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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

May 30, 1963

JOSE PANTOJA,
Petitioner,

- versus - CIVIL CASE NO. R-3045

SATURNINO DAVID, Collector of Internal Revenue, PEDRO ELIZALDE, Provincial Treasurer of Cebu, and TIMOTEO CAÑARES, Municipal Treasurer of Danao, Cebu,
Respondents.

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D E C I S I O N

This case has been remanded to this Court for the second time. On January 9, 1953, petitioner instituted in the Court of First Instance of Cebu an action for prohibition praying that "respondents be ordered to desist and refrain from further proceedings designed to enforce collection of the alleged tax liability of petitioner against the latter's property and for such other remedy as may be just and equitable in the premises." Upon the organization of this Court in 1954, the case was remanded to it pursuant to Section 22 of Republic Act No. 1125. The case was ordered dismissed by this Court in its resolution of January 7, 1956 for lack of jurisdiction. On appeal to the Supreme Court, it was held in G. R. No. L-10765, February 28, 1961, that we have jurisdiction to pass upon the issue raised by petitioner whether or not the right of the Government to collect the tax assessed against him has already prescribed. Accordingly, this Court has been ordered to give due course to the petition, and, if the allegations of petitioner "are properly proved, it may and should annul the distraint levied on his property."

Respondent has, however, raised anew the question of the jurisdiction of this Court. It is alleged that in a later decision of the Supreme Court (Coll. of Int. Rev. v. Yuseco, G. R. No. L-12528, Oct. 28, 1961) it was held that we have no original jurisdiction to issue writs of prohibition and injunction independently of, and apart from, an appealed case. Therefore, respondent contends that this action for prohibition should be dismissed.

Assuming that the doctrine laid down in this case in G. R. No. L-10765, February 28, 1961, has been overruled on October 28, 1961 in the Yuseco case, yet we feel that we have no power to reopen a case that has been finally passed upon and disposed of by the Highest Court. Our only duty, as ordered by the Supreme Court, is to determine the correctness of the allegations of petitioner in regard to the question of prescription of the right of the Government to collect the tax assessed against petitioner. We will, therefore, confine ourselves to the resolution of that issue.

The tax here in issue was assessed against petitioner on November 16, 1939. Upon failure of petitioner to pay the tax, the then Collector of Internal

Revenue issued on March 26, 1940 a warrant of distraint and levy. (See Exh. 13, page 22, B.I.R. records.) By virtue of said warrant of distraint and levy, certain real properties of petitioner were levied upon and were scheduled for sale at public auction. (Exh. 9, page 17, B.I.R. records.) However, petitioner instituted an action for injunction against the Provincial Treasurer of Cebu and the Municipal Treasurer of Danao, Cebu. (Civil Case No. 1302, Exh. 18, pp. 29-32, B.I.R. records.) Upon the filing of a bond, the defendants, the Provincial Treasurer of Cebu and the Municipal Treasurer of Danao, were enjoined by the Court of First Instance of Cebu against proceeding with the sale of petitioner's properties. After hearing, the writ of injunction was finally lifted on November 29, 1941. (Exhs. 38 and 40.) No further action was taken on the case in view of the advent of World War II.

After the war, it is alleged that the Government encountered difficulty in reconstituting the records of the case. To insure collection of the tax, another warrant of distraint and levy was issued on February 13, 1950, and the real properties of petitioner were again advertised for sale at public auction. For lack of bidders, the properties were declared forfeited in favor of the Government on July 17, 1952.

Petitioner contends that since his properties were levied upon by virtue of a warrant of distraint and levy issued on February 13, 1950, about eleven years after the assessment of November 16, 1939, the right to collect the tax has prescribed.

Section 332(c) of the National Internal Revenue Code provides that where an internal revenue tax has been assessed within the period of limitation prescribed by law, such tax may be collected by distraint or levy within five years after assessment. In this case, the tax was assessed on November 16, 1939, and the first warrant of distraint and levy was issued on March 26, 1940, four months and ten days after assessment. It is true that sometime in 1940, a writ of preliminary injunction was issued by the Court of First Instance of Cebu in Civil Case No. 1302 enjoining the sale of the properties of petitioner, but said writ of injunction was lifted on November 29, 1941, leaving the said warrant of distraint and levy in full force and effect. It was never cancelled or invalidated. The issuance of the second warrant of distraint and levy on February 13, 1950, did not have the effect of invalidating the first warrant. Therefore, it is our opinion that the right of the Government to collect the tax in question has not prescribed. (See Clara Diluangco Palanca v. Commissioner of Internal Revenue, G. R. No. L-16661, January 31, 1962.)

WHEREFORE, the herein petition for prohibition is hereby dismissed, with costs against petitioner.

SO ORDERED.

Manila, May 30, 1963.

ROMAN M. UMALI
Associate Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge