, petitioners filed a supplemental petition for review alleging, as an additional ground for appeal, that the right of respondent to collect the tax assessed against the Hacienda Fortuna has already prescribed.

In the course of the trial, the parties submitted a stipulation of facts, pertinent portions of which are quoted below:

> "1. That on July 9, 1948, the petitioners purchased from their parents, Julio Ledesma (now deceased) and Florentina de Ledesma, the 'Hacienda Fortuna', consisting of 36 parcels of land, situated in the municipality of San Carlos, Negros Occidental, containing an aggregate area of 1,202 hectares, more or less, and with a sugar quota of 79,211.17 piculs which had been included in that purchase.
>
> "2. That under the said purchase, the petitioner Carlos Ledesma acquired one-third of said hacienda, pro-indiviso, for the price of ₱145,043.00, payable in ten equal annual amortizations of ₱14,504.30 plus interest at 6% per annum; the petitioner Julieta Ledesma acquired another one-third of the hacienda, pro-indiviso, for the same price and under the same terms of payment; and the petitioners Vicente Gustilo, Jr. and Amparo Ledesma de Gustilo acquired the remaining one-third of said hacienda, pro-indiviso, for the same price and under the same terms of payment.
>
> "3. That at the time of said purchase, for several years prior thereto, and continuously up to the present time, the 'Hacienda Fortuna' has been devoted principally to sugar-cane farming for the production of sugar.
>
> "4. That by virtue of said purchase, the petitioners took over the sugar-cane farming on 'Hacienda Fortuna' beginning

with the sugar crop year 1948-1949.

"5. That the sugar quota of 79,211.17 picuIs of the 'Hacienda Fortuna' was, prior to said purchase, registered in the name of the sellers under Plantation Audit No. 38-101 of the district of San Carlos Milling Co., Ltd., San Carlos, Negros Occidental; that by virtue of said purchase, the said Plantation Audit No. 38-101 was cancelled, and beginning the sugar crop year 1948-1949, the said sugar quota of 79,211.17 piculs was transferred to and registered in the names of the petitioners, separately, as follows: - one-third to petitioners Vicente Gustilo, Jr. and Amparo Ledesma de Gustilo, under Plantation Audit No. 38-246; one-third to petitioner Carlos Ledesma, under Plantation Audit No. 38-247; and the remaining one-third to petitioner Julieta Ledesma, under Plantation Audit No. 38-248, of the said district.

"6. That the gross sugar production from 'Hacienda Fortuna' for the sugar crop year 1948-1949 at the San Carlos Milling Co., Ltd. was credited by the latter to the petitioners individually as follows:

(a) Gross Production-

Amparo Ledesma & Vicente Gustilo, Jr.	21,308.30 piculs
Carlos Ledesma	21,308.30 piculs
Julieta Ledesma	21,308.30 piculs
Total ---	63,924.90 piculs

(b) Planters' Share-

Amparo Ledesma & Vicente Gustilo, Jr.	13,317.70 piculs
Carlos Ledesma	13,317.70 piculs
Julieta Ledesma	13,317.70 piculs
Total ---	39,953.10 piculs

as shown in the letter, dated December 2, 1955, of the Manager of the San Carlos Milling Co., Ltd., a copy of which is hereto attached as Annex 'A' of this Stipulation; and the petitioners also shared equally in the corresponding expenses of production.

"7. That separate 'quedans' were issued by the said San Carlos Milling Co., Ltd. to petitioners Vicente Gustilo, Jr. and Amparo Ledesma de Gustilo, for their share of the sugar produced under said Plantation Audit No.

38-246; and to petitioner Julieta Ledesma, for her share of the sugar produced under said Plantation Audit No. 38-248. Such sugar production is that referred to in paragraph 6 hereof.

"An analysis of the quedans issued to each of the petitioners for the crop year 1948-1949, compiled by the San Carlos Milling Co., Ltd., is hereto attached as Annex 'B' hereof.

"8. That the petitioners have included in their individual income tax returns for the year 1949 their respective net profit derived from their individual sugar production stated in paragraph 6 hereof from 'Hacienda Fortuna'.

"9. That on July 11, 1949, the petitioners formed among themselves a general co-partnership, under the firm name, 'Hacienda Fortuna - Carlos, Julieta, Vicente, Jr., and Amparo', for the exploitation of 'Hacienda Fortuna'.

"A copy of the Articles of General Co-Partnership is hereto attached as Annex 'C' hereof.

"10. That the said Articles of General Co-Partnership were duly registered on July 14, 1949 in the Commercial Register of the Office of the Register of Deeds for Bacolod City.

"11. That under date of March 22, 1950, the respondent assessed upon 'Hacienda Fortuna' itself an income tax for the year ending December 31, 1949 in the amount of ₱23,704.22, as per assessment Notice No. A-18-301-49.

"12. That the said sum of ₱23,708.22 was computed by the respondent on the basis of the total net profit derived from 'Hacienda Fortuna' during the entire calendar year 1949.

"13. That subsequently, by a letter dated March 12, 1955, the respondent instructed the Provincial Revenue Agent of Negros Occidental to investigate the income of 'Hacienda Fortuna' for the period from January 1, 1949 to July 13, 1949, being the portion of the year 1949 which was prior to the registration of said Articles of General Co-Partnership on July 14, 1949; that after such investigation, the said Provincial Revenue Agent submitted his Examiner's Report, dated April 30, 1955, as follows:

'Sugar Sales - January 1 to July 13, 1949 ----------------	₱ 484,017.20
Molasses Sales - January 1 to July 13, 1949 ----------------	21,030.40
Total Sales ----	₱ 505,047.60
LESS: Total expenses as per work sheet ----	₱ 373,570.40
Net profit for the period -------------	₱ 131,477.20
Income tax due on ₱131,477.20 at 12% ----	₱ 15,777.26

The above findings does not represent additional income tax due but proportionate income tax due for the period or a part only of the ₱23,704.22 as per original return for 1949 covering transactions for the crop year 1948-1949.'

"A copy of said Examiner's Report is hereto attached as Annex 'D' hereof.

"14. That the petitioners and the respondent hereby accept the correctness of the figures in the said Examiner's Report, as reproduced above; that however, the petitioners deny liability for the above-stated sum of ₱15,777.26 as income tax allegedly due on the 'Hacienda Fortuna' itself.

"15. That the facts alleged in the Supplemental Petition for Review, which are admitted in respondent's Answer thereto, are made a part of this stipulation of facts." (See pars. 1-15, pp.182-186, CTA records.)

Briefly, the material facts may be summarized as follows: Petitioners bought from their parents on July 9, 1948, the Hacienda Fortuna, petitioners acquiring undivided shares in said hacienda. On July 11, 1949, petitioners organized a general copartnership, under the firm name "Hacienda Fortuna - Carlos, Julieta, Vicente, Jr., and Amparo", for the exploitation of said hacienda. The Articles of General Co-partnership executed on July 11, 1949 was registered on July 14, 1949 in the Commercial Register of the Office of the Register of Deeds for Bacolod City. The parties agree that the income tax due on the net income of the partnership from January 1 to July 13, 1949, before registration of the articles of copartnership, is ₱15,777.26, and not ₱23,704.22, respondent thus agreeing to the revision of the original assessment. The assessment was made by respondent on March 22, 1950, and the action instituted by respondent in the Court of First Instance of Negros Occidental in Civil Case No. 3373 was filed on March 22, 1955, exactly five years from the date of assessment. The petition for review in this case was filed with this Court on January 3, 1956, within the 30-day period for filing appeals from the decisions of the Commissioner of Internal Revenue.

Two issues have been raised in this appeal: (1) whether or not the right of the Government to collect the income tax against the Hacienda Fortuna, as an unregistered general copartnership, for the year 1949 has prescribed; and (2) whether or not the income tax in question was validly assessed against the Hacienda Fortuna.

On the first issue, it is contended on behalf of petitioners that the right of the Government to collect the income tax assessed against the Hacienda Fortuna has already prescribed, pursuant to Section

332 of the Revenue Code which provides that after an internal revenue tax has been assessed within the period prescribed by law, the same may be collected by a proceeding in court only if such proceeding is begun within five years after the assessment. In this case, the assessment was made on March 22, 1950. Although an action was instituted by the Government in the Court of First Instance of Negros Occidental on March 22, 1955 for the collection of the assessment, which was the last day of the five-year period within which judicial proceeding could be instituted, the said case was dismissed by order of said court on July 12, 1958, following the decision of the Supreme Court in Ledesma v. Court of Tax Appeals, G. R. No. L-11343, January 29, 1958. It is then concluded that since the action instituted by the Government was dismissed on the ground that it "was not a valid judicial action for the collection of the alleged income tax x x x the situation is the same as if the said action had never been filed." (Page 8, Memorandum for Petitioners.) The judicial action, according to petitioners, which must be considered in the computation of the five-year period prescribed in Section 332(c) of the Revenue Code is the petition for review filed by them with this Court on January 3, 1956, which is clearly beyond the five-year period from the date of assessment on March 22, 1950. If this conclusion is correct, the right of the Government to collect the tax in question has prescribed,

and by virtue of Section 14 of Republic Act No. 1125, the decision of respondent must have to be reversed.

That the action instituted by the Government in the Court of First Instance of Negros Occidental on March 22, 1955 is null and void and of no legal effect, is deducible, according to petitioners, from the following opinion in Ledesma v. Court of Tax Appeals, supra:

> "After the creation of the Court of Tax Appeals, we see no reason or occasion for the Collector to enforce his assessments by means of civil action before the Courts of First Instance. In the first place, as already stated, said actions take a relatively long time to determine. In the second place, there is no need for enforcing his tax assessment in that manner because his ruling or decision is enforceable against the taxpayer, unless the latter appeals therefrom, and even when appealed, there is an assurance that the Tax Court without loss of time, would decide the appeal. Besides, the Government and the Collector will suffer no loss or prejudice by the appeal, for the reason that said appeal will not 'suspend the payment, levy, distraint and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law'. (Par. 2, Sec. 11, Republic Act No. 1125). Moreover, we must bear in mind that the taxpayer and businessman is as much interested as the Collector in the early and final determination of his tax assessment, so that he would know as soon as possible how much he is liable to pay as taxes, which information is necessary for the proper operation of his business. To allow the filing of ordinary civil cases in the ordinary courts to enforce rulings of the Collector on assessments, would rob Republic Act No. 1125, creating the Court of Tax Appeals, of its principal objectives, namely, of the expeditious determination of disputed tax assessments, and also deprive the taxpayer of the remedy of appeal from the Collector's rulings and decisions to the Tax Court which is in a position to determine and finally decide said tax assessments in the shortest time possible."

We will not dispute the soundness of the opinion quoted above. It is to be noted, however, that the statement that there appears to be "no reason or occasion for the Collector to enforce his assessments by means of civil action before the Courts of First Instance" was based on the ground, among others, that "the Government and the Collector will suffer no loss or prejudice by the appeal, for the reason that said appeal will not 'suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law.'" Therefore, if the Government would be prejudiced by not allowing it to file an action in the Court of First Instance for collection of an internal revenue tax, said opinion would not apply.

The opinion quoted above apparently overlooked the fact that in cases involving assessments of income tax, the Government lost its right to enforce collection of the tax by distraint or levy after the lapse of three years from the time the return was filed or was due, pursuant to Section 51(d) of the Revenue Code.[1] The only remedy available to the Collector (now Commissioner) of Internal Revenue was to institute the corresponding civil action. Said the Supreme Court:

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[1] Section 51(d) of the Revenue Code was repealed by Rep. Act No. 2343, which became effective on June 20, 1959.

"As may be seen, the aforequoted provision prohibits the use of the extrajudicial methods of distraint and levy for the collection of income taxes after the lapse of 3 years from the time the return has been filed or is due. x x x. There is no question that the warrants of distraint and levy were issued by respondent on September 27, 1952, and as computations will show that said warrants of distraint and levy were issued after 3 years, 6 months and 26 days from March 1, 1949, the date when the last income tax return for 1948 should have been submitted, the Collector of Internal Revenue was divested of the right to effect collection of petitioner's income tax liabilities by administrative methods and the only recourse left to him for said purpose was to institute the corresponding civil action (Collector of Internal Revenue vs. Avelino et al., G. R. No. L-9202, promulgated November 19, 1956; Collector of Internal Revenue vs. Aurelio P. Reyes et al., G. R. No. L-8685, promulgated January 31, 1957; and Collector of Internal Revenue vs. Zulueta et al., G. R. No. L-8840, promulgated February 8, 1957)." (Santiago Sambrano v. Court of Tax Appeals, G. R. No. L-8652, March 30, 1957; emphasis supplied.)

The "corresponding civil action" referred to in the above quotation from the Sambrano case, which is the only recourse left to the Collector of Internal Revenue in cases involving income tax, after the lapse of three years from the date the return was filed or was due, can only refer to an action filed in the proper Court of First Instance because the Government can not institute such action in the Court of Tax Appeals. (See Sections 7 and 11 of Republic Act No. 1125.) The present case instituted by petitioners in this Court involves an assessment of income tax. Therefore, if the Government had not filed an action in the Court of First Instance of Negros Occidental in Civil Case No. 3373 on March 22, 1955, the last day of the five-year period prescribed in Section 332(c) of the Revenue Code, the right of the Government to collect the tax would have been totally lost. In such case, there can be no doubt that the Government would have been unduly prejudiced. We are not inclined to assume that the Supreme Court intended such a result. It may be argued that the decision in the Sambrano case was promulgated on March 30, 1957, while the case of Ledesma v. Court of Tax Appeals was promulgated on January 29, 1958, so that the opinion in the former case has lost much of its force and validity. But the opinion in the Sambrano case was reiterated in later cases, among which are: Adriano Chua Joy v. Collector of Internal Revenue, G. R. No. L-10961, February 28, 1958; Collector of Internal Revenue v. Querol, G. R. No. L-11456, April 28, 1958; Collector of Internal Revenue v. Solano, G. R. No. L-11475, July 31, 1958; and Alhambra v. Collector of Internal Revenue, G. R. Nos. L-12026 & L-12131, May 29, 1959.

Since in this case the only remedy ofthe Government as of March 22, 1955 was to institute an action in the Court of First Instance of Negros Occidental in Civil Case No. 3373, the filing of said action on said date suspended the running of the statute of limitation upon the right of the Government to enforce collection of the tax by judicial action. That said Civil Case No. 3373 was subsequently dismissed because this Court was directed by the Supreme Court to proceed with the determination of the appeal of petitioners, on the ground that proceedings in this Court are more expeditious, does not affect the suspension of the prescriptive period.]

At any rate, even conceding the correctness of the proposition advanced by petitioners that after an assessment has been made and the taxpayer disputes the assessment, the Government is prohibited from instituting judicial action for collection of an internal revenue tax during the entire period allowed by law within which the taxpayer may appeal to this Court, which in this case covers the period from March 22, 1955 to January 3, 1956, still the right of the Government to collect the tax has not prescribed. Section 333 provides:

> "SEC. 333. Suspension of running of statute.- The running of the statute of limitations provided in section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and for sixty days thereafter."

If, as contended by petitioners, the Government was prohibited from instituting judicial action to enforce collection of the assessment in question from March 22, 1955 to January 3, 1956, the running of the five-year prescriptive period was suspended during that period, pursuant to Section 333 of the Revenue Code.

As judicial action was instituted by petitioners themselves on January 3, 1956, the contention that the right of the Government to collect the tax has prescribed is without merit.

We now come to the second issue relating to the validity of the assessment. The position of respondent is that from January 1 to July 13, 1949, the Hacienda Fortuna was an unregistered general co-copartnership taxable as a corporation under Section 24 of the Revenue Code, and from January 14, 1949, the date the Articles of General Copartnership was registered, to the end of that year, the partnership was exempt under Section 26 of the same Code. As revised, the income tax assessed against the Hacienda Fortuna is ₱15,777.26. Petitioners admit the correctness of this amount, if the legality of the assessment is sustained. However, it is the contention of petitioners that no partnership existed prior to the formal organization of the partnership on July 11, 1949; they were merely co-owners of the Hacienda Fortuna. And assuming that a general partnership existed, the registration of the Articles of General Copartnership on July 14, 1949 operated to exempt said partnership from income tax for the entire year ending December 31, 1949, and not only from the date of registration.

Although petitioners acquired undivided shares in the Hacienda Fortuna, from the evidence of record it appears to us that the intention of the parties was to form, and that they did operate the hacienda as, a general partnership. That this was their intention is confirmed by the fact that they actually organized a general copartnership on July 11, 1949. And the Articles of General Copartnership which was registered on July 14, 1949 provides that the agreement shall be retroactive as of January 1, 1949. The sole question to be decided is, therefore, whether the partnership is entitled to exemption for the entire year of 1949, or whether it is taxable as an unregistered partnership before its articles of partnership was actually registered.

Section 24 of the Revenue Code imposes an income tax on corporations. The term "corporation" includes unregistered general copartnerships. (Sec. 84 /b/.) Section 26 provides that persons carrying on business in general copartnership duly registered in the mercantile registry shall be liable for income tax only in their individual capacity. There is no specific provision of law or regulation as to the date of commencement of the exemption of a registered general copartnership. We find, however, that the Bureau of Internal Revenue, as far back as 1924, issued a ruling which was published in the Official Gazette to the effect that "the status or form of organization of a partnership at the end of the taxable year will determine its income tax liability for that year." We quote:

> "A & C Co. had been paying income tax for years as a nonregistered partnership. On July, 1922, it registered its partnership agreement. Should it

file a return for the period from January to July of the year of its registration?

"HELD: That it need not do so. For purposes of the Income Tax Law, the status or form of organization of a partnership at the end of the taxable year will determine its income tax liability for that year. (September 4, 1924.)" (Ruling No. 30, 22 O. G. 3451.)

Ruling No. 30 of the Bureau of Internal Revenue, dated September 4, 1924, does not appear to have been revoked, or even revised or amended. In fact, the same opinion was reiterated in a ruling dated November 5, 1948. Again, we quote:

"In answer to your letter dated October 15, 1948, requesting opinion whether or not a commercial partnership, intended to be registered as evidenced by the partnership agreement formally executed by the parties at the time it commenced to do business, but which was not registered until after the lapse of several months, should be required to file two (2) separate returns - one corresponding to the unregistered period and another for the period after its registration, you are informed that, if a general partnership registers its articles of partnership within the same taxable year, which may either be calendar or fiscal year, in which it commenced business, it is required to file only one income tax return covering its income for the period from the date of its business operation to the end of the taxable year. However, where the registration takes place after the end of the taxable year in which the partnership commenced business, separate returns should be filed, one corresponding to the taxable year in which the partnership did business as an unregistered partnership, and another covering the taxable year in which it operated as a registered partnership." (B.I.R. ruling, dated November 5, 1948, contained in a letter addressed to Provincial Examiner Amante Astudillo, Surigao, Surigao.)

The rule enunciated above that the status of a general partnership, as a registered or unregistered general copartnership, at the end of the taxable year determines its liability or exemption from income tax for the entire taxable year is a sound rule. It does not run counter to any specific provision of law or regulation. On the other hand, it appears to us to be in harmony with the intent and purpose of the law to grant exemption to registered general copartnerships and to tax the partners only in their individual capacity. We note that when the attention of respondent was called to the existence of the Bureau's ruling of November 5, 1948, he merely stated that he was not inclined to reconsider his decision and would prefer "to have a judicial pronouncement on the matter." (See p. 222, B.I.R. records.)

Moreover, the old Income Tax Law (Act No. 2833, as amended) contained the same provisions regarding the exemption from income tax of registered general copartnerships as the present law. The practice of the Bureau of Internal Revenue exempting general copartnerships from income tax for the entire year so long as it was registered within that year continued to be the prevailing rule in 1939, when the National Internal Revenue Code, Commonwealth Act No. 466, was enacted. The law governing general copartnerships contained in the old law was merely reenacted in the new Code. It is reasonable to suppose that a long standing administrative practice, if contrary to the intention of the legislature, would be specifically corrected by it. (1 USTC, Par. 259; see also 1 USTC, Par. 293.) That Congress merely reenacted the old law in the face of the long continued practice of the Bureau of Internal Revenue which it published in the Official Gazette is a strong indication that such practice has received congressional approval. We find no justification to deviate from the rule.

Finding the assessment against the Hacienda Fortuna not in accordance with law, the decision appealed from is reversed. No pronouncement as to costs.

SO ORDERED.

Manila, August 15, 1960.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Presiding Judge MARIANO NABLE
dissents in a separate opinion.

CARLOS LEDESMA, JULIETA LEDESMA, VICENTE GUSTILO, JR. and AMPARO LEDESMA DE GUSTILO,
Petitioners,

- versus - C.T.A. CASE NO. 226

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

DISSENTING OPINION

I am constrained to dissent from the majority opinion which holds that the right of the respondent to collect the income tax in question has not prescribed. In my opinion, prescription has set in.

It is well to recapitulate briefly the facts pertinent to the resolution of this jurisdictional issue. The assessment at bar was made on March 22, 1950. On May 6, 1950, the petitioners protested against this assessment, which protest was rejected by the respondent on March 12, 1955. In the interim, i.e., on June 16, 1954, the Court of Tax Appeals was created by Republic Act No. 1125. Thereafter, on March 22, 1955, the suit (Civil Case No. 3373) for the collection of the assessment was instituted before the Court of First Instance of Negros Occidental. However, on April 2, 1955, the petitioners requested for a reconsideration of the rejection of the protest, which reconsideration was denied by the respondent on October 25, 1955. Subsequent reconsiderations were sought, but the same were likewise denied. Hence, the filing on January 3, 1956 of the instant petition for review, which was dismissed by this Court on the ground that "there is an action pending between the same parties for the same cause", and later given due course before this Court pursuant to the Supreme Court's decision (G. R. No. L-11343, January 29, 1958).

It is to be observed that the petitioners' request for reconsideration of the rejection of the protest against the assessment was filed with the respondent on April 2, 1955, or within thirty (30) days from the date of said rejection. Obviously, the assessment was being disputed at the time the judicial action for collection was filed before the Court of First Instance of Negros Occidental. Being a disputed assessment (see St. Stephen's Association, et al v. The Collector of Internal Revenue, G. R. No. L-11238, August 21, 1958), "there is no question that petitioners had the right to appeal the ruling or decision of the Collector assessing the income tax against them, to the Court of Tax Appeals and that the latter had exclusive appellate jurisdiction over said appeal" (Ledesma, et al vs. Court of Tax Appeals, et al, G. R. No. L-11343, January 29, 1958), for "the main purpose of the enactment of Republic Act No. 1125, creating the Court of Tax Appeals, was not only to give said court exclusive appellate jurisdiction over disputed tax assessments, but also to transfer to its jurisdiction all cases involving said assessments previously cognizable by Courts of First Instance and even those already pending in said courts x x x." (Id.). This conclusion becomes more compelling when we consider further that the assessment was not final and executory at the time the request for reconsideration of the respondent's decision rejecting the protest of May 6, 1950 was filed, so as to warrant the filing of an action for collection before the Court of First Instance (see Republic of the Philippines v. Juana B. Vda. de Del Rosario, et al., G. R. No. L-10460, March 11, 1959; Uy Ham v. Republic of the Philippines, et al., G. R. No. L-13809, October 20, 1959).

If, as held, this Court has exclusive appellate jurisdiction over the instant appeal, it necessarily follows that the Court of First Instance of Negros Occidental had no jurisdiction over Civil Case No. 3373, which involved the same assessment as the instant, for it cannot be advocated that both, the Court of Tax Appeals and the Court of First Instance of Negros Occidental, had jurisdiction over the same disputed assessment. And when a court had no jurisdiction over a case, which, like Civil Case No. 3373, was subsequently dismissed, the resulting situation would be as if the case was never filed. Consequently, the filing of Civil Case No. 3373 before the Court of First Instance of Negros Occidental did not interrupt the flight of the statutory period of five years within which the judicial action for collection of the income tax in question should have been filed. And inasmuch as the respondent's answer to the instant petition for review, which is considered as a judicial action for collection of the tax in question (Collector v. Solano, et al., G. R. No. L-11475, July 31, 1958; Collector v.

Clement, et al., G. R. No. L-12194, January 24, 1959), was filed on April 1, 1958, far beyond five years from the date of the assessment, it is clear that the respondent's right to collect the tax has already prescribed.

Having arrived at the conclusion that the right of the respondent to collect the income tax at bar has already prescribed, I find it unnecessary to pass upon the question of whether or not the income tax in question was validly assessed against Hacienda Fortuna.

I vote to reverse the assessment appealed from.

MARIANO NABLE
Presiding Judge