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J. C. YUSECO,
Petitioner,

- versus - C.T.A. CASE NO. 217

March 25, 1957

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is a petition seeking to enjoin respondent Collector of Internal Revenue from enforcing or executing the distraint and levy of petitioner's properties to answer for alleged income tax due from the latter for the years 1945 and 1946.

The facts established in this case show that petitioner did not file income tax returns for the calendar years 1945 and 1946. This fact having come to the knowledge of revenue examiners, they accordingly made income tax returns for petitioner upon which respondent on August 20, 1948, assessed against and demanded from petitioner the sums of ₱134.14 and ₱7,563.28 representing alleged income taxes and corresponding surcharges for the years 1945 and 1946. On September 1, 1948, petitioner wrote the respondent, requesting that he be informed as to how the assessments were arrived at. In reply thereto, respondent in a letter dated September 17, 1948 furnished the information sought and at the same time demanded the payment of the aforesaid assessments. On October 4, 1948, petitioner asked that he be given an opportunity to present his side of the matter. However, respondent on December 13, 1948, denied reconsideration of the assessment and reiterated his demand upon petitioner for payment thereof which was followed with another demand on June 29, 1949. On July 28, 1949, petitioner once more requested for a reinvestigation of the case but the same was denied by respondent in his letter dated February 7, 1951 wherein he repeated his demand for payment. On April 3, 1951, petitioner renewed his request for reinvestigation and nothing was heard of the matter for almost three years thereafter.

On January 6, 1953, respondent issued a warrant of distraint and levy on petitioner's properties which, however, was not executed. On January 16, 1953 petitioner sought the withdrawal and/or reconsideration of said warrant. Meanwhile, on July 2, 1953, respondent issued a revised assessment notice which reduced the original assessment for the 1946 income tax to ₱2,447.30, including surcharge. On July 18, 1953, petitioner asked that he be informed of the action upon his petition for reinvestigation. This request was reiterated in his letter of August 18, 1953 wherein he acknowledged receipt of the modified assessment for the 1946 income tax. On September 1, 1953, respondent wrote petitioner demanding from the latter payment of the said sum of ₱2,447.30

as income tax for the year 1946 plus penalties incident to delinquency, and reiterating the demand for the unrevised income tax assessment for 1945 in the sum of ₱134.14, but respondent did not take any further action thereafter to effect collection of the assessment.

On January 20, 1955, respondent again issued a warrant of distraint and levy on the properties of petitioner, this time only to effect collection of the said sum of ₱2,447.30 as income tax for 1946. The distraint being still enforce, petitioner on December 12, 1955 filed his petition for prohibition with this Court.

The following appear to be the issues involved in this case:

1. Whether or not this Court has jurisdiction to entertain the instant petition for prohibition. yes

2. Whether or not said petition states facts sufficient to constitute a cause of action.

3. Whether or not the respondent Collector of Internal Revenue may legally collect through administrative remedy the alleged income tax deficiency in question.

Relative to the first issue, respondent contends that there being no principal action, the instant petition for prohibition, which is a mere ancillary action, can not be entertained by this Court. He further argues that this petition is not an appeal as provided for under Republic Act No.

1125 which this Court can entertain. Contrarily, petitioner avers that an application for a writ of prohibition is not an ancillary, but an independent civil action, and that the issue of prescription raised in the petition is one of those over which this Court should take cognizance.

We find the contentions of respondent in respect to the first issue untenable. The taxpayer may dispute the decision of the Collector of Internal Revenue in many ways. The taxpayer may contest the correctness of the assessment, or he may assail the right of the Collector to assess the tax thereby raising the legality of the assessment, or he may challenge the power of the Collector to collect the tax thru administrative remedy or by judicial action, interposing in either case prescription as a bar to the assessment or the collection of the disputed tax. When the taxpayer questions the authority of the Collector to collect the tax as in the case at bar, through the administrative remedy of distraint and levy to enjoin any further collection thereof, his action may be principal or ancillary as the circumstance may appear. Generally, the exercise of the right to assess presupposes the right to collect the tax. Hence, when the right to assess the tax has prescribed, it follows that the right to collect the same is also lost. However, the exercise of the act of assessing the tax does not necessarily involve the simultaneous exercise of the power to collect. The latter act may be exercised, as is usually done, subsequent to the act of assessing the tax. Thus, for example, section 331 of the Tax Code provides that the assessment must be made within a period of five (5) years from the time the tax return is filed and under section 332 (c) the collection thereof may be effected within five (5) years from such assessment. A situation may however arise where an assessment may have been validly made but the collection thereof was not effected within the period prescribed by law. Consequently, a taxpayer, may merely petition that the Collector be prohibited or enjoined from proceeding with the collection of such tax assessment on the ground of prescription without necessarily asking for the review thereof. Thus, a tax assessment although at first presumptively correct or valid may lose its validity by reason of the fact that the right to collect the same has prescribed and such fact shall have the effect that "there is no deficiency in respect of such tax."

> "In tax cases however, it was the evident intention of the legislative body in establishing the statute of limitations on the assessment and collection of taxes 'to protect the taxpayers against any proceeding whatsoever for the collection of tax claims not made and pressed within' the period prescribed (Bowers v. N. Y. & Albany Co. 273, U.S. 350, 71 L. Ed. 676). Emphasis was added to these provisions by section 14, Republic Act No. 1125 quoted above, which to our mind, operates to bar not only the remedy but it has the effect of extinguishing the liability, for if the

> defense of prescription were sustained its effect is that 'there is no deficiency in respect of such tax.'" (Republic of the Philippines v. Jose Razon and Jai-Alai Corporation, Manila Civil Case No. 15566 (C.T.A.) Resolution, January 23, 1957.)

This consequence finds justification in section 14 of Republic Act No. 1125 which provides:

> "SEC. 14. Effect of decision that tax is barred by statute of limitations.- If the assessment or collection of any tax is barred by any statute of limitations, the decision of the Court to that effect shall be considered as its decision that there is no deficiency in respect of such tax." (Underlining supplied.)

It is important to note that the law uses the phrase "assessment or collection" and apparently empowers this Court to declare as barred by any statute of limitations the collection of a tax, independently of the assessment thereof. When read and interpreted harmoniously with section 7 of said Act, which lodges in the Court the exclusive appellate jurisdiction to review by appeal, *inter alia* decisions of the Collector of Internal Revenue in cases involving disputed assessment or other matters arising under the National Internal Revenue Code. It follows that this Court may validly pass upon the question of the exercise of the power to collect a tax without necessity of a review of the correctness of the assessment.

In respect of the second issue, respondent advances the argument that section 305 of the National Internal Revenue Code applies notwithstanding the fact that a tax is illegal, unconstitutional, inaccurate, or wrongfully assessed, or that the collection thereof will cause grievious and unconscionable prejudice to the taxpayer, and that the Collector of Internal Revenue cannot thereby be joined from collecting the tax without petitioner first paying the tax and subsequently filing a claim for its refund.

We find it unnecessary to go into an extended discussion on this point considering the several pronouncement on this point by our Supreme Court. Suffice it to say that while under section 305 of the Tax Code, no court may restrain the collection of any internal revenue tax, this rule has been modified by section 11 of Republic Act No. 1125 which authorizes this Court to enjoin the collection of such tax under the circumstances set forth therein. Thus the Supreme Court, in the case of the Collector of Internal Revenue v. Jose Avelino and Court of Tax Appeals, G.R. No. L-9202, November 19, 1956 (aff'g Res. C.T.A. Case No. 120, May 20, 1955) held:

> "It therefore appears from the above (sec. 11, Republic Act No. 1125) that when in the opinion of the court the collection of the tax by the Collector of Internal Revenue may jeopardize the interest of the taxpayer it may, at any stage of the proceedings, suspend the collection and require the taxpayer either to deposit the amount claimed or file a surety bond for not more than double the amount with the Court. This section must be deemed to have modified section 305 of the National Internal Revenue Code in view of the repealing clause contained in said Act to the ef-

> fect that 'any law or part of law, or any executive order, rule or regulation or part thereof, inconsistent with the provisions of this Act is hereby repealed.'" (Section 21; see also Collector vs. Reyes, G.R. No. L-8685, January 31, 1957; Collector vs. Zulueta, G.R. No. L-8840, February 8, 1957).

Obviously, under section 11 of Republic Act No. 1125, in relation to section 14 thereof, this Court, upon petition of a taxpayer may enjoin the collection of the tax and declare the same barred by prescription, if such be the case.

We now come to the third issue. It appears that petitioner J. C. Yuseco failed to file income tax returns for the years 1945 and 1946. Under the income tax law, these returns were due and should have been filed, at the latest on March 1, 1946 and March 1, 1947, respectively. In view of petitioner's failure, internal revenue examiners filed the corresponding returns for petitioner and on August 20, 1948 respondent assessed the corresponding income taxes. The warrant of distraint and levy on petitioner's properties issued by respondent on January 6, 1953, not having been executed nor served upon petitioner as required by paragraph 3, section 319 of the Tax Code is null and void (see Aznar v. Collector, C.T.A. Case No. 109, Resolution, February 8, 1956). Moreover, said warrant of distraint and levy was null and void, the same having been issued in contravention of section 51(d) of the Tax Code which limits the authority of the Collector of Internal Revenue to effect collection of deficiency income taxes by summary administrative proceedings only within the three-year period from the time the income tax return was or should have been filed. (Collector vs. Zulueta, *supra*; Aznar v. Collector, *supra*). In this case the power of respondent to effect collection by summary methods was barred after March 1, 1949 and March 1, 1950 as regards the income taxes that were due or might have been due for the calendar years 1945 and 1946, respectively. Under the same premises, although duly served upon petitioner, the second warrant of distraint and levy for the collection of the modified income tax assessment of ₱2,447.30 issued by respondent only on January 20, 1955 was null and void, the same having been issued far beyond the three-year prescriptive period provided for in said section 51(d) to collect income taxes through the summary methods of distraint and levy. (See Collector of Internal Revenue v. Jose Avelino, et al., *supra*; see also Collector v. A. P. Reyes, et al., *supra*; Collector v. J. C. Zulueta, *supra*).

WHEREFORE, pursuant to section 51(d) of the National Internal Revenue Code, judgment is hereby rendered declaring the warrant of distraint and levy issued by respondent on January 20, 1955 to effect collection of "the amount of ₱2,447.30 as income tax for the year 1946 plus 5% surcharge and the 1% monthly interest from August 16, 1953" allegedly due from petitioner, is hereby declared null and void and of no legal force and effect and respondent is hereby directed to return to petitioner the properties seized from the latter under said warrant. The respondent Collector of Internal Revenue is likewise enjoined from taking any further proceeding to effect by summary methods the collection of the alleged income taxes assessed against petitioner J. C. Yuseco in the sums of ₱134.14 and ₱2,447.30 for the years 1945 and 1946, respectively. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, March 25, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.