REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

LILIA YUSAY GONZALES, Judicial co-administratrix of the Estate of the late Matias Yusay,
Petitioner,

- versus -

C.T.A. CASE NO. 777

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal by petitioner from a decision of the Commissioner of Internal Revenue assessing estate and inheritance taxes in the total sum of ₱97,723.96, including surcharge, interest and compromise penalties, on the transmission of the estate of the late Matias Yusay.

It appears that Matias Yusay, a resident of Pototan, Iloilo, died on May 13, 1948, leaving a legitimate son, Jose Yusay, an acknowledged natural daughter, Lilia Yusay Gonzales, herein petitioner, and considerable real and personal properties. Intestate proceedings to settle the estate was instituted in the Court of First Instance of Iloilo by Jose Yusay, who was appointed administrator of the estate.

On May 11, 1949, Jose Yusay, as administrator, filed an estate and inheritance tax return (Exhs. I & B, pp. 14-20, BIR rec.), declaring a net estate of

₱203,354.00.

Three successive investigations were conducted by agents of respondent on the return and three consecutive assessments for estate and inheritance taxes, 25% surcharge, interest and compromise penalties were issued: the first, on October 29, 1953 (Exh. 5, p. 32 BIR rec.), against Jose Yusay in the total amount of ₱40,248.79; the second, on January 25, 1955 (Exh. 8, p. 55 BIR rec.), also against Jose Yusay in the total amount of ₱48,011.98; and finally, on February 13, 1958 (Exh. 21, pp. 112-113 BIR rec.; Exh. F, pp. 136-137 BIR rec.), against Florencia Piccio Vda. de Yusay, co-administratrix of herein petitioner, and who substituted administrator Jose Yusay after his death on November 30, 1956, in the total amount of ₱97,723.96, itemized as follows:

Estate tax	₱16,246.04	
5% surcharge on ₱8,225.89 for late payment	411.29	
1% mo. int. on ₱8,225.89 fr. 2/13/50 to 3/13/58	7,979.11	
½% def. int. on ₱8,020.19 fr. 2/13/50 to 3/13/58	3,889.79	
Compromise - no notice of death	15.00	
Compromise for late payment on ₱8,225.89	40.00	
Total		₱28,581.23
Inheritance tax	₱39,178.12	
5% surcharge on ₱22,117.10 for late payment	1,105.86	
1% mo. int. on ₱22,117.10 from 5/13/50 to 3/13/58	20,790.07	
½% def. int. on ₱17,061.02 from 5/13/50 to 3/13/58	8,018.68	
Compromise for late payment on ₱22,117.10	50.00	
Total		69,142.73
TOTAL ESTATE & INHERITANCE TAXES & PENALTIES DUE		₱97,723.96

This assessment, copy of which was sent on July 14, 1959 to Atty. Ramon Gonzales, counsel and husband of petitioner, was issued on the basis of the "Re-Amended Project of Partition" approved by the Court of First Instance of Iloilo on June 13, 1957 (Exh. 15, p. 75 BIR rec.).

On May 14, 1959, respondent filed a "Motion for Allowance of Claim and for an Order of Payment of Taxes," including interest, 5% surcharge and compromise penalty in the amount of ₱103,298.94 (Exh. 23, pp. 139-143, BIR rec.). On June 1, 1959, petitioner Lilia Yusay Gonzales, thru her counsel Atty. Ramon Gonzales, filed her answer to the respondent's claim for taxes, alleging, among others, that she has not received the assessment dated February 13, 1958; that the estate is administered by two administratrices: 2/3 by Florencia Piccio Vda. de Yusay and 1/3 by petitioner; and that if each administratrix is authorized to pay the corresponding portion of the estate and inheritance taxes, petitioner will strive to pay the same. It is prayed therein that the motion for payment of taxes be deferred until after a new assessment against each administratrix has been prepared and served (Exh. 24, p. 147, BIR rec.).

On November 17, 1959, petitioner wrote a letter to respondent disputing the assessment for estate and inheritance taxes mentioned in the latter's letter of February 13, 1958 and requesting that the assessment be declared invalid on the ground that the right of the latter to assess the taxes has prescribed (Exh. D, p. 124 BIR rec.). In reply thereto, which was received by petitioner on March 14, 1960 (Exh. G-2, p. 62, CTA rec.), respondent, on January 20, 1960 (Exh. G, p. 127 BIR rec.) denied petitioner's request and reiterated his demand for payment of the assessment.

On April 13, 1960 (Exhs. H, I, J & K, pp. 57-58 CTA rec.), petitioner filed her petition for review by registered mail. Petitioner, however, has not contested the correctness of the amount sought to be collected as transfer taxes, surcharge, interest and compromise penalty.

The issues raised by the parties are as follows:

(1) Whether or not the appeal was made within the thirty-day period prescribed in Section 11 of Republic Act No. 1125; and in the affirmative

(2) Whether or not the right of respondent to assess the estate and inheritance taxes in question has already prescribed.

With respect to the first issue, petitioner, invoking the decision in St. Stephen's Association vs. Collector of Internal Revenue, G.R. No. L-11238, promulgated on August 21, 1958, contends that the reglementary period of 30-days within which to appeal should be counted from March 14, 1960 when she received respondent's letter denying her request for the invalidation of the last assessment. Consequently, it is concluded that the instant petition was seasonably filed.

Respondent, on the other hand, maintains that the period to appeal should be counted from June 1, 1959, the date petitioner's answer to the motion for payment of taxes was filed; and that as the petition for review was filed on April 13, 1960, the appeal was made beyond the statutory period of thirty days.

We agree to the contention of petitioner. The last transfer tax assessment against the estate dated February 13, 1958 was disputed on November 17, 1959, when petitioner in her letter requested that the said assessment be invalidated on the ground that the right of respondent to assess the taxes has already prescribed. This request was denied in respondent's letter of January 20, 1960 which was received by petitioner on March 14, 1960. As the Supreme Court, in the case of St. Stephen's Association vs. Collector of Internal Revenue, supra, said:

> "x x x. Where a tax-payer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with par. (1) of Sec. 7, Republic Act No. 1125, conferring appellate jurisdiction upon the Court of Tax Appeals to review 'deci-

> sions of the Collector of Internal Revenue in cases involving disputed assessments x x x" (Emphasis supplied.)
>
> "The period for appeal to the respondent court in this case must, therefore, be computed from the time petitioners received the decision of the respondent Collector of Internal Revenue on the disputed assessment, and not from the time they received said assessment. x x x"

The decision on the disputed assessment having been received by petitioner on March 14, 1960, the instant petition for review, which was filed on April 13, 1960, was seasonably filed and this Court can take jurisdiction over the case.

The respondent's claim that the thirty-day period should be reckoned from June 1, 1959, the date of the filing of petitioner's answer to the proof of claim in the probate court is untenable as there was then no assessment received by her as she received the assessment through her lawyer-husband only on July 14, 1959, or after she filed her answer to the proof of claim. Hence, the assessment could not have been disputed by her.

Moreover, it is urged upon us that the probate court has jurisdiction to settle the question of liability of the estate for taxes and not the Court of Tax Appeals. It suffices to say that the validity or legality of the assessment having been questioned or disputed, the same is, therefore, within the jurisdiction of this Court and not the Court of First Instance

152

of Iloilo (Uy vs. Uy, G.R. No. L-15386, April 29, 1961).

We will now come to the second issue as to whether or not the right of respondent to assess the estate and inheritance taxes has prescribed.

It must be noted that there are in all three (3) successive assessments issued by respondent since the filing of the return on May 11, 1949; the first in 1953, the second in 1955, and the third in 1958. The amount of the assessment for estate and inheritance taxes increased in the second, and again, in the last assessment. The issuance of the last assessment has impliedly cancelled or set aside the previous assessments issued in 1953 and 1955. The setting aside of these two previous assessments has the effect as if no assessments were issued on those years (Sison & Sison vs. Collector, C.T.A. No. 337, Feb. 28, 1958), and the five (5) year period within which to assess the taxes should be counted from May 11, 1949, the date of the filing of the return, to July 14, 1959 when the last assessment was received. Consequently, the new assessment was issued beyond the five-year period prescribed in Section 331 of the Revenue Code.

The provision of Section 332 (a) of the Tax Code cannot be invoked in this case as it was neither alleged in respondent's answer, nor proved during the hearing that the return was false or fraudulent with intent to evade the payment of tax. Moreover, the failure of respondent to charge fraud and impose the penalty thereof in the assessments made in 1953, 1955 and 1958 is an eloquent demonstration that the filing of petitioner's transfer tax return was not attended by falsity or fraud with intent to evade tax.

The increase in the valuation of the estate can be attributed to the addition of 40% to approximate the fair and reasonable market value at the time of death of the decedent, as agreed by respondent and administrator Jose Yusay (see Exhs. 17 & E, pp. 100-101 BIR rec.; Exh. 2, p. 28 BIR rec.). It does not indicate fraud as valuation is a question of prophecy, or a matter of opinion or judgment (II Paul's Federal Estate & Gift Taxation, Section 18:03, p. 1218), and "the best possible valuation is nothing better than a reasonable approximation reached by the _via media_ of compromise and reconciliation." (_Ibid_, pp. 1221-1222.) The compromise or agreement reached by respondent and administrator Jose Yusay increasing the values declared in the return shows the latter's willingness to actually cooperate with the taxing authorities; it negates the idea of bad faith or intent to commit fraud or deceive the government. (Balter, Fraud Under Federal Tax Law, Sec. 132, p. 249, citing W. D. Collins, 7 BTA 913; H. C. Lister 18 BTA 699, J. B. Dortch, 19 BTA 159; Harold B. Franklin 34 BTA 927.)

But respondent urges upon us that the filing of the return did not start the running of the five (5)

152

year period for the reason that the return did not disclose the heirs of the deceased Matias Yusay, and contained inadequate data regarding the value of the estate. We believe that these mere omissions do not require additional returns for the same. Altho incomplete for being deficient on these matters, the return cannot be regarded as a case of failure to file a return where want of good faith and intent to evade the tax on the part of petitioner are not charged. It served as a sufficient notice to the Commissioner of Internal Revenue to make his assessment and start the running of the period of limitation. In this connection, it must be borne in mind that the Commissioner is not confined to the taxpayer's return in making assessment of the tax, and for this purpose he may secure additional information from other sources. As was done in the case at bar, he sends investigators to examine the taxpayer's records and other pertinent data. His assessment is based upon the facts uncovered by the investigation (Collector v. Central Azucarera de Tarlac, G.R. Nos. L-11760 & L-11761, July 31, 1958).

Furthermore, the failure to state the heirs in the return can be attributed to the then unsettled conflict raging before the probate court as to who are the heirs of the estate. Such failure could not have been a deliberate attempt to mislead the government in the assessment of the correct taxes.

Finding that the assessment in question was made beyond the five (5) year statutory period provided in Section 332 (a) of the Tax Code, the right of respondent Commissioner to assess the estate and inheritance taxes has already prescribed.

WHEREFORE, the decision of respondent assessing against the estate of the late Matias Yusay estate and inheritance taxes is hereby reversed. No costs.

SO ORDERED.

Manila, January 11, 1962.

MARIANO NABLE
Presiding Judge

We concur:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge

151