REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

CARLOS MORAN SISON and
PRISCILA F. SISON,
Petitioners,

- versus - C.T.A. CASE NO. 337

COLLECTOR OF INTERNAL
REVENUE,
Respondent.

x- - - - - - - - - - - - - -x Feb. 28/58

DECISION

The respondent assessed against the spouses Carlos Moran Sison and Priscila F. Sison, petitioners herein, the sum of ₱5,535.02 as deficiency income tax for the year 1949.

It appears that on February 28, 1949, petitioners, together with three other persons, organized a corporation known as the Priscila Estate, Inc. with a capital stock of ₱1,000,000.00, divided into shares with a par value of ₱1,000.00 per share. In payment of the shares subscribed by petitioners, they executed a deed of assignment in favor of the newly formed corporation conveying to the latter properties consisting of real estate, office supplies, furniture and fixtures, specifically described in the inventory marked Exhibit 6. The properties had an aggregate assessed value of ₱1,069,717.00. By the terms of the deed of assignment, the corporation assumed "all the obligations and liabilities of the Assignors in the total amount of three hundred ninety seven thousand

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seven hundred seventeen (₱397,717.00) pesos . . . as well as Assignors' income tax liabilities for the calendar year 1948 to the extent only of ₱28,000.00."

On April 18, 1950, within the period of extension for the filing of their income tax return for 1949, petitioners filed their joint income tax return for said year showing an income tax liability of ₱555.26, which was paid in two installments on May 13, 1950 and August 14, 1950. Subsequently, or on July 2, 1952, after an examination and investigation of the said income tax return, respondent assessed against petitioners a deficiency income tax of ₱41,101.53. This deficiency income tax was computed after taking into account the alleged capital gain in the sum of ₱257,380.00 realized by petitioners from the transfer of their properties in 1949 to the Priscila Estate, Inc. in exchange for 672 shares of the latter.

Upon request for reconsideration, and after several investigations conducted by examiners of the Bureau of Internal Revenue, respondent, in his letter of October 13, 1956, received by counsel for petitioners on October 17, 1956, reduced the deficiency income tax assessment from ₱41,101.53 to ₱5,535.02. The reduction of the assessment was due to the finding that instead of deriving a net capital gain of ₱257,380.00 from the transfer of their properties to Priscila Estate, Inc., petitioners derived ordinary and capital gains in the sum of ₱31,879.97. (See Exh. D for petitioners; Exh.

12 for respondent.) In his letter of October 19, 1956, counsel for petitioners requested a reconsideration of the revised assessment and at the same time alleged that the right of respondent to assess and collect the said deficiency tax had prescribed. Upon denial of the request for reconsideration, the case has been elevated to this Court for review. The following issues have been raised by petitioners.

> First, whether respondent's right to assess and collect the amount of ₱5,535.02 as petitioners' alleged deficiency income tax for 1949 has prescribed;
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> Second, assuming that said right is not yet barred by prescription, whether petitioners have realized any profit from the transfer of their properties to the Priscila Estate, Inc.;
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> Third, assuming that there was such a profit, whether it was a mere paper profit and, therefore, not a taxable income; and
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> Fourth, whether under the circumstances of this case respondent can be held liable to petitioners for compensatory, exemplary and moral damages, plus a reasonable amount for attorney's fees and the expenses of this litigation, aside from costs.

Has the right of the Government to assess and collect the deficiency income tax of ₱5,535.02 prescribed? The law applicable is Section 331 of the National Internal Revenue Code, which provides:

> "Sec. 331. <u>Period of limitation upon assessment and collection</u>.—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.

The records of this case show that the income tax return of petitioners for 1949 was filed on April 18, 1950. The deficiency income tax of ₱5,535.02 was assessed on October 17, 1956, the date respondent's letter of October 13, 1956 was received by petitioners, or more than six (6) years from the date the return was filed. The law requires that an assessment of an internal revenue tax must be made within 5 years from the date the return was filed. It is, therefore, clear that the right of the Government to assess the said deficiency tax has prescribed, and consequently the same may no longer be collected.

It is argued, however, that "an original assessment was issued against petitioners in July, 1952, or well within the 5-year period from April 18, 1950 when the return was filed" and that the "subsequent assessment of October 13, 1956 was a mere amendment to the first and it could not be denied that the right to assess once exercised continues in force and the subsequent amendment is a mere continuation of the exercise of such right." (Page 9, Memorandum for Respondent.) We cannot accept the soundness of this proposition. We have held that where an assessment is made within the five-year period but such assessment is set aside and modified by another, the five-year period within which to assess as provided in Section 331 of the Revenue Code is to be counted from the date of filing of the return to the date the new assessment was made. This rests on the theory that an assessment that has been set aside or cancelled is no assessment at all. (Suyoc Consolidated Mining Co. v. Collector of Internal Revenue, C.T.A. No. 189, September 27, 1956; Gancayco v. Collector of Internal Revenue, C.T.A. No. 287, November 14, 1957.) If the theory of respondent is to be accepted, he could nullify the provision of law limiting his power to assess and collect internal revenue taxes by merely amending his former assessment.

It is also argued that "petitioners' various requests for reconsideration . . . in effect suspended the running of the prescriptive period during the time when the reinvestigations were being conducted." (Pp. 9-10, Memorandum for Respondent.) We find no legal basis for this conclusion. The law provides for the suspension of the running of the statute of limitations upon assessment and collection of internal revenue taxes in general only in two instances, to wit:

> 1. Where before the expiration of the time prescribed (for the assessment or collection of the tax), both the Collector of Internal Revenue and the taxpayer agreed in writing to its assessment or collection after such time (Pars. [b] and [c], Revenue Code); and
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> 2. Where the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy or a proceeding in court, and for sixty days thereafter. (Section 333, Revenue Code.)

Nowhere does the law recognize that a simple request for reconsideration of an assessment, unaccompanied by any positive indication that the taxpayer is waiving his right to assert the defense of prescription, has the effect of suspending the running of the statute of limitations. This is especially so where, as in this case, the original assessment was found to be erroneous and the request for reconsideration was not without justification. We may also add that to consider a request for reconsideration as having the effect of suspending the running of the statute of limitations would be to discourage such requests, which is contrary to the established policy of requiring the exhaustion of all administrative remedies before resorting to the courts. The present practice in the Bureau of Internal Revenue apparently supports this view.

> "That a request for re-examination or reconsideration of an assessment does not suspend the running of the statute of limitations seems to be the prevailing opinion in the Bureau of Internal Revenue. This may be inferred from the fact that General Circular No. V-102 dated January 17, 1955 (providing that if a taxpayer wants his case re-examined or reinvestigated, he must sign a statement that he is waiving the periods of prescription involved in the assessment and collection of the deficiency tax in question) had to be promulgated. x x.
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> "If a simple request for reinvestigation or re-examination of an assessment suspends the running of the statute of limitations, as alleged by respondent, there is no necessity for the requirement that a taxpayer must 'sign a statement that he is waiving the periods of prescription' as a condition for the granting of the request

for reinvestigation or re-examination. General Circular No. V-182 is obviously in line with Section 332 (c) of the Revenue Code which provides that the waiver of the taxpayer must be contained in an agreement in writing extending the five-year period of limitation upon the right of the respondent to collect internal revenue taxes." (Suyoc Consolidated Mining Co. v. Collector of Internal Revenue, supra.)

Finally, respondent claims that the statute of limitations upon assessment and collection of internal revenue taxes provided in Sections 331 and 332 of the Revenue Code does not apply to income tax, citing Collector of Internal Revenue v. Avelino, G.R. No. L-9202, November 19, 1956. In other words, respondent is of the opinion that the right of the Government to collect income tax through judicial action is imprescriptible. (Page 9, Internal Revenue Bulletin, August, 1957.) Counsel for the Government have expanded this theory of respondent by asserting that it is not only the right to collect income tax by judicial action but also the right to assess said tax that is imprescriptible. (Pp. 10-11, Memorandum for Respondent.) We have read with care the decision of the Supreme Court in the Avelino case, especially the portion indicated by counsel for respondent, but we have found nothing therein from which any inference may be drawn that the right of the Government to assess and collect income tax by judicial action does not prescribe.

The sole question raised by the parties and decided by the Supreme Court in the Avelino case was the validity of the warrant of distraint and levy issued by the Collector of Internal Revenue to enforce collection of income tax after three years from the date the return was filed or was due. It was there held that income tax may be validly collected by distraint and levy within three years after the return was filed or was due, and any attempt to collect said tax by that method after the three-year period is illegal and void. After the three-year period, the sole remedy for the collection of income tax is by judicial action. The reason for this is that since Section 51(d) of the Revenue Code limits the right of the Government to collect income tax by distraint and levy, Sections 331 and 332 of the same Code which provide for different periods for collection of internal revenue taxes in general by the said method do not apply to income tax. Section 51(d) is a special provision specifically applicable to income tax, while Sections 331 and 332 are provisions applicable generally to internal revenue taxes. Said the Supreme Court:

> " . . . but there is nothing provided in the new Code from which it may be inferred that the provisions of said section 51(d) were deemed repealed or modified by the provisions of sections 331 and 332 thereof. Since repeals by implication are not favored, unless the contrary clearly appears, and it is a well known rule that conflicting provisions should be harmonized and reconciled so that both may be given force and validity, it is our duty to harmonize and reconcile them if only to give effect to the clear intent of our legislative body."

The only conflict between Section 51(d) on the one hand and Sections 331 and 332 on the other relates to the period of limitation upon the power to collect income tax by distraint and levy, and the Supreme Court rightly held that Section 51(d) being a special provision is the one applicable. With respect to the right to assess and collect income tax by judicial action, there is absolutely no conflict between the said provisions of law. Section 51(d), the special provision, being silent on the subject, Sections 331 and 332, the general provisions, must be held to apply. There is nothing in Sections 331 and 332 which excludes from their operation the right of the Collector of Internal Revenue to assess and collect income tax by judicial action. And this Court has expressed this view in a long line of decisions. We summarized our views on this subject in Gancayco v. Collector of Internal Revenue, C.T.A. No. 287, November 14, 1957, from which we quote:

> "1. After three years from the filing of an income tax return, the Government cannot collect income tax by distraint and levy; but it may do so by judicial action within five years from the date the return was filed, if there was no assessment, or within five years from the date of assessment. (Intestate Estate of N. T. Hashim, Manila Civil Case No. 71131, June 11, 1956; Adriano Chua Joy v. Collector of Int. Rev., C.T.A. No. 245, May 25, 1956;[1] Republic of the Phil. v. Canlas, Manila Civil Case No. 22366, June 16, 1956; Suyoc Consolidated Mining Co. v. Collector of Int. Rev., C.T.A. No. 189, Sept. 27, 1956; Solano v. Collector of Int. Rev., C.T.A. No. 208, Oct. 5, 1956; Jose Ng Suy v. Collector of Int. Rev., C.T.A. No. 321, July 1, 1957; Bohol Land Transp. Co. v. Collector of Int. Rev., C.T.A. No. 261, Sept. 26, 1957.)

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[1] Affirmed by the Supreme Court in G. R. No. L-10961, Feb. 28, 1958.

"2. Where the taxpayer failed to file his income tax return, the Collector of Internal Revenue may assess the tax within ten years from the date of discovery of the omission, and may collect the tax without assessment by judicial action within the same period. (Euemia Evangelista v. Collector of Int. Rev., C.T.A. No. 53, Nov. 23, 1955, affirmed by the Supreme Court in G.R. No. L-9996, Oct. 15, 1957.)

"3. In case of fraud, income tax may be collected without assessment by judicial action within ten years from the date of discovery of the fraud, or within five years from the date of assessment, if an assessment has been made. (Reyes v. Collector of Int. Rev., C.T.A. No. 42, Jan. 8,1955,affirmed in G.R. No. L-8685, Jan. 31, 1957; Perez v. Araneta, B.T.A. No. 189, Feb. 13, 1956; William Li Yao v. Collector of Int. Rev., C.T.A. No. 30, July 31, 1956; Elvira Buenaventura v. Collector of Int. Rev., C.T.A. No. 139, June 24, 1957.[1])"

We find no justification for this Court to depart from the opinions expressed in the foregoing decisions. Apparently, the Supreme Court entertains the same view when, in a case elevated to it on certiorari, it directed this Court to "determine the income tax liabilities of Matias H. Aznar that have not prescribed under the terms and period fixed by Sections 331 and 332 of the National Internal Revenue Code." (Collector of Int. Rev. v. Aznar, G. R. No. L-10370, Jan. 31, 1958.)

Having found that the right of respondent to assess the income tax in question from petitioners has prescribed, we deem it unnecessary to pass upon the second and third issues relating to the correctness of the said

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[1] Cited in Opinion No. 182 of the Secretary of Justice, Aug. 1, 1957, XXII Lawyers Jour. 606.

assessment.

The fourth issue refers to the claim of petitioners for "compensatory, exemplary and moral damages, plus a reasonable amount for attorney's fees and the expenses of this litigation, aside from costs." To justify their claim for damages, petitioners allege:

> "On June 23, 1952, it originally assessed the amount of ₱41,101.53 as PETITIONERS' alleged deficiency income tax for 1949 based on a supposed undeclared paper profit of ₱257,380.00 which they purportedly realized from the transfer of their properties to a corporation they absolutely control.
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> "In arriving at the said profit of ₱257,380.00, however, the Bureau took into account only those properties where PETITIONERS appeared to have made some gains and disregarded altogether those properties where they suffered losses.
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> "But that is not all. When the factual and legal bases of the assessment were questioned and, as a consequênce, the case was reinvestigated resulting in the finding that, instead of realizing a profit, PETITIONERS sustained a loss from the transfer, one would think that the case would be dropped.
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> "But no. PETITIONERS were instead subjected, to their great annoyance and inconvenience, to a series of re-investigation for a period of more than four (4) years and by different teams of examiners at that until, on October 13, 1956, the assessment was revised and reduced to only ₱5,535.02 based this time on an alleged profit of ₱31,879.97.
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> "PETITIONERS twice requested RESPONDENT to explain how his Office arrived at such reduced profit of ₱31,879.97. But he merely stated in his letter of November 2, 1956, Annex 'B', that the said profit was based upon the alleged total assets of ₱1,004,637.03 transferred by PETITIONERS to the Priscila Estate, Inc., without explaining how such figure was arrived at. He miserably failed and stubbornly refused to give out the details thereof, to wit: the costs to PETITIONERS of each of the properties transferred, their respective assigned values, and the rates and amounts of depreciation taken into account.

> "Under these circumstances, it is trite to say that PETITIONERS were deprived of their right to question the correctness and legality of the deficiency assessment against them. In effect, they were being deprived of their property without due process of law. x x x.
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> "This unvarying and persistent practice of the Bureau of Internal Revenue -- of being dictatorial and averse to making explanations of its assessments, of investigating and reinvestigating again and again a case for years to the point of harassment and by different teams of examiners at that, and of constantly revising its assessments -- a practice which had been censured time and again by this Honorable Court of Tax Appeals, smacks of persecution." (Pp. 13-16, Petition for Review.)

These allegations are denied in the answer of respondent, who claims that he "exercised due diligence and good faith in order that petitioners' income tax liability for 1949 may be correctly ascertained and that petitioner was never deprived of his property without due process of law nor denied equal protection of the laws."

No evidence was presented by petitioners during the hearing of this case in support of their allegation that they suffered damages as a result of alleged acts of harassment and persecution committed by respondent, and no proof was adduced as regards the specific amount of damages that they actually sustained. Nothing of record appears which may indicate that respondent deprived, or attempted to deprive, petitioners of any of their property without due process of law. In fact, we believe that the actuations of the officers of the Bureau of Internal Revenue who handled this case operated to the advantage of petitioners. The failure of respondent to assess the deficiency tax in question within the period prescribed by law, made it possible for petitioners to set up the defense of prescription. The claim for damages must perforce be dismissed as untenable.

FOR THE FOREGOING CONSIDERATIONS, and pursuant to Section 14 of Republic Act No. 1125, the decision appealed from is hereby reversed. No costs.

SO ORDERED.

Manila, Philippines, February 28, 1958.

R. M. Umali
ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

Reversed in G.R. No. L-13739, Nov. 29, 1960.