REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ADRIANO CHUA JOY,
Petitioner,

- versus -

May 25, 1956

C.T.A. CASE NO. 245

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

x- - - - - - - - - - - - - - - - - -x

DECISION

This is an appeal from the decision of the Collector of Internal Revenue ordering the seizure, distraint, levy and sale of the properties of the petitioner in order to collect the amount of ₱20,145.00 as war profits tax, including surcharge, and the sums of ₱112.50, ₱45.00, ₱45.00, ₱45,00, ₱3,430.38 and ₱119,851.26 as income taxes, inclusive of surcharges, for the years 1938, 1939, 1940, 1941, 1945 and 1946, respectively.

On May 5, 1956, when this case was called for hearing, the petitioner submitted the case for judgment on the pleadings pursuant to Section 10, Rule 35 of the Rules of Court, in view of the fact that the "Answer" of the respondent admitted all the material allegations in the "Petition for Review with Preliminary Injunction" filed by the petitioner. The parties did not submit any evidence except that the counsel for the petitioner manifested in open Court that the sale at public auction of the properties distrained or levied upon is scheduled for this coming Saturday, May 26, 1956, which fact was also admitted by the counsel for the respondent.

The facts admitted and established by the pleadings of the parties are as follows:

On August 10, 1948, the respondent Collector of Internal Revenue assessed against the petitioner as war profits tax the sum of ₱20,145.00, and as income taxes for the years 1938 to 1941, inclusive, 1945 and 1946, the total amount of ₱123,529.14. The petitioner questions and disputes the aforesaid assessments on the ground that he did not have the net worth and income imputed to him by the respondent, but he offered and tendered payment of what he truly and honestly believed to be his war profits and income tax liabilities in the aggregate amount of ₱19,187.74.

On January 26, 1956, the respondent issued a warrant of distraint and levy to enforce the collection and satisfaction of the war profits and income taxes assessed against the petitioner. The said warrant of distraint and levy was served upon the petitioner and executed on February 9, 1956, and the sale at public auction of the properties seized and distrained or levied upon is set for Saturday, May 26, 1956.

On March 9, 1956, the petitioner filed his appeal with this Court. Although his pleading is entitled "Petition for Review with Preliminary Injunction" it is substantially a "Petition for Prohibition with Preliminary Injunction". Inasmuch as the case is now before us for decision on the merits, we deem it unnecessary to determine whether or not to issue a writ of preliminary injunction.

The issue to be decided in this case is whether or not the Collector of Internal Revenue has the power or authority to collect by distraint and levy the war profits and income taxes in question after the lapse of more than seven (7) years and five (5) months from the date of the assessment.

With respect to the income tax assessed against petitioner, the settled and well-established rule in this jurisdiction which has been honored by time and jurisprudence is that the Collector of Internal Revenue cannot collect income tax by the summary method of distraint and levy after the lapse of three (3) years from the date the return is due or has been made. This fundamental principle in the collection of income taxes is embodied in Section 51 (d) of the National Internal Revenue Code as interpreted and applied in a long line of decisions of the Supreme Court (Collector of Internal Revenue vs. Villegas, 56 Phil. 554; Juan de la Viña vs. Government of the Philippine Islands, 65 Phil. 262; Collector of Internal Revenue vs. Haygood, 65 Phil. 520; Philippine Sugar Estate Development Co., Inc. vs. Posadas, 68 Phil. 216) and of this Court (Vicente J. Francisco vs. Collector, C.T.A. No. 20, Resolution dated March 18, 1955, certiorari denied G.R. No. L-8997, April 12, 1955; A. P. Reyes vs. Collector, C.T.A. Case No. 42; Avelino vs. Collector, C.T.A. Case No. 120; Carmen Cuenco vs. Collector, C.T.A. Case No. 113;

Lourdes Cuenco vs. Collector, C.T.A. Case No. 114; etc.).

In the case at bar, the records do not show the dates when the returns were made and filed. Even if we were to be very liberal to the respondent and assume that the returns were made and filed on the same day when the assessment was made, that is, on August 10, 1948, and count the three-year statutory period of limitation from said date, undoubtedly, the authority of the Collector of Internal Revenue to collect the income tax assessed against petitioner for the years 1938, 1939, 1940, 1941, 1945 and 1946 by distraint and levy or by any other summary method had already long prescribed when the warrant of distraint and levy was issued and executed on February 9, 1956, more than seven (7) years and five (5) months after the assessment in question was made. Accordingly, the said warrant of distraint and levy was issued in violation of Section 51 (d) of the Revenue Code.

Even granting that Section 51 (d) of the Revenue Code is not applicable in this case, the right of the Government to collect the income tax in question has prescribed under Section 332 of the same Code. It has been established that the assessment was made on August 10, 1948. Section 332 (c) provides that where the assessment of any internal revenue tax has been made within the period prescribed by law (within 5 years after the return was filed pursuant to Sec. 331), the tax "may be collected by distraint and 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." In this case, the warrant of distraint and levy was issued more than 5 years after the assessment, and it is not shown that there was any agreement for the extension of such five-year period between the Collector and the taxpayer. (See Servando de los Angeles v. Collector of Internal Revenue, C.T.A. Case No. 110, October 7, 1955.)

As regards the war profits tax, Section 9 of the War Profits Tax Law (Rep. Act No. 55) provides -

> "SEC. 9. Administrative remedies.— All administrative, special and general provisions of law including the laws in relation to the assessment, remission, collection and refund of national internal revenue taxes, not inconsistent with the provisions of this Act, are hereby extended and made applicable to all the provisions of this laws, and to the tax herein imposed."

The five-year periods within which internal revenue taxes must be assessed and collected are, therefore, applicable to the assessment and collection of the war profits tax. It is clear from the records that more than five years had elapsed after the assessment of the war profits tax when the warrant of distraint and levy was issued and executed by respondent. The right of the Government to collect the war profits tax against petitioner has, therefore, likewise prescribed.

We note that petitioner, despite the fact that the right of the Government to collect the war profits and income taxes assessed against him has prescribed, has offered to pay the sum of ₱19,187.74, which he honestly believes is the true and correct amount of his war profits and income tax liabilities. The tender of payment should have been accepted in the interest of the Government.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the warrant of distraint and levy issued on January 26, 1956 is declared null and void as having been issued in violation of Sections 51 (d) and 332 of the Revenue Code, and the respondent Collector of Internal Revenue is hereby ordered to desist from taking any further proceedings thereunder, and he is hereby directed to return to petitioner the properties seized from the latter, the sale at public auction of which is set for Saturday, May 26, 1956.

SO ORDERED.

Manila, Philippines, May 25, 1956.

MARIANO NABLE
Presiding Judge
(On Leave)

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge