REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESTATE OF BENEDICTO B.
ALCANTARA, represented by
Administratrix Erlinda
A. Dulay,
Petitioner,

- versus - C.T.A. CASE NO. 3714

BUREAU OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

6/7/90

D E C I S I O N

This petition arose from respondent's motion for allowance of a claim and issuance of an order to pay taxes filed in the Regional Trial Court of Lapu-Lapu City, aimed to collect deficiency income tax in the amount of P104,653.30, and deficiency percentage tax in the amount of P6,819.22 covering the year 1975.

As regards the assessment for deficiency estate tax included in respondent's motion, petitioner has excluded it in this appeal as shown from the prayer in her petition for review, and the manifestation of petitioner's counsel in open court made during the hearing of the instant case on August 12, 1986. *(pp. 7, 17, 19 and 20, tsn, hearing of August 12, 1986)*

Petitioner Erlinda A. Dulay, Administratrix of the Estate of Benedicto B. Alcantara, is the former wife of deceased Benedicto B. Alcantara who died on March 17, 1977. *(p. 143, BIR rec.)* On February 4, 1980, a Letter of Authority No. 173191 was issued by the Revenue Regional Director authorizing Revenue Examiner Victoriano A. Fuentes to examine the books of account and other accounting records of deceased Alcantara for income tax purposes covering the year 1975. *(p. 31, BIR rec.)* Likewise, on March 24, 1980, the said Revenue REgional Director issued another Letter of Authority No. 17408 authorizing Examiner Canuto Alegarbes to investigate the estate tax of the deceased Benedicto B. Alcantara. *(p. 12, BIR rec.)* In order to avoid the multiciplicity of claims to be filed against the intestate estate of deceased for internal revenue taxes, the income tax aspect of the investigation was consolidated with the investigation of the deceased estate tax liability and examiner Canuto Alegarbes was assigned to investigate the said consolidated revenue taxes. *(p. 32, BIR rec.)*

After the preliminary investigation of the revenue taxes covering the aforesaid years in question, the Revenue District Officer of Mandaue City, Pedro M. Sanchez issued a letter dated May 28, 1980 addressed to Erlinda A. Dulay, Administratrix of the Estate of the deceased Benedicto B. Alcantara stating that the 1975 return filed by the deceased Benedicto B. Alcantara is not supported by receipts or any books of account and other related records. That based on the evidence obtainable under the circumstances, it was ascertained that the deceased Benedicto B. Alcantara is liable for deficiency percentage and income tax in the aggregate amount of P115,388.34 inclusive of interest, surcharges, and compromise penalty covering the said year 1975. Consequently, the Administratrix, Erlinda A. Dulay, was invited to an informal conference on June 9, 1980 at the office of the Revenue Examiner, in connection with the result of the preliminary investigation of the subject revenue taxes. *(Exh. 5, p. 34, BIR rec.)* In answer to the request, the Administratrix, Erlinda A. Dulay, sent a letter dated June 17, 1980 stating that she has no authority to confer with regard to the result of preliminary investigation of the revenue taxes because her duties as administratrix are prescribed within the provisions of Rules 81 and 84 of the Rules of Court, and for her to act without court order is tantamount to contempt of court. Likewise, the said administratrix Dulay stated that since this involves a claim against the estate, it is governed by Rule 86 of the Rules of Court. *(Exh. 6, p. 35, BIR rec.)*

On August 26 and September 23, 1980 the Revenue District Officer of Mandaue City informed the Administratrix, Erlinda A. Dulay of the result of investigation conducted by Examiner Canuto S. Alegarbes covering the 1975 internal revenue tax liabilities and invited said administratrix or her authorized representative for an informal conference to enable said administratrix to contest the proposed assessment which shows the computation of the percentage tax and income tax liabilities of deceased Benedicto B. Alcantara in the total amount of P111,389.76. If said findings of the tax liabilities petitioner is not agreeable to her, she may file her protest or appear for conference within five days from receipt of letters dated August 26 and September 23, 1980, and failure on her part or her authorized representative to appear, a statutory notice will then be sent to the petitioner as provided for by law. *(pp. 45 and 46, BIR rec.)*

In a memorandum letter of Revenue Examiner Canuto Alegarbes dated November 3, 1980, addressed to the Revenue District Officer of Mandaue City, the latter was informed of the former's investigation of the income and percentage taxes of deceased Alcantara, on the basis of documents obtainable showing the liability of the deceased for deficiency income tax and percentage tax in the amounts of P139,251.47 and P6,819.22, respectively. This is so because the Administratrix cannot produce any records or books of accounts in connection with the business of the deceased as a common carrier. *(Exh. 3, p. 56, BIR rec.)*

On the basis of the aforesaid memorandum of Examiner Canuto Alegarbes, respondent, through Regional Director Salvador Hernandez, issued on January 19, 1981 a deficiency percentage tax assessment covering the year 1975 in the amount of P6,519.22 addressed to the estate of the deceased, c/o the administratrix Erlinda A. Dulay *(Exh. 7, p. 97, BIR rec.)*; and that likewise on January 31, 1981 the Revenue Regional Director issued again an Assessment No. 59-1-07025463-75 on the Estate of deceased Benedicto B. Alcantara, c/o of the Administratrix Erlinda A. Dulay for deficiency income tax covering the year 1975 in the amount of P104,653.30 *(Exh. 8, p. 113, BIR rec.)*, computed as follows:

a.) P6,819.22 as deficiency percentage tax for 1975:

Taxable receipts per return		P170,456.00
Add: Undeclared income:		
Gross income per investigation	... P311,040.00	
Gross income per return	... 170,456.00	P140,584.00
Taxable receipts		311,584.00
2% tax due thereon		6,220.80
Less tax paid		2,584.00
Deficiency tax due		3,672.80
Add: 25% surcharge		918.20
14% interest per annum (42%)		1,928.22
compromise penalty for late payment		300.00
TOTAL AMOUNT DUE AND PAYABLE		P 6,819.22

b.) P104,653.30 as deficiency income tax for 1975:

Net income disclosed in the return audited		P 26,741.73
Add: Unreported income:		
Gross receipts per investigation	P331,040.00	
Gross receipts per return	170,456.00	
Net income per investigation		P167,325.73
Less: Personal & additional exemption		8,000.00
Amount subject to tax		159,325.73
Amount of tax due thereon		75,515.00

Less: Tax previously paid per return	2,578.00
Deficiency income tax	P 72,937.00
Add: 14% interest per annum (42%)	31,716.30
TOTAL INCOME TAX DUE AND PAYABLE	P104,653.30

These assessments were sent to petitioner by mail on January 30, 1981 and February 10, 1981, as evidenced by the entry in the record book of respondent as well as registry receipt No. 272 dated January 30, 1981 and registry receipt No. 377 dated February 10, 1981. *(Exhs. 9-a and 9-b, p. 151, BIR rec.; and Exhs. 10, 10-a and 10-b, p. 152, BIR rec.)*

The Assessment No. 59-1-07025463-75 issued by respondent on January 30, 1981 for deficiency income tax covering the year 1975 in the amount of P104,653.30 was confirmed by Deputy Commissioner Romulo N. Villa in his letter dated May 13, 1984 addressed to Erlinda A. Dulay, Administratrix of the Estate of Benedicto B. Alcantara. *(Exh. 8, p. 69, BIR rec.)*

On February 10, 1982, respondent issued a Warrant of Distraint and Levy against the properties of the petitioner and Warrant of Garnishment against the estate's bank deposit to enforce the collection of the aforesaid deficiency taxes involved in the instant case. The said

Warrant of Distraint and Levy was served on petitioner on June 16, 1982 and the Warrant of Garnishment was served upon the Insular Bank of Asia and America, Cebu Branch, on April 7, 1982. *(pp. 72-91, BIR rec.)*

On October 17, 1983, respondent Commissioner of Internal Revenue filed before the Regional Trial Court Branch X, Cebu City, a motion for allowance of claim and for an order to pay taxes together with the proof of claim in Special Proceedings No. 58-L which is a special remedy to enforce collection of the deficiency revenue taxes involve in this case. *(p. 134, BIR rec.)* Copy of said motion, together with appendix attached thereto, was sent to the petitioner on October 21, 1983. *(p. 183, respondent's memorandum, p. 183, CTA rec.; admitted by petitioner in par. 3, Petition for Review, p. 1, CTA rec.)*

On November 22, 1983, respondent received a copy of petitioner's opposition to the motion for allowance and for an order to pay taxes together with the proof of claim filed by petitioner with the Intestate Court. *(pp. 138 and 139, BIR rec.)* Likewise, respondent, on December 5, 1983, received a letter of protest from petitioner for deficiency income and business taxes dated November 18, 1983. *(pp. 142-143, BIR rec.)* Without waiting for a decision on her protest, petitioner Administratrix Erlinda A. Dulay on December 29, 1983 interposed this appeal. *(p. 1, CTA rec.)*

After the hearing of this case on the merits, petitioner was given thirty days from receipt of this Court's resolution dated September 10, 1987 within which to file her memorandum in support of her case but since said petitioner had failed to do so within the time allowed her, this Court had considered said case submitted for decision. *(p. 151, CTA rec.)*

The issues before this Court for resolution are:

> 1) Whether the right of respondent to assess the deficiency income and percentage taxes covering the year 1975 has prescribed; and
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> 2) Whether or not petitioner is liable for the deficiency income tax in the amount of P104,653.30 and deficiency percentage tax in the amount of P6,819.22 for the year 1975.

A close scrutiny of petitioner's petition for review reveals that said petitioner had appealed from the motion of the respondent for allowance of claim and for an order to pay taxes covering the deficiency income and percentage taxes, but does not include the deficiency estate tax as clearly shown in the petition for review which merely prays for the cancellation and withdrawal of the deficiency income and percentage tax assessments. *(see p. 3, CTA rec.)* During the hearing before this Court on August 1, 1986, counsel for petitioner manifested that she does not question the estate tax in the petition for review. *(pp. 7, 8 and 19, tsn, hearing of August 1, 1986)* Considering, therefore, that petitioner did not appeal to this Court the issue involving the estate tax, the Court has no jurisdiction to pass upon the validity of the subject assessment.

Administratrix Erlinda A. Dulay raised the issue that the authority of the respondent to make the assessments have long prescribed. Likewise, in paragraph 10 of petitioner's petition for review, it is alleged that the act of assessment being personal to the taxpayer, they cannot be enforced against her as the deceased wife.

In short, the thrust of counsel for petitioner is that since Benedicto B. Alcantara died on March 17, 1977 and that these deficiency taxes were assessed long after his death, and that the assessments were served only upon the decedent's wife, therefore these deficiency income and percentage taxes could no longer be collected against the estate. *(see p. 10, tsn, hearing of August 1, 1986).*

We find petitioner's contentions to be devoid of merit. On the issue of prescription, the provision of law then applicable and relied upon by petitioner is Section 331 of the Tax Code which provides as follows:

> 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 purpose 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". *(1976 Tax Code, Underscoring supplied.)*

The individual income tax return of deceased Benedicto B. Alcantara for the year 1975 was filed by him in the Bureau of Internal Revenue of Cebu City on April 19, 1976 *(Exhibit 2, p. 29, BIR rec.)* while the assessment for percentage tax in the amount of P6,519.22 was issued by respondent on January 19, 1981 *(Exhibit 7, p. 97, BIR rec.)*.

Likewise, the assessment for deficiency income tax in the amount of P104,653.30 was dated January 31, 1981 *(Exh. 8, p. 113, BIR rec.)* and which was sent by mail by respondent to the Administratrix Erlinda A. Dulay of the estate of deceased on February 10, 1981 *(Exhibits 10 and 10-A, p. 152, BIR rec.)*. Definitely, from the date of petitioner's filing of his return on April 19, 1976 up to the respondent's issuance of his assessment on January 19 and February 10, 1981, prescription has not yet set in.

As to the contention that the acts of assessment being personal to the deceased taxpayer, they cannot be enforced against the wife which we believe is erroneous. In the instant case, the deficiency assessments issued by the respondent is directed to the surviving wife Erlinda A. Dulay, as Administratrix of the Estate of her late husband Benedicto B. Alcantara. The surviving wife being an heir to the estate of her late husband cannot reason out that the deficiency assessments for percentage and income taxes is personal to the taxpayer considering that under the law of succession, the estate of the deceased is liable for said deficiency taxes as the said deficiency taxes are still outstanding obligations inherited by the heirs as a consequence of the transmission of the estate of the deceased to the heirs. This is so because Articles 774 and 776 of the New Civil Code provides that rights and obligations are transmitted through his death by operation of law and not extinguished by death.

> Art. 774. Succession is a mode of acquisition by virtue of which property, rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law. *(Underscoring supplied)*

Likewise Article 776 of the New Civil Code provides:

> Art. 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death. *(Underscoring supplied)*

Clearly, the heir of the deceased husband, particularly the wife, who is now also the Administratrix of the Estate of the Deceased Husband Benedicto B. Alcantara, inherits not only the property, but also the rights and obligations of the deceased. In this particular case, since the deceased Benedicto B. Alcantara is being assessed for deficiency income and percentage taxes, the estate of the deceased is answerable in the event the court finds the deceased liable for deficiency tax. As administratrix, petitioner is entitled to be notified of the assessments made against the estate as what the officials of the Commissioner of Internal Revenue had done in this case which is to call for a conference with the former. These acts of the officials of the Commissioner enable petitioner as administratrix to protect the estate against the subject tax claim. It is within the power and duty of the administratrix under the Rules of Court to defend the estate against such a claim but she has failed in this regard. It is not correct for petitioner to say that she has no authority to confer with the respondent and that she needs a court order for that purpose since a court order is not really unavailing under the rules in the first place.

In the instant case, respondent, by documentary evidence, has shown that the formal assessments for percentage and income taxes were sent by mail to the administratrix on January 19, 1981 *(Exh. 7, p. 97, BIR rec.)* and January 31, 1981 *(Exh. 8, BIR rec.)*, respectively. Before the mailing or sending of the formal assessments in question, petitioner had knowledge of such pending assessments because the Revenue District Office of

Mandaue City had informed petitioner of the result of the preliminary investigation, in his letter dated May 28, 1980, and which petitioner answered, on June 17, 1980, saying that she cannot act without court order because it will be tantamount to contempt of court being the administratrix of the estate of deceased Alcantara. *(pp. 34 and 35, BIR rec.)*

Administratrix Erlinda A. Dulay has knowledge of such assessments but refused to receive the same merely upon the ground that she cannot protest the deficiency assessment because that is the personal business of the husband and not her as the wife and Administratrix of the Estate so much so that the letters of assessment were returned several times. *(p. 12, tsn, hearing of August 1, 1986)*.

As we have said, considering that the Administratrix is also an heir to the Estate of the Deceased Benedicto B. Alcantara, she should have protested and contested the said assessments because being an heir and administratrix of the Estate of Deceased Alcantara, she inherits not only the property but the rights and obligation of the estate of her deceased husband.

Since petitioner failed to protest or contest the formal assessments issued by respondent, the assessments have definitely become final and executory, pursuant to Section 319-A of the Tax Code of 1977 which we hereby quote as follows:

> Protesting of assessment. When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision; otherwise, the decision shall become final, executory and demandable. *(Art. 319-A of the Tax Code; Underlining supplied).*

In the case at bar, the assessments involved have long become final and executory, and when respondent filed a motion for allowances of claim and for an order to pay taxes together with proof of claim in the Intestate Court on the settlement of the deceased estate on October 17, 1983, it was merely enforcing the collection of the tax. Hence, respondent Commissioner's motion filed in the Intestate Court can be said to be the final decision appealable to this Court.

It is worthy to note that even during the hearing of this case petitioner did not present evidence, either testimonial or documentary, which would show that said deficiency assessments were erroneously or arbitrarily issued. In the absence of evidence to the contrary, these assessments are presumed valid and legal. In this jurisdiction, settled is the rule that a taxpayer contesting the validity or correctness of an assessment must prove not only that the Commissioner of Internal Revenue is wrong but that he (the taxpayer) is right. All presumptions are in favor of the correctness of tax assessments. *(**Tan Guan vs. Court of Tax Appeals,** L-23676, April 27, 1967, 19 SCRA 903; **Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue,** L-6741, January 31, 1956; citing United States vs. Anderson, 269 U.S. 422, 428, 70 L. ed. 347, 46 Sup. Ct. Rep. 131 and other cases).* Hence, in the absence of proof to contrary, the said assessments against petitioner should be considered valid and legal.

The Supreme Court in the case of ***Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue***, *supra*, categorically stated that:

> "All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.
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> "As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner clearly to show that the assessment was erroneous, in order to relieve himself from it." *(51 Am. Jur, pp. 620-621.)*
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> "The burden is on him who seeks the recovery of a tax already paid to establish those facts which show its invalidity. *United States vs. Anderson, 269 U.S. 422, 428, 70 L. ed. 347, 46 Sup. Ct. Rep. 131; Fidelity Title & T. Co. vs. United States, 259 U.S. 304, 306, 66 L. ed., 953, 954, 42 Sup. Ct. Rep. 514.* * * * ." ***(Compania General de Tabacos vs. Collector of Int. Rev.**, 73 L. ed., 704, 706.)* x x x.

WHEREFORE, petitioner is hereby ordered to pay the government the sum of P104,653.30 from the Estate of the late Benedicto Alcantara representing

deficiency income tax for the year 1975 inclusive of interest. Likewise, petitioner is ordered to pay the deficiency percentage tax from the Estate of Benedicto B. Alcantara in the amount of P6,519.22, inclusive of surcharge and interest.

With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, June 7, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals