Library

VICENTE J. FRANCISCO,
Petitioner,

- versus - C.T.A. CASE NO. 20

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

Sept. 30, 1960

R E S O L U T I O N

This is in connection with a "Motion to Dismiss" the petition for review filed by petitioner on March 7, 1960 on the grounds that the case ceased to involve a justiciable controversy and for lack of jurisdiction.

The petition for review was filed on October 8, 1954. It seeks the reversal of a decision of respondent, dated August 11, 1954, assessing against and demanding from the petitioner deficiency income taxes for the years 1945 to 1951, inclusive, in the respective amounts of ₱260.19, ₱7,989.09, ₱113,143.21, ₱32,456.71, ₱44,574.03, ₱1,767.00 and ₱133,213.50, or a total of ₱333,403.73; real estate dealer's fixed taxes for the years 1948 to 1954, inclusive, in the total amount of ₱1,105.00; deficiency additional residence taxes for the years 1946 to 1952, inclusive, in the total amount of ₱1,080.00.

It is alleged in the petition for review that the above assessment and demand is erroneous, illegal, arbitrary and confiscatory; that insofar as the deficiency income taxes assessed for the years 1945, 1946, 1947 and 1948 are concerned, the right to assess and collect the same has prescribed; that petitioner is not liable for the payment of real estate dealer's fixed taxes; and that petitioner is not aware of his liability for additional residence taxes.

The respondent, on October 27, 1954, filed his "Answer" to the petition for review denying the material allegations therein and at the same time sustaining his assessment.

The issues having been joined, this case was scheduled for hearing on the merits. On several occasions, the scheduled hearings were cancelled to give way to, and await the result of, the reinvestigation by the respondent, at the instance of petitioner, of the latter's liability for deficiency income taxes for the years 1945 to 1951.

As a result of the reinvestigation, the Commissioner (then Collector) of Internal Revenue, on October 13, 1959, reduced the deficiency income tax assessment for the years 1946, 1947, 1948, 1949, and 1951 of petitioner to the respective amounts of ₱3,438.04, ₱4,004.45, ₱22,428.92, ₱7,851.11 and ₱377.00. (See Annex A, Urgent Motion for Postponement, Feb. 1, 1960, p. 821, CTA rec.; see also Vol. II, BIR rec., p. 224.)

On March 7, 1960, petitioner filed his "Motion to Dismiss" the petition for review. The respondent on March 30, 1960, filed his "Opposition to Motion to Dismiss" predicated upon the grounds that the filing of his answer to the petition is tantamount to a judicial action for the collection of the income taxes due from the petitioner and to which he is entitled to a decision; and that this Court can decide the issues properly brought before it, including the power to sentence the taxpayer to pay what is due from him under the law in all cases which are within the jurisdiction of this Court.

We find petitioner's "Motion to Dismiss" meritorious.

The Court of Tax Appeals is a court, a part of the judicial system, and not an administrative body. (Ursal vs. Court of Tax Appeals, et al., G.R. Nos. L-10123 and L-10355, April 26, 1957; Ursal vs. Court of Tax Appeals, et al., G.R. No. L-10165, August 30, 1957.) Hence, appeals to the Court of Tax Appeals are manifestly judicial. (Lopez & Sons, Co. vs. Court of Tax Appeals, G.R. No. L-9274, Feb. 1, 1957; 53 Off. Gaz. 3065.) Being a judicial body, the procedure to be followed in the Court of Tax Appeals is the general rules of procedure outlined in the Rules of Court of the Philippines. (See Perez vs. Court of Tax Appeals, et al., G.R. No. L-9193, May 29, 1957; see also Rule 16, Rules of the Court of Tax Appeals.)

In the absence of a rule governing the dismissal of actions in the Court of Tax Appeals, Section 2 of Rule 30 of the Rules of Court of the Philippines should apply to the voluntary dismissal of this case filed by petitioner. The provision of Section 2 of Rule 30 of the Rules of Court of the Philippines reads:

> "SEC. 2. By order of the Court.- Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall not be dismissed without the approval of the court." (Underlining supplied.)

The above rule was taken from Rule 41 (a) (2) of the Federal Rules of Civil Procedure of the United States, except the last sentence (I Moran, Comments on the Rules of Court, 1952 Ed., p. 627). Under this rule providing for voluntary dismissal of actions upon order of the court and upon such terms and conditions as the court deems proper, the plaintiff (petitioner) has the absolute right to dismiss the action and the discretion of the court is as to the terms and conditions of the dismissal. The United States Court of Appeals, Seventh Circuit, in the case of Bolten v. General Motors Corporation, 180 F 2d 379, 381-382, applying Rule 41 (a) (2), said:

"In our view, the absolute right of a plaintiff to dismiss under (a) (2) is restricted by the requirement that it be done 'upon order of the court and upon such terms and conditions as the court deems proper.' The discretion of which the authorities speak, and sometimes confusingly, is as to the 'terms and conditions' rather than to the right of the plaintiff to have such 'terms and conditions' fixed and to dismiss without prejudice upon compliance therewith."

The appeal by a taxpayer is a matter of right and such right is granted by law (Chan Kian, etc. vs. The Court of Tax Appeals, et al., G. R. No. L-12184, May 29, 1959). And appeals to this Court are intended for the benefit and interest of taxpayers by having decisions of Collector on disputed assessments reviewed (Ledesma et al. vs. Court of Tax Appeals, et al., G. R. No. L-11343, January 29, 1958); but are not intended for the benefit of the latter. Hence, the right to appeal by taxpayers, as in the case at bar, just like any other right, may be waived (Article 6, Civil Code of the Philippines) by the voluntary dismissal of the petition for review. (Section 2, Rule 30, Rules of Court of the Philippines.)

IN VIEW OF THE FOREGOING, the "Motion to Dismiss" filed by petitioner is hereby granted. Let

RESOLUTION -
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this case be, as it is hereby, dismissed.

SO ORDERED.

Manila, September 30, 1960.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge