REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TEODORO VAÑO, substituted
by Milagros H. Vaño,
Petitioner,

versus

C.T.A. CASE NO. 2388

HON. MISAEL P. VERA,
as the Commissioner of
Internal Revenue,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of respondent holding the estate of the late Jose R. Vaño, represented by its administrator, Teodoro Vaño, liable for deficiency estate and inheritance taxes, with interest and penalties.

Jose R. Vaño, a resident of Cebu City, died testate on January 28, 1950. On February 11, 1950, testamentary proceeding was filed with the Court of First Instance of Cebu City (Branch III), docketed as Special Proceeding No. 619-R, for the settlement of his estate. Subsequently, the will of the deceased was probated and Teodoro Vaño was declared the sole heir and administrator of the estate.

On March 5, 1969, respondent issued an assessment against the estate of the late Jose R. Vaño, through the administrator, Teodoro Vaño, demanding payment of the amounts of ₱115,936.32 and ₱252,686.32

16

as deficiency estate and inheritance taxes, inclusive of interest and penalties. On April 2, 1969, respondent filed with the probate court a motion for allowance of said amounts.

The administrator, in an undated letter which was received by the Bureau of Internal Revenue on April 8, 1969, protested the assessment and requested its cancellation or withdrawal based on the grounds: (1) that the assessment had already prescribed; (2) that the fair market value of the estate had been exaggerated; and (3) that the deductions from the gross estate had been understated.

On June 18, 1969, the probate court declared itself without jurisdiction over respondent's claim for deficiency taxes and held in abeyance final action on the claim until the parties shall have taken appropriate action in the competent court.

As a condition for the grant of reinvestigation of petitioner's protest, the Regional Director of Cebu City sent a letter to the Administrator requiring him to accomplish and submit, on or before July 23, 1969, a "waiver of the statute of limitation" with a warning that failure to submit the same would amount to abandonment of his protest. In reply thereto, the Administrator, in a letter dated July 15, 1969, communicated his refusal to sign the waiver of the statute of limitations at the same time requesting a ruling on his protest. On February 20, 1970, petitioner sent a letter to respondent reiterating his request for a ruling on his protest. Respondent, on September 21, 1971, issued a warrant of distraint and levy against the estate of Jose R. Vaño, and, through the Regional Director of Cebu City, filed with the probate court on January 28, 1972, a motion to execute the said warrant. The instant petition for review was filed on February 10, 1972.

The Administrator, Teodoro Vaño, died on February 6, 1972 and his surviving spouse, Milagros Haager Vda. de Vaño, was appointed by the probate court as administratrix to take over the administration of the estate. On March 17, 1972, this Court granted the motion of Milagros H. Vaño to substitute for the petitioner in her capacity as administratrix of the estate of Jose R. Vaño, as well as that of an heir and/or as representative for the heirs.

Petitioner, during the hearing of this case, having manifested that she is no longer disputing the valuation of the estate and the deductions disallowed by the respondent, is submitting the case on the following issues:

1. Whether or not this Court has jurisdiction over the instant appeal; and

2. Whether or not the assessment for deficiency

167

estate and inheritance taxes has already prescribed.

Respondent contends that this Court has no jurisdiction to entertain this case because petitioner failed to appeal within 30 days from receipt of the appealable decision. It is respondent's position that the refusal of petitioner to accomplish and submit the waiver of the statute of limitations within the period fixed by the former amounts to a denial of the latter's protest which denial should be appealed to this Court within the period of 30 days, citing in support thereof the case of Republic v. Lim Tian Teng Sons & Co., Inc., G.R. No. L-21731, March 31, 1966, 16 SCRA 585.

Petitioner, however, maintains that the appeal was timely made because it was filed within 30 days from January 28, 1972, the date of receipt of the warrant of distraint and levy which is claimed to be the appealable decision.

Under Section 7 of Republic Act No. 1125, an assessment is not appealable. An assessment must first be contested or disputed by the taxpayer and the answer to, or the decision on, the protest is the one that is appealable as decision on a disputed assessment. (Comm. of Int. Rev. v. Villa, G.R. L-23988, Jan. 2, 1968, 22 SCRA 3; St. Stephen's Ass. v. Coll. of Int. Rev., G.R. No. L-11238, Aug. 21, 1958, 104 Phil. 314.)

An assessment must, therefore, be formally contested administratively before it can be appealed to the Court of Tax Appeals; otherwise, it may be dismissed motu proprio by the Court. (Comm. of Int. Rev. v. Villa, supra.) A motion for reconsideration of an assessment filed by a taxpayer may be denied directly or indirectly. The institution of proceedings for distraint and levy or a suit for collection of the tax in a Court of First Instance, subsequent to a motion for reconsideration, is equivalent to a denial thereof and the taxpayer's remedy is to appeal to the Court of Tax Appeals within 30 days from notice of either. (See Hahn v. Comm. of Int. Rev., CTA Case [Res.] No. 1987, April 30, 1969; Algue, Inc. v. Comm. of Int. Rev., C.T.A. Case No. 1620, Jan. 16, 1960; Phil. Planters Invest. Co., Inc. v. Comm. of Int. Rev., C.T.A. Case No. 1266, Nov. 11, 1962; Auyong Hian v. Comm. of Int. Rev., C.T.A. Case [Res.] No. 1449, March 3, 1964.) Likewise, the failure of a taxpayer to submit a written waiver of the statute of limitations within a specified period, as required by the Commissioner of Internal Revenue, as a condition for the granting of the request of the taxpayer for reconsideration or reinvestigation amounts to a denial of such request, and the 30-day period for appeal to the Court of Tax Appeals starts to run from the expiration of the period fixed for the filing of such waiver. (Republic v. Lim Tian Teng Sons & Co., Inc., supra.)

In the present case, the assessment for deficiency estate and inheritance taxes was protested by petitioner who requested its cancellation and withdrawal. In answer to said request, respondent wrote petitioner a letter consenting to the reinvestigation provided that a waiver of the statute of limitations was submitted on or before July 23, 1969. Petitioner wrote back and challenged the requirement for a written waiver of the prescriptive period because to do so would amount to a renunciation of his right to invoke the defense of prescription at the same time requesting a ruling on his protest. This was followed several months later by another letter reiterating the request for a ruling on his protest. On September 11, 1971, respondent issued a warrant of distraint and levy against the estate, which was received by petitioner's counsel on January 28, 1972, and within 30 days from receipt thereof interposed an appeal to this Court.[1]

From the facts above recited, we are of the opinion that the issuance of the warrant of distraint and levy is the decision on the disputed assessment which is appealable to this Court.

Petitioner categorically refused to accomplish the waiver of the statute of limitations on the ground

[1]Petition for Review was sent by registered mail in Cebu City postmarked February 10, 1972, p. 35, CTA rec.

170

that such a waiver would amount to a renunciation of his right to invoke the defense of prescription which was then already available to him. In other words, petitioner challenged or questioned the right of respondent to impose as a condition for the grant of reinvestigation the waiver of the prescriptive period. This challenge made it imperative for respondent to render a decision on the disputed assessment and from his decision the recourse was to appeal to the Court of Tax Appeals pursuant to Section 7(1) of Republic Act No. 1125.

> . . . It should be pointed out, however, that when appellee received the assessment notice issued by the Collector of Internal Revenue on February 25, 1957, all he did was to send a letter through counsel on May 10, 1957 requesting a reinvestigation, to which he received a reply dated June 14, 1957, wherein he was asked to submit under oath specific grounds of his client's protest, to pay one-half of the amount and put up a bond for the rest. <u>Nothing more was heard from appellee thereafter until the present action for collection was filed</u>. <u>In other words, appellee failed to dispute the assessment effectively</u>, <u>and the same therefore became final and properly collectible by means of ordinary action</u>. <u>Had appellee complied with the conditions required of him by the Bureau of Internal Revenue in its letter of June 14, 1957, or had he even challenged the validity of those conditions, the assessment would have been a disputed one which the Collector of Internal Revenue would have to decide</u>, <u>and from his decision the recourse would have been to the Court of Tax Appeals according to Section 7(1), of Republic Act No. 1125</u>. As it was, appellee's <u>failure to dispute the assessment</u> in the

> manner prescribed by law has barred his right to do so in the present case. (Republic v. Ledesma, L-18759, Feb. 28, 1967, 19 SCRA 460; underlining supplied.)

The issuance of the warrant of distraint and levy on September 21, 1971, which was actually served on petitioner's counsel on January 28, 1972, is equivalent to a denial of petitioner's protest and, therefore, the decision on the disputed assessment was appealable within 30 days from January 28, 1972. (Hahn v. Comm. of Int. Rev., supra; Algue, Inc. v. Comm. of Int. Rev., supra; Phil. Planter's Invest. Co., Inc. v. Comm. of Int. Rev., supra.) Consequently, when petitioner sent by registered mail the petition for review on February 10, 1973, only thirteen (13) days of the prescribed period of 30 days had been consumed and, therefore, the appeal was filed on time.

The Lim Tian Teng case cited by respondent in support of his stand is not applicable. In the first place, the taxpayer in said case failed to dispute the assessment effectively as it failed to accomplish the waiver of the prescriptive period or challenged the validity of such a condition. In the case at bar, petitioner not only refused to sign the waiver but challenged such a requirement. In the second place, the sole issue involved in the Lim Tian Teng case was the correctness of the assessment; prescription as a defense was not raised in said case. As such, the taxpayer therein had nothing to lose by accomplishing the waiver except to extend the period of prescription.

As regards the second issue, it is claimed by petitioner that inasmuch as the estate and inheritance tax return was filed way back in August, 1959, and the assessment was issued only in March, 1969, or after the lapse of nearly 10 years, the Government's right to assess has already prescribed pursuant to Section 331 of the Revenue Code, which reads as follows:

> SEC. 331. Period of limitation upon assessment and collection.—Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: Provided, That this limitation shall not apply to cases already investigated prior to the approval of this Code. (Underscoring supplied.)

It is, however, the contention of respondent that the estate and inheritance tax return was filed only on July 7, 1966 so that the assessment issued on March 5, 1969 was made well within the 5-year prescriptive period.

Under Section 331 of the Revenue Code, supra, the tax or any deficiency thereof may be assessed within 5 years from the date the return was due or was filed. There is no question that an estate and inheritance tax return was filed for the estate of the late Jose R. Vaño; however, the same was not filed on the due date.[1] The decisive question that must be resolved is, when was the return actually filed? Was it in August, 1959, as claimed by petitioner, or on July 7, 1966, as insisted by respondent?

We are of the opinion that the records of this case sufficiently established the fact that the estate and inheritance tax return was actually filed on or before August 25, 1959.

The evidence shows that the Administrator was issued on August 25, 1959, an "Authority to Accept Payment" by the Chief of the Collection Branch, B.I.R., Cebu City, authorizing the acceptance of the sums of ₱1,311.21 and ₱3,739.44, or a total of ₱5,050.65, as payment for the estate and inheritance taxes due on the estate of the late Jose R. Vaño, including, among others, the compromise penalty of ₱50.00 for late filing of the return. (Exhs. A, B & B-1, pp. 74-76, CTA rec.) Pursuant to said authority, the Administrator paid on the same date the sums of ₱1,311.21 and ₱3,739.44, or a total of ₱5,050.65, as estate and inheritance taxes under Official Receipts Nos. 2467323 and 61765. (Exhs.

---

[1]Under Sec. 93, Revenue Code, the return must be filed within 6 months after the decedent's death, but if judicial testamentary or intestate proceeding is instituted for the settlement of the estate prior to the expiration of such period, the return must be filed within 12 months after the decedent's death.

C & D, pp. 76-77, CTA rec.) On July 7, 1966, the Administrator requested tax clearance certificate in order to effect closure of the administration of the estate. In reply thereto, the Assistant Revenue Regional Director, in a letter dated August 26, 1966, certified that the estate and inheritance taxes due on the estate of the late Jose R. Vaño had been fully paid on August 25, 1959 in the total amount of ₱5,050.65, including, among others, the compromise penalty for late filing of the return. (Exh. E, p. 78, CTA rec.) Likewise, in a letter dated January 17, 1968, the Chief, Assessment Branch of Revenue Region No. 13, Cebu City, in answer to the directive of the Regional Director, submitted the finding that the corresponding assessment for estate and inheritance taxes including, among others, the compromise penalty for late filing of the return, in the sums of ₱1,311.21 and ₱3,739.44, or a total of ₱5,050.65, was paid on August 25, 1959 (p. 27, BIR rec.).

It is difficult to understand why the Administrator was given authority to pay, and the collecting officer to accept payment, of the estate and inheritance taxes on August 25, 1959, if no return had been previously filed. The law required the filing of the estate and inheritance tax return before payment of the estate and inheritance taxes. (See Secs. 93 & 95, N.I.R.C.) That the estate and inheritance taxes were tendered and

177

accepted on August 25, 1959 is a clear indication that a return was filed prior to the time of payment. At any rate, the said authority contradicts respondent's assertion that no return was filed because under the heading "Schedule" it was typewritten on the blank spaces the amount of tax, interest, including, among others, a "compromise penalty for late filing" of the estate and inheritance tax return. Because of its significance in the resolution of the question at bar, we are reproducing the said schedule:

BUREAU OF INTERNAL REVENUE
Cebu City

AUTHORITY TO ACCEPT PAYMENT

xxx xxx xxx xxx

(SCHEDULE ___ PARAGRAPH ___ (Assessment No. __
(Demand No. ______

Tax . . . inheritance tax	₱1,923.79
___% Surcharge	______
___% Surcharge	______
Interest of <u>1%</u> <u>monthly interest</u> from <u>1/28/52</u> to <u>8/28/59</u>	<u>₱1,750.65</u>
<u>Compromise for late filing</u>.	50.00
Com., no notice of death	<u>15.00</u>
T o t a l. . .	<u>₱3,739.44</u>

(Exhs. B & B-1, p. 75, CTA rec.; underscoring supplied.)

The aforesaid schedule was prepared by the Chief of the Collection Branch of Cebu City and when the "compromise penalty" of ₱50.00 for late filing of the

176

return was collected, it is a conclusive evidence that a return was actually filed. For one thing, the Administrator would not have consented to the payment thereof if no return was actually filed by him. The imposition of the compromise penalty for late filing of the return is an admission that a return was filed. In fact, this was confirmed by no less than the Assistant Revenue Director and subsequently by the Chief of the Assessment Branch of Cebu City.

Respondent leans heavily on the estate and inheritance tax return found in the B.I.R. records allegedly filed on July 7, 1966. (Exhs. 7 & 7-A, pp. 17-18, rec.) An examination, however, of said return, more specifically, the stamp indicating the filing thereof, reveals that the last two numbers representing the year of filing is not legible. The only legible portion is the month, day and first two numbers of the year, which reads: July 7, 19__. Another thing, the return (Exh. 7) was subscribed on August 14, 1959. It is highly inconceivable that a return which was subscribed and sworn to before the administering officer on August 14, 1959 would be filed 7 years later, or on July 7, 1966. The more logical presumption is that it was subscribed before the administering officer in 1959 and filed in the same year.

We are not unmindful of the rule that when the defense of prescription is invoked against an assess-

assessment, the burden of proof is upon the taxpayer to show that the right to assess or collect the tax has already prescribed. In this case, it is incumbent upon petitioner to show when the return was filed. To our mind, petitioner has satisfactorily discharged this burden. The records of this case amply support the conclusion that the estate and inheritance tax return of the estate of the late Jose R. Vaño was filed on or before August 25, 1959, the date the taxes, interest and penalties were paid. Consequently, when respondent issued the assessment on March 5, 1969, nearly 10 years had already elapsed. Undoubtedly, the right to assess the estate and inheritance taxes in question has already prescribed.

WHEREFORE, the decision appealed from is hereby reversed. Without pronouncement as to costs.

SO ORDERED.

Quezon City, June 3, 1975.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate JUDGE ALVAREZ did not take part.