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MANUEL A. JAVELLANA,
Petitioner,

- versus - C.T.A. CASE NO. 425

September 21, 1954

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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DECISION

This is an appeal from a decision of the respondent, assessing against and demanding from the petitioner the aggregate amount of ₱7,008.95, as deficiency estate and inheritance taxes, including surcharge and interest, allegedly due on the estates of the latter's deceased parents.

The petitioner's mother, Pilar A. de Javellana, and father, Angel Javellana, died on May 7, 1941 and February 22, 1945, respectively, leaving estates subject to estate and inheritance taxes. The petitioner, as sole heir, filed estate and inheritance returns for the respective estates on November 4, 1941 and January 2, 1946 (Exhibits A and B, pp. 1 & 17, BIR rec.), and a supplemental return (Exhibit J, p. 33, CTA rec.) for his father's estate was filed on February, 1946. On the basis of the first two returns, the respondent, on January 2, 1946, assessed the sums of ₱13,102.00 and ₱17,554.67 as estate and inheritance taxes, including the compromise penalty for lack of notice of death of Pilar A. Javellana (Exhibits D and 5, p. 28, BIR rec.).

These sums were paid by the petitioner on February 28, 1946, as evidenced by Official Receipts Nos. 10432, 10433, 2252 and 2253 (Exhibits C-3, C-2, C-1 and C, pp. 29-32, BIR rec.).

Upon investigation, it was ascertained that the haciendas of the petitioner's parents had a sugar quota of 11,558.21 piculs. Consequently, on July 17, 1946, the respondent assessed against and demanded from the petitioner the sums of ₱7,654.64 and ₱4,703.09, as deficiency estate and inheritance taxes, including interest and compromise penalty for lack of notice of death. (Exhibits E and 9, pp. 46-47, BIR rec.) This deficiency assessment included the tax on the sugar quota of 11,558.21 piculs, which was valued at ₱5.00 per picul.

On April 6, 1949, the petitioner wrote to the respondent, acknowledging receipt of the latter's letter of March 19, 1949 and requesting copy of the assessment dated July 17, 1946 in order to give reasons why he was not liable to pay deficiency taxes (Exhibit 12, p. 61, BIR rec.). In response thereto, the respondent, on July 7, 1949, enclosed a copy of said assessment and, at the same time, asked for satisfactory explanations justifying the discontinuance of the demand for deficiency taxes. (Exhibit 13, p. 63, BIR rec.) On August 10, 1949, the petitioner requested for necessary details as to the nature of the deficiency taxes sought to be collected from him and the items upon which the same were based (Exhibit 14, p. 64, BIR rec.).

On September 9, 1949, the respondent demanded from the petitioner the payment of the respective sums of ₱10,810.95 and ₱6,660.86 as deficiency estate and inheritance taxes, including 5% surcharge, interest and compromise penalty for late payment (Exhibit 15, pp. 69-71, BIR rec.). At the same time, he requested the petitioner to submit explanation which would justify the countermanding of this assessment. On October 19, 1949, the petitioner wrote to the respondent, giving the explanation asked for (Exhibit 17, pp. 73-76, BIR rec.).

Later, on December 8, 1951, the respondent issued a warrant of distraint and levy against the properties of the petitioner to satisfy the amount of ₱18,538.06, representing estate and inheritance taxes allegedly due on the estates of his deceased parents (see Exhibit 19, p. 121, BIR rec.; see also p. 118, BIR rec.). On March 29, 1952, the petitioner requested the respondent to withhold the execution of the warrant of distraint and levy and to allow him an opportunity to further explain his (former's) side on the sugar quota (Exhibit 19). And, on April 6, 1952, he supplemented his letter of March 29, 1952 and requested for the reconsideration of the respondent's stand and for the revocation of the warrant (Exhibit 20, pp. 124-125, BIR rec.).

Finally, the respondent, on July 29, 1955, reduced the valuation of the sugar quota from ₱5.00 to ₱1.00 per picul, thereby also reducing the assessment to ₱5,697.70 and ₱1,311.25, respectively, as deficiency estate and inheritance taxes, plus 5% surcharge and interest (Exhibit 21, pp. 141-142, BIR rec.).

On September 16, 1957, the petitioner received warrants, dated January 15 and 16, 1957 (Exhibits K and L, pp. 34-35, CTA rec.), distraining and levying his properties for unpaid balance of estate and inheritance taxes and penalties in the sums of ₱2,624.16 and ₱11,391.02. Subsequently, the respondent issued a notice of seizure of the petitioner's real property located at 140 Vito Cruz, Manila, with the advertence of its sale at public auction on November 4, 1957 (Exhibit M, p. 36, CTA rec.). On September 26, 1957, the petitioner requested for the cancellation of the notice of seizure and the corresponding warrants of distraint and levy (Exhibit N, p.37, BIR rec.), which request was denied on October 11, 1957 (Exhibit O, p. 171, BIR rec.).

On October 12,1957, the petitioner filed before this Court his "Petition for Review and Prohibition With Preliminary Injunction."

On the incidental question of whether or not the scheduled sale at public auction, on November 4, 1957, of the petitioner's property at 140 Vito Cruz, Manila should be suspended and/or cancelled, this Court, in its Resolution of October 30, 1957, cancelled said scheduled sale on the grounds that (1) "the assessment dated July

29, 1955 is _prima facie_ illegal in that it was made beyond the five-year period" provided under Section 331 of the Tax Code; and (2) that, "if the warrant of distraint and levy as well as the notice of seizure respectively served on petitioner on September 16 and 18, 1957 were to be founded upon the assessment dated July 17, 1946 and the supplemental demand of September 9, 1949, respondent's attempt to collect the same would also be _prima facie_ unlawful as beyond the five-year period granted him under Section 332 of the Tax Code."

Meanwhile, on October 28, 1957, the respondent filed a motion to dismiss the petition for review and prohibition with preliminary injunction on the ground that the said petition was not filed within the 30-day period prescribed in Section 11 of Republic Act No. 1125. Resolving this motion, this Court, in a majority opinion dated January 27, 1958, held the petition to have been seasonably filed.

On March 12, 1958, the respondent filed his answer to the petition.

During the hearing of the case on its merits, the parties stipulated as follows:

> "1. That the destruction of certain properties mentioned in the estate and inheritance tax returns for the late Angel Javellana (Exhibit 'B') has been verified and found correct as per Exhibits '2' and '2-A' (pp. 111 and 109 respectively of the BIR records).
>
> "2. That all the properties of the deceased spouses Pilar Javellana and Angel Javellana are enumerated in the estate and inheritance tax returns (Exhibits 'A' and 'B') except the following:

(a) Lot No. 1326 located at Jaro, Iloilo with the assessed value of ₱4,500.00 (separate propetty of the deceased Angel Javellana).

(b) Sugar quota of 11,558.21 piculs (conjugal property of the deceased spouses).

"The above two items represent the only controverted items in this case for purposes of deficiency assessment.

"3. That in the deficiency assessment (Exhibit 'H') the sugar quota was valued at one peso (₱1.00) per picul for the reasons stated in Exhibits '1' and '5' (pp. 134 and 138 respectively, BIR records).

"4. That this is only a partial stipulation of facts and, therefore, the evidence already submitted or to be submitted shall govern points not covered by this stipulation." (Pp. 137-138, CTA rec.)

This case yields the following issues:

1. Whether or not the right of the respondent to collect the alleged deficiency estate and inheritance taxes has already prescribed;

2. Whether or not the deficiency assessment in question is illegal and/or erroneous; and

3. Whether or not the respondent is liable for damages.

The resolution of the first issue turns upon the application of Sections 331 and 332(c) of the Tax Code, the pertinent provisions of which read:

"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 the 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."

"SEC. 332. x x x

(c) Where the assessment of any internal-revenue tax has been made within the period of limitation above-prescribed such tax 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. x x x."

It is suggested, on behalf of the petitioner, that the respondent could collect the alleged deficiency taxes only within five years from July 17, 1946 when the first deficiency assessment was made. Having failed to initiate the collection within the said five years, the right of the respondent to collect the same has prescribed. It is equally urged that the petitioner's protests and requests for explanation of the various assessments did not interrupt the running of the prescriptive period. However, it is argued by the respondent that the five-year period within which he was authorized by law to collect the deficiency taxes should be counted from the issuance of the revised assessment of July 29, 1955.

From the foregoing finding of facts, it appears that the initial deficiency assessment, dated July 17, 1946, was made within five years from and after the filing of the estate and inheritance tax returns. During the interim between the initial and final deficiency assessments, the petitioner has intermittently requested for a copy of the initial deficiency assessment in order to give reasons why he was not liable therefor (Exhibit 12, p. 61, BIR rec.); for necessary details as to the nature of the deficiency taxes and of the items in the returns upon which the same were based (Exhibit 14, p. 64, BIR rec.); for the withholding of the execution of the warrant of distraint and levy, and allowance of an opportunity to further explain his side on the sugar quota (Exhibit 19, p. 121, BIR rec.); and for the reconsideration of the respondent's stand, and revocation of the said warrant (Exhibit 20, pp. 124-125, BIR rec.). In view of these various requests, it is more reasonable to conclude that the respondent desisted from enforcing the collection by a proceeding in court within five years from the initial deficiency assessment because he wanted to afford the petitioner with every opportunity to dispute the correctness of the assessment. After having persuaded the respondent to reduce the deficiency assessment, and consequently to defer the collection of the tax, the petitioner may not now be allowed to profit from such postponement, thereby evading his tax liability, if there be any, on the ground of mere legal technicality. To hold, as urged upon us, that the postponement of the collection of the alleged deficiency taxes has foreclosed respondent from proceeding with the collection through judicial means is obviously unfair and prejudicial to the government. The Supreme Court, in Collector vs. Suyoc Consolidated Mining Co., et al., G. R. No. L-11527, November 25, 1958, where the Collector was forced to a similar situation, said:

> "It is obvious from the foregoing that petitioner refrained from collecting the tax by distraint or levy or by proceeding in court within the 5-year period from the filing of the second amended final return due to the several requests of respondent for extension to which petitioner yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. Because of such requests, several reinvestigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription."

> "While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such a case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harrassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government."

Consequently, we believe, and so hold, that the respondent's right to collect the alleged deficiency estate and inheritance taxes by a proceeding in court has not prescribed.

We now come to the issue of whether or not the deficiency assessment under consideration is illegal and/or erroneous. The imputation of illegality and/or error of the assessment in question is limited to questions regarding the sugar quota of 11,558.51 piculs, which, as stipulated, constituted a conjugal property of petitioner's parents, and Lot No. 1326, which, as likewise stipulated, was a separate property of Angel Javellana and had an assessed value of ₱4,500.00.

Relative to the question involving the sugar quota which the respondent valued at ₱1.00 per picul, the petitioner contends that said quota should not be included as part of the taxable estate because it had no market value on the dates of his parents' demise; that its value was already included in the assessment of the land, and that being a mere privilege granted by the state, it is doubtful if the same could be treated as taxable property.

A sugar quota, otherwise technically referred to as "plantation-owner's allotment", means the quantity of sugar of a stated class which in a given year may, in the case of A and B sugar be marketed, and in the case of C sugar be held as a reserve, by the owner and/or planters of the plantation concerned (Executive Orders Nos. 873 and 885, dated September 30, 1935 and October 12, 1935, respectively, Exhibits 2 and 3, pp.

83-91, BIR rec.). Like any other specie of property, it may be transferred either in whole or in part, by or in connection with a transfer of plantations or areas to which they pertain, or independently thereof, subject to the conditions stated in Executive Order No. 873. In fact, sugar quotes were and are still being sold or leased for monetary considerations. They "can be sold in the year 1941 for ₱5.00 and in the year 1945 for ₱6.00 per picul" (p. 95, BIR rec.). However, in view of the fact "that the valuation dates in question are the two (2) hectic periods of the war (invasion and liberation) when no concrete evidence of values can be had" (Exhibit 5, p. 138, BIR rec.), we presume that the respondent's valuation of the sugar quota under consideration at ₱1.00 per picul is <u>prima facie</u> correct (see Interprovincial Autobus Co., Inc. vs. Collector, G. R. No. L-6741, January 31, 1956; see also Commissioner v. Robertson, 75 F (2d) 540; Estate of William McDougall, 45 BTA 803, 807). The petitioner's general allegation that the sugar quota did not have market value on the dates of his parent's demise is not sufficient to overcome this presumption of correctness. Moreover, even granting that there was then no market value, the absence of market price is not a barrier to valuation (Guggenheim v. Rasquin, 312 U.S. 254, 85 L. ed. 813; see also Lucas v. Alexander, 279 U.S. 573, 73 L. ed. 851), for an important element in the value of the property is the use to which it may be put (Susquehanna Power Co. v. State Tax Commission, 283 U.S. 291, 296, 75 L. ed. 1042).

As regards the petitioner's objection to the inclusion of the sugar quota as part of the taxable estate on the ground that the value thereof has already been included in the assessment of the land, we find the same to be without merit. We find no evidence in record to sustain this objection.

The suggestion that a sugar quota is a mere privilege granted by the state, and, therefore, it is doubtful if the same can be treated as taxable property is equally without merit. A sugar quota, once granted by the government and until withdrawn from the sugar planter, is a property or property right, the devolution of which constitutes a transfer or shifting of the economic benefits and burdens of property.]

Relative to Lot No. 1326, which, as stipulated by the parties, was a separate property of the petitioner's father, its value of ₱4,500.00 should be considered only in the estate of his father, in computing the estate and inheritance taxes due thereon.

The instant appeal on the legality or illegality of the deficiency assessment having been limited to the questions relative to the sugar quota and Lot No. 1326, we are not at liberty to disturb the respondent's determinations on the other real and personal properties of the petitioner's deceased parents. Consequently, we find, and so hold, that there is due from the petitioner the total sum of ₱5,475.55 as deficiency estate and inheritance taxes, including 5% surcharge.

Having determined a deficiency against the petitioner, we find it unnecessary to pass upon the question of damages.

WHEREFORE, the decision appealed from is hereby modified in the sense that the petitioner is ordered to pay to the respondent or his authorized agent the sum of ₱5,475.55, computed in Annex "A" hereof, with the corresponding interests from March 1, 1946. With costs against the petitioner.

SO ORDERED.

Manila, September 21, 1959.

MARIANO NABLE
Presiding Judge

I CONCUR:

~~AUGUSTO M. LUCIANO~~
Associate Judge

I reserve my vote.

ROMAN M. UMALI
Associate Judge

ANNEX "A"

Estate of PILAR A. DE JAVELLANA

Estate tax	₱ 6,833.12	
5% Surcharge on ₱1,515.97	75.80	
Total	₱ 6,908.92	
Less amount paid	5,317.15	
Deficiency estate tax due		₱1,591.77
Inheritance tax	₱10,079.18	
5% Surcharge on ₱2,409.33	120.47	
Total	₱10,199.65	
Less amount paid	7,669.85	
Deficiency inheritance tax due		2,529.80
TOTAL		₱4,121.57

Estate of ANGEL JAVELLANA

Estate tax	₱ 6,985.79	
5% Surcharge on ₱467.07	23.35	
Total	₱ 7,009.14	
Less amount paid	6,518.72	
Deficiency estate tax due		₱ 490.42
Inheritance tax	₱11,848.39	
5% Surcharge on ₱822.44	41.12	
Total	₱11,889.51	
Less amount paid	11,025.95	
Deficiency inheritance tax due		863.56
TOTAL		₱1,353.98

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