JOSE NG SUY,
Petitioner,

- versus - C.T.A. CASE NO. 321

July 1, 1957

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from the decision of the Collector of Internal Revenue assessing and demanding from the petitioner the payment of the sum of ₱386.00 as deficiency income tax for the year 1950.

Jose Ng Suy, petitioner, filed his income tax return for the year 1950, reflecting the sum of ₱5,850.29 as net income and the total amount of ₱7,800.00 as personal exemptions for the taxable year. Hence, said return did not indicate any income subject to income tax. However, after an examination and audit was conducted by an examiner of the Bureau of Internal Revenue, respondent disallowed certain deductions claimed by the petitioner, and on February 27, 1956, issued an assessment against petitioner demanding the amount of ₱386.00 as deficiency income tax.

On March 21, 1956, petitioner filed with respondent its protest against the deficiency assessment raising the defense of prescription citing Section 51 (d) of the National Internal Revenue Code as authority therefor. Inasmuch as the respondent insisted on the collection of the assessed deficiency income tax, petitioner on October 4, 1956 filed his petition for review with this Court. On October 25, 1956, the respondent filed his answer thereto praying, among other things, the payment by petitioner of the alleged deficiency income tax. Petitioner raises no issue of fact and does not question the correctness of the said assessment. But he contends however, that under the provisions of Section 51 (d) of the National Internal Revenue Code, the right of respondent to collect the alleged deficiency income tax for the year 1950 has prescribed. He argues and concludes thus:

> "So far, there is no record showing the exact date when the petitioner filed his income tax return for the year 1950 and in the absence of that, the counting of the period should begin on March 1, 1951. From March 1, 1951 up to February 27, 1956 the latter period being the date of the demand for the alleged deficiency - there is already a period of almost five (5) years had elapsed. This being the case, the right to collect said deficiency income tax has already prescribed." (Petitioner's Memorandum, pp. 1-2)

We cannot agree with nor subscribe to the argument and conclusion of the petitioner. It is true that the Collector of Internal Revenue cannot collect by summary administrative methods an assessment for income tax after the lapse of three years from the date the return is due, or has been made. (Philippine Sugar Estate Development vs. Posadas, 68 Phil. 216; Collector of Internal Revenue vs. Avelino, 53 OG 645; Collector of Internal Revenue vs. Reyes, G.R. No. L-8685, Jan. 31, 1957; Collector of Internal Revenue vs. Zulueta, G.R. No. L-8840, Feb. 8, 1957; Sambrano vs. Court of Tax Appeals, G.R. No. L-8652, March 30, 1957) However, in the case at bar, respondent is not collecting, nor is he attempting to collect the deficiency income tax assessment in question by any known summary administrative method. Therefore, we are of the opinion and so hold that the defense of prescription as against collection by summary procedure as provided for in Section 51 (d) of the Tax Code does not lie in the instant case.

However, the deficiency income tax assessment in question has admittedly been assessed within five (5) years after the return was filed and therefore validly effected within the period prescribed by Section 331 of the Tax Code. Although respondent may be barred from collecting the tax by summary methods after the three year period provided by section 51 (d), nonetheless, respondent could enforce collection of the tax by judicial action (Sambrano vs. Court of Tax Appeals, supra;

Collector vs. Avelino, supra; Collector vs. Reyes, supra; Collector vs. Zulueta, supra) Pursuant to section 332 (c) of the Revenue Code where the assessment is validly made within the period prescribed in Section 331, the proceeding in Court for the collection of the tax may be begun within five (5) years after the assessment of the tax.

The assessment in this case having been effected, petitioner without paying the tax had the alternative of appealing the same to this Court pursuant to section 11, Republic Act No. 1125, asserting as defense prescription (see sec. 14, Rep. Act No. 1125) or wait until the Collector of Internal Revenue institutes the judicial civil action and there assert his defense of prescription. Or the taxpayer may elect to pay the tax and pursue the remedy provided by section 306 of the Tax Code (see Johnston Lumber Co. vs. Court of Tax Appeal, G.R. No. L-9292, April 23, 1957) In the instant case, petitioner elected the procedure first given above.

As afore-stated, petitioner filed his petition for review of the decision of the Collector of Internal Revenue on October 4, 1956, and the latter submitted his answer thereto on October 25, 1956, praying, among other things, for the rendition of a judgment ordering the petitioner to pay the deficiency income tax assessed against him. The appeal of the petitioner to this Court is, we believe, equivalent to a judicial action for the collection of deficiency income tax within the purview of said Section 332 (c). It set the machinery of this Court into operation for the purpose of determining the question relative to thea assessment and/or collection of the tax. Thus, where a taxpayer paid income taxes after the collection by summary methods has been barred and thereafter instituted action for its refund, it was held that "the collection became judicial and the right of the Collector of Internal Revenue to effect the collection through that means has not prescribed" (Philippine Sugar Estate Dev. Co. v. Posadas, 68 Phil. 216). In view of the nature and subject matter of the instant petition for review, there is every reason to treat the present appeal as an action in court which involves the collection of a deficiency tax assessment. Consequently, it appearing that this action was instituted on October 4, 1956, or seven (7) months and seven (7) days from and after the assessment of February 27, 1956, the right to enforce the collection of the deficiency income tax in question by judicial action has not prescribed under section 332 (c) of the Tax Code.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of the Collector of Internal Revenue appealed from, is hereby affirmed. The petitioner is ordered to pay to the respondent the sum of ₱386.00 as deficiency income tax for the year 1950, plus the 5% surcharge and 1% monthly interest thereon from date of delinquency to the date of payment thereof.

SO ORDERED.

Manila, Philippines, July 1, 1957.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge