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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Sept. 28, 1964

JOSE YULO,
Petitioner,

- versus - C.T.A. CASE NO. 1274

JOSE B. LINGAD, as Acting
Commissioner of Internal
Revenue,
Respondent.

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DECISION

The respondent made against the petitioner a second deficiency income tax assessment in the sum of ₱110,875.50 for the year 1951. The assessment was issued on March 14, 1955. Various requests for reconsideration of said assessment were denied. Finally, in a letter dated July 26, 1962, respondent made a demand for the payment of said amount, otherwise judicial action would be instituted for its collection. Petitioner, through his counsel, denied liability for said amount, at the same time claiming that the right of the Government to collect the same has prescribed. In reply, respondent insisted that the said amount is due from petitioner and alleged that the right to collect the same has not prescribed. Accordingly, petitioner instituted the instant appeal.

The only issue raised in this appeal is whether or not the right of the Government to collect the said sum of ₱110,875.50 has already prescribed.

The records of the case show that petitioner filed his income tax return for 1951 on February 22,

1952. The deficiency assessment in question was issued on March 14, 1955. Under Section 332 of the National Internal Revenue Code, collection of the said amount by judicial action may be made only within five years from the date of assessment. Judicial action for collection of said amount was instituted on October 8, 1962 with the filing of the present appeal, or 7 years, 6 months and 24 days from the date of assessment. However, respondent alleges that since petitioner made various requests for reconsideration, the period during which the case was under consideration (3 years, 2 months and 15 days) should be deducted so that the judicial action for collection was instituted within the five-year statutory period.

As already stated, the assessment was made on March 14, 1955. Petitioner requested reconsideration of said assessment on April 16, 1955, which was denied on May 12, 1955. On May 16, 1955, petitioner requested "a further extension of twenty (20) days from May 17, 1955 for a thorough examination, study and consideration of the assessment." This request of petitioner was denied in respondent's letter of May 18, 1955, at the same time stating that "this Office will proceed with the enforcement of the collection of the said assessment by distraint and levy." A warrant of distraint and levy was issued on the same date.

Following the issuance of the warrant of distraint and levy on May 18, 1955, petitioner, in his letter dated May 21, 1955, requested that the assessment be held in abeyance in view of the pendency of C.T.A. Case No. 84 (an appeal of the petitioner involving, among others, a deficiency assessment for the year 1951) and that "the warrant of distraint and levy issued against the taxpayer for the collection of the amount of ₱110,875.50 be withdrawn and cancelled." (Exh. 2-B, page 39, B.I.R. records.) This was also denied in the letter of respondent dated June 30, 1955, wherein petitioner was required to pay the deficiency income tax" within fifteen (15) days from receipt hereof in order that his case may be closed; otherwise, the warrant of distraint and levy dated May 18, 1955 of this Office against Mr. Jose Yulo will be enforced in accordance with its terms." (Exh. D, pp. 56-57, B.I.R. records.) Not having heard from petitioner, respondent directed the Deputy Provincial Treasurer of Floridablanca, Pampanga, by letter dated February 11, 1956, "to proceed with the collection (of the deficiency tax) in order that the interest of the Government may be protected." On the same date, respondent addressed a letter to counsel for petitioner to urge his client to pay the tax, "otherwise, drastic action thereon will be taken by this Office."

On February 29, 1956, counsel for petitioner again requested that the deficiency assessment be withdrawn and cancelled and that "the warrant of distraint and levy which the Municipal Treasurer of Floridablanca was instructed to serve upon and enforce against Mr. Yulo for the collection of the alleged additional deficiency income tax of ₱110,875.50 be withdrawn and cancelled." (Exh. 4, pp. 64-66, B.I.R. records.) Following this request, the Deputy Provincial Treasurer of Floridablanca was instructed by telegram dated March 2, 1956 to suspend execution of the warrant of distraint and levy until further advice.

Following the suspension of the execution of the warrant of distraint and levy, but without any formal request for reinvestigation, respondent instructed the Provincial Revenue Officer of Pampanga to conduct an immediate reinvestigation of the case. After reinvestigation, respondent reiterated his demand for the payment of the deficiency income tax in his letter of November 15, 1957. In his reply of November 26, 1957, counsel for petitioner reiterated his stand that "the subject assessment is illegal and it is thus respectfully requested that the same be reconsidered, withdrawn and cancelled." (Page 116, B.I.R. records.) On December 19, 1957, respondent reiterated his demand, "otherwise, this Office will be constrained to file judicial action against him for failure to pay the tax." (Page 117, id.) On the same date, the Regional Director of B.I.R. Regional District No. 3 was instructed to take the necessary steps to collect the tax "when the assessment or demand remains unpaid after the deadline set in the demand or notice." (page 118, id.)

No action was taken on the case until October 24, 1961, when respondent issued instructions to institute the necessary judicial action for collection.

(See Memorandum for Revenue Operations Executive (Legal) dated Oct. 24, 1961, page 119, BIR records.) No judicial action was, however, instituted, but on June 21, 1962, the Chief, Collection Branch of the B.I.R. Regional District of San Fernando, Pampanga, was instructed to execute the warrant of distraint and levy issued on May 18, 1955. Then on July 26, 1962, respondent sent to petitioner a letter requiring the latter to pay the tax within fifteen (15) days, otherwise, "judicial action for the collection of the aforesaid amount will be immediately instituted against you without further notice." (Page 124, B.I.R. records.) The reply of counsel for petitioner dated September 7, 1962, reads as follows:

> Please be advised that as per our client's records, he has no unpaid income tax liability for prior years, particularly 1951, except those which are now under judicial review. Be that as it may, it appears that any action to collect the alleged deficiency had already prescribed since the same was assessed in March 1955.

From the foregoing statement of facts, it is clear that petitioner never requested reinvestigation of the case. From the beginning, petitioner insisted that the assessment was illegal and asked that the same be reconsidered and withdrawn. Even if the various requests for reconsideration and cancellation of the assessment may be considered as requests for reinvestigation, the said requests were denied. It has been held that the act of requesting a reinvestigation alone does not suspend the prescriptive period.

The request should first be granted, in order to effect suspension. (Republic v. Gancayco, G. R. No. L-18307, June 30, 1964, citing Collector v. Suyoc Consolidated, G. R. No. L-11527, Nov. 25, 1958; Republic v. Ablaza, G. R. No. L-14519, July 26, 1960.) Since in this case it is admitted that judicial action was instituted more than seven years after assessment, the right to collect the tax in question has already prescribed.

Mention is made of the fact that petitioner requested the suspension of the execution of the warrant of distraint and levy, which request was granted. It is alleged that the issuance of the warrant of distraint and levy and the suspension of its execution had the effect of suspending the prescriptive period for collection. It will be noted that the income tax return of petitioner for 1951 was filed on February 22, 1952. Under Section 51(d) of the National Internal Revenue Code, before its repeal by Republic Act No. 2343, effective June 20, 1959, the Government had only three years from the date the return was filed within which to enforce collection of income tax by distraint and levy. In this case, the warrant of distraint and levy was issued on May 18, 1955, or more than three years from the date the return was filed. Therefore, the said warrant of distraint and levy was illegally issued. The only remedy of the Government was to enforce collection by judicial action. (Collector v. Avelino, G. R. No. L-9202, Nov. 19, 1956;

Collector v. Reyes, G. R. No. L-8685, Jan. 31, 1957; Collector v. Zulueta, G. R. No. L-8840, Feb. 8, 1957.) If the warrant of distraint and levy issued for collection of the income tax is illegal, a request for suspension of its execution, even if granted, cannot have the effect of suspending the period for judicial collection of said tax.

Finding that the right of the Government to collect the said income tax from petitioner has already prescribed, the decision appealed from is hereby reversed. No pronouncement as to costs.

SO ORDERED.

Quezon City, September 28, 1964.

R. M. Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge Augusto M. Luciano is on leave.