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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

November 24, 1959

CLARA DILUANGCO PALANCA,
EUGENIA DILUANGCO COCOLAY,
and LAI THIAM BIN,
Petitioners,

- versus -

C.T.A.
CASE NO. 509

November 24

COLLECTOR OF INTERNAL REVENUE
Respondent.

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

D E C I S I O N

The petitioners are the heirs of the late Gliceria Diluangco, who died on April 18, 1947. On March 27, 1951, the executor of the estate filed an estate and inheritance tax return, after being required to do so, reporting that the gross value of the estate left by the deceased was ₱126,729.50, claiming deductions in the sum of ₱59,541.64, leaving a net taxable estate of ₱67,187.86. Respondent assessed the estate and inheritance taxes on the basis of the return filed, plus 25% surcharge for late filing of the return, in the total amount of ₱9,705.61. The estate and inheritance taxes in the amount of ₱8,296.14 were paid on May 2, 1951. Petitioners refused to pay the 25% surcharge. Thereafter, the case was investigated by an examiner of the Bureau of Internal Revenue who reported that the value of the gross estate was ₱204,241.83 and that the net taxable estate was ₱150,657.40. On the basis of the report of said examiner, respondent assessed against petitioners on August 31, 1951, the sum of ₱22,533.46 as deficiency estate and inheritance taxes and penal-

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ties. Upon failure of petitioners to pay the said amount as demanded, respondent issued on March 5, 1952 a warrant of distraint and levy to enforce collection of said amount.

In view of the insistent request of counsel for petitioners for reconsideration of the assessment, respondent ordered a reinvestigation of the case. As a result of the reinvestigation, on August 18, 1952, respondent reduced the deficiency assessment from ₱22,533.46 to ₱10,437.76. Again, for failure of petitioners to pay the revised deficiency assessment, respondent issued on June 23, 1955 a warrant of distraint and levy to enforce collection of the sum of ₱10,437.76, plus interest up to May 31, 1955. There is no dispute as to the correctness of said amount. The only issue raised by petitioners relates to the statute of limitation upon the right of the Government to collect said amount. It is alleged on behalf of petitioners that the right to collect the estate and inheritance taxes and penalties in this case has prescribed either by distraint and levy or by judicial action.

It is admitted that the estate and inheritance taxes in question were finally assessed on August 18, 1952, within the five-year period prescribed in Section 331 of the National Internal Revenue Code from the date the return was filed. It is also admitted that a warrant of distraint and levy was issued by respondent on June 23, 1955, but that said warrant of distraint and levy has not been fully executed in view of the request

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of counsel for petitioners for an itemized statement of the amount due from each heir and the assurance given by said counsel that "upon receipt of (respondent's) reply, the heirs will immediately make arrangement for the settlement of their share." (See Exh. 19, page 134, B.I.R. records.) Petitioners contend that since the warrant of distraint and levy was not executed by the seizure and sale of the properties subject to the lien for the taxes, in accordance with the procedure outlined by law, the running of the period of prescription for collection has not been suspended by the issuance of said warrant of distraint and levy. Neither had respondent taken any step to institute judicial action for collection prior to the institution of the present appeal, which was filed on March 3, 1958, more than five years after the assessment, so that the right to collect said taxes by judicial action has prescribed.

Where an internal revenue tax has been assessed within the period prescribed in Section 331 of the Revenue Code, as in the case at bar, the tax so assessed may be collected "by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five-year period," pursuant to Section 332(c).

The sole issue presented for our consideration is whether or not the warrant of distraint and levy issued by respondent on June 23, 1955 suspended the running of the five-year period for collection. If not, the right of the Government to collect said taxes has prescribed; in the affirmative, said taxes may still be collected from petitioners.

Petitioners admit that the warrant of distraint and levy of June 23, 1955 was duly issued by respondent and that it was issued within five years from the date of assessment of the taxes involved. But it is argued that it was not fully executed because no property subject to the lien was seized and advertised for sale in accordance with law, and that the warrant of distraint and levy was served upon Attorney Manuel V. San Jose who had previously been relieved as executor of the estate of the deceased.

It appears that the execution of the warrant fof distraint and levy was delegated to an officer of the Bureau of Internal Revenue who served the same upon Attorney Manuel V. San Jose on July 22, 1955. No property was levied upon or distrained at the time as Attorney San Jose requested for time within which to study the case and to consult his clients. On August 22, 1955, Attorney San Jose delivered personally to the internal revenue officer his letter of the same date addressed to respondent requesting that the amount due from each heir be specified, promising at the same time that arrangement would be made immediately for the settlement of the obligation. For ready reference, the report of the internal revenue officer and the letter of Attorney

San Jose are quoted below:

2nd Indorsement
August 23, 1955

Respectfully returned to the Chief, Field Collection Division the case of the Estate of the late Gliceria Diluangco, c/o Atty. Manuel V. San Jose, 514 Samanillo Bldg., Escolta, Manila, who is indebted to this Office in the sum of ₱12,826.29 representing unpaid balances of the estate and inheritance taxes, surcharges and interests due from the heirs therefrom.

The undersigned served the Warrant of Distraint and Levy last July 22, 1955 upon Atty. Manuel V. San Jose and duly acknowledged by his Secretary, Mr. Arturo P. Cristi, whose signature appears in the original copy of said Warrant attached herewith.

Atty. San Jose requested for sometime with which to study this case and in order to contact and inform his clients accordingly, to which, in the interest of fairness, your agent agreed. On August 23, 1955, Atty. San Jose presented the undersigned his letter to the Collector of Internal Revenue of even date, the contents of which are self-explanatory and attached herewith for your perusal.

In view of the foregoing, the undersigned is forwarding the docket of this case for appropriate action.

(SGD.) MANUEL F. DEL ROSARIO
Asst. Agent

(See Exhibit 20, page 137, BIR records.)

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August 23, 1955

The Collector
Bureau of Internal
Revenue
Manila

S i r : Attention: Mr. Manuel Del Rosario

In connection with the inheritance and estate tax assessment on the estate of Gliceria Diluangco, for which the heirs have paid the total amount of ₱8,296.14 as evidenced by Official Receipts Nos. 30680-V-2, 30681 V-2; 30682 V-2, 30683 V-2, and 30684 V-2 all dated May 2, 1951, as counsel for the heirs I respectfully request that you kindly inform us of the amounts still owing by each heir entitled to inherit under the last will and testament of the deceased which was duly probated in court in Special Proceeding No. 2550 of the Court of First Instance of Manila. This information is necessary as there are four (4) heirs who will have to share in the deficiency, if any, and each one of them would like to know the respective share of each. I wish to assure you that upon receipt of your reply, the heirs will immediately make arrangement for the settlement of their share.

Thanking you for your prompt attention, I remain

Very truly yours,

(SGD.) MANUEL V. SAN JOSE
Counsel for the heirs of Eliceria Diluangco

(See Exhibit 19, page 134, B.I.R. records.)

Section 332 of the Revenue Code provides that the collection of an internal revenue tax may be made by distraint and levy if the proceeding is <u>begun</u> within five years after assessment. In this case, the distraint and levy proceeding was actually <u>begun</u> with the issuance of the corresponding warrant of distraint and levy and the service thereof to Attorney Manuel V. San Jose. It is true that the warrant has not been fully executed with the seizure and sale of any property subject to the lien, but it was not due to the voluntary desistance of respondent; rather it was because of the request of the then counsel for petitioners for a statement of the amount due from each heir and for an opportunity to make arrangement for the settlement of the obligation, which request was considered reasonable by respondent. Under the law, it is not essential that the warrant of distraint and levy be fully executed in order that it may have the effect of suspending the running of the statute of limitation upon collection of the tax. It is enough that the proceeding be validly begun or commenced and that its execution has not been suspended by reason of the voluntary desistance of respondent. In our opinion, the warrant of distraint and levy of June 23, 1955 was validly issued and was duly served upon counsel for petitioners and, therefore, the five-year period for collection of the estate and inheritance taxes in question was suspended. And it continued to be suspended up to the date when the present appeal was filed by petitioners on May 3, 1958. Accordingly, the right to collect said taxes has not prescribed.

It is alleged that the warrant of distraint and levy was not properly served. It was served upon Attorney Manuel V. San Jose who had previously been relieved as executor of the estate. But, although Attorney San Jose might have been relieved as executor, he was still the counsel for the heirs at the time the services was made and it was he who continued to represent said heirs in their dealings with the Bureau of Internal Revenue. We are of the opinion that the warrant of distraint and levy was properly served.

Finding that the right to collect the sum of ₱10,437.76 from petitioners has not prescribed, and there being no question as to the correctness of said

DECISION -
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assessment, petitioners are hereby ordered to pay said amount, plus the corresponding interest to the date of payment. With costs against petitioners.

SO ORDERED.

Manila, November 24, 1959.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

[illegible]
Associate Judge