fy'd

SERVANDO DE LOS ANGELES,
Petitioner-Appellant

versus

THE COLLECTOR OF INTERNAL REVENUE, THE PROVINCIAL TREASURER OF RIZAL, and THE MUNICIPAL TREASURER OF MARIKINA, RIZAL,
Respondents-Appellees
x - - - - - - - - - - - - - - - x

C. T. A. CASE NO. 110

Oct. 7, 1955

DECISION

The only question presented for decision in this case is whether or not an inheritance tax assessed in August, 1935, under the old Internal Revenue Law (Sections 1536, et seq., Chapter 40 of the Administrative Code), may still be collected by distraint and levy in view of the statute of limitations provided in Sections 331 and 332 of the National Internal Revenue Code.

The facts of the case may be briefly stated as follows:

On May 10, 1928, Marta Dizon died leaving real and personal properties to four of her cousins, namely, Sixto, Regina, Epifania and Servando, all surnamed de los Angeles, the last being the petitioner herein. On March 5, 1935, Sixto de los Angeles, who was also the administrator of the estate of the deceased, filed an inheritance tax return from which it appears that the sum of ₱185.94 was due from each heir. Sometime in August, 1935, assessment notices were sent to all the four heirs requiring each of them to pay ₱185.94 on or before Aug-ugust 25, 1935. All the heirs, except petitioner, paid the amounts assessed against them on August 26, 1935. Petitioner refused to pay the amount assessed against him on the ground that he had not received his share of the inheritance and that certain questions in regard to the distribution of the estate had been elevated to the Supreme Court (G. R. No. 45824).

As already stated, the inheritance tax sought to be collected from petitioner was assessed in August, 1935. While the amount originally assessed was ₱185.94, the amount being collected reached ₱558.75, which includes surcharge and interest up to June 30, 1954. Interest at the rate of 1% per month on the sum of ₱185.94 will have to be added from July 1, 1954 to the date of payment.

Numerous attempts were made by the Bureau of Internal Revenue to collect the sum of ₱185.94, plus penalties, from petitioner without success. It is interesting to note that from 1936 to 1954 instructions were repeatedly issued to the deputy provincial treasurer of Marikina, Rizal, to enforce collection of the tax by distraint and levy, but these instructions were apparently ignored. It was only on January 28, 1955 when a warrant of distraint and levy was issued pursuant to Sections 315-330 of the National Internal Revenue Code and sent to the deputy provincial treasurer of San Mateo, Rizal for execution. Petitioner, without disputing the legality of the assessment, vigorously protested the collection of the tax and penalties claiming that the right of the Government to collect has already prescribed, pursuant to paragraph (c), Section 332 of the Revenue Code. On the other hand, respondent claims that the statute of limitations provided in Sections 331 and 332 of the Revenue Code does not apply in view of the proviso contained in Section 331 to the effect that the limitation contained therein "shall not apply to cases already investigated prior to the approval of this Code", the National Internal Revenue Code having been approved on June 15, 1939 and became effective on July 1st of the same year, while the instant case was investigated in 1935.

The statute of limitations upon the right of the Government to assess and collect internal revenue taxes is provided in Sections 331 and 332 of the Revenue Code. For a clear understanding of the issue involved, the said sections are reproduced below:

> "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. Exceptions as to period of limitation of assessment and collection of taxes.—(a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.
>
> "(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.
>
> "(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. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

Section 331 provides that, except in the cases enumerated in Section 332, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court <u>without assessment</u> for the collection of such taxes shall be begun after the expiration of such period. Section 331 provides for two kinds of limitation. The first is a limitation upon the right to assess, and the second is a limitation upon the right to institute a proceeding in court for the collection of an internal revenue tax <u>without assessment</u>. In both cases the period provided is 5 years, counted from the date after the filing of the return, after which the right of the Government to assess and collect is barred, except in cases investigated prior to the approval of the Revenue Code on June 15, 1939.

Neither of the two kinds of limitation prescribed in Section 331 is a bar to the right to collect the tax in the instant case, for it is undisputed that the inheritance tax sought to be collected from petitioner was assessed in 1935. If the general rules laid down by law do not apply to the case under consideration, it follows that the proviso likewise can not have any application thereto. We have to look to Section 332 which enumerates the cases to which Section 331 does not apply.

Section 332 enumerates three exceptions to the period of limitation upon assessment and collection provided in Section 331. We are not concerned with the first and second exceptions. The third exception is obviously the one applicable to the case at bar. It says, and we quote:

> "(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. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

The assessment of the inheritance tax against petitioner was made within the period prescribed by law. Hence, under paragraph (c) of Section 332, the tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after 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. The collection of the tax was not effected by distraint or levy or by a proceeding in court within five years after assessment. In fact, it was only in January, 1955, after about 20 years from the date of assessment and more than 15 years from the date of the approval of the Revenue Code, that a warrant of distraint and levy issued by respondent was sought to be executed.

Section 332 authorizes the Collector of Internal

Revenue to collect a tax that has been previously assessed after five years from the date of assessment if there is an agreement to that effect between the Collector and the taxpayer concerned. No such agreement appears to have been made in this case. Section 333 provides that the periods of limitation upon collection of internal revenue taxes may also be suspended for the period during which the Collector is prohibited from instituting distraint and levy proceedings, and for 60 days thereafter. Respondent has not shown that the period of limitation for the collection of the tax here in dispute has been suspended for a period sufficient to give validity to his warrant of distraint and levy issued in January, 1955.

We take notice, however, that on November 2, 1945, Commonwealth Act No. 722 was approved, which suspended the running of the periods of limitation provided in Sections 331 and 332 of the Revenue Code for the period from December 8, 1941 to the last day of February, 1945. (See General Circular No. V-6, Nov. 14, 1945, of the Collector of Internal Revenue.) But even the said Act was not enough to preserve the right of respondent to collect the tax in question for the reason that more than 9 years had elapsed from March 1, 1945 to January, 1955. From whatever angle we view the case, respondent appears to be well within his rights to complain against the method of collection resorted to by respondent which the law itself declares to be barred.

It is argued with much vehemence that the proviso contained in Section 331 that "this limitation shall not apply to cases already investigated prior to the approval of this Code" applies not only to the limitation provided in that section but also to Section 332. It is to be noted that the proviso specifically mentions "this limitation", referring to the limitation provided in Section 331 and not to the limitations enumerated in Section 332. If Congress had intended to make the proviso applicable to both sections, it would undoubtedly have worded the proviso so as to make it applicable to both sections. We do not feel justified in enlarging the meaning and scope of the law beyond what was clearly intended by Congress. Taxing acts, including provisions as to limitations on assessment and collection of taxes, should be construed liberally in favor of the taxpayer. (Bowers v. N. Y. & Albany Co., 273 U. S. 346, 1 USTC, Par. 218, cited in Vol. 4 CCH (1954), Par. 1443.119.)

WHEREFORE, we are of the opinion and so hold that the Government is barred by the statute of limitations from collecting the inheritance tax assessed in August, 1935 against the petitioner, and pursuant to Section 14, Republic Act No. 1125, "there is no deficiency in respect of such tax." Accordingly, the warrant of distraint and levy of January 28, 1955 is hereby ordered lifted and withdrawn.

SO ORDERED.

Manila, October 7, 1955.

R C Umali

ROMAN M. UMALI
Associate Judge

WE CONCUR:

M Nable

MARIANO NABLE
Presiding Judge

Augusto M Luciano

AUGUSTO M. LUCIANO
Associate Judge

109

(Note: This case was appealed to the Supreme Court) aff'd in Collector vs. de los Angeles, L-9899, Aug. 13, 1957