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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

September 4, 1961

CAPITOL SUBDIVISION, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 711

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

DECISION

This is an appeal from respondent's decision holding petitioner liable for deficiency income taxes for the years 1948, 1949, 1950 and 1951 in the amounts of ₱2,927.69, ₱3,952.19, ₱5,927.00, and ₱14,406.00, respectively, or a total of ₱27,212.88.

The parties submitted the case for decision solely on the following stipulation of facts:

1. That petitioner is a corporation, engaged in the business of purchase, sale, barter and exchange of urban estates, and their improvement and subdivision into residential lots for resale to the public, certified true copy of the Amended Articles of Incorporation is attabhed hereto as Annex "A";

2. That petitioner filed its income tax returns for the years 1948, 1949, 1950 and 1951 on February 28, 1949, March 31, 1950, March 31, 1951 and March 1, 1952, respectively, and the amounts assessed thereon as per return, were promptly paid;

3. That in an investigation conducted by an examiner of the respondent, it was recommended in the memorandum report dated June 30, 1952 of the examiner, that petitioner should pay the following deficiency income tax, as follows:

For the year ended December 31,1948	- ₱2,927.69
For the year ended December 31, 1949	- 3,952.19
For the year ended December 31, 1950	- 5,927.00
For the year ended December 31, 1951	- 14,406.00

4. That respondent sent income tax assessment notices dated April 8, 1953, requesting payment of the aforesaid amounts due and collectible; the said taxes being based on disallowed deductions and overclaimed depreciations, as shown on pages 12, 19, 39 and 45, BIR records;

5. That petitioner, upon receipt of the said Income Tax Assessment Notice, on May 30, 1953, requested for the breakdown of the amounts reflected under the heading General Expenses in the said notices, and letter appearing on page 60, BIR records;

6. That on June 21, 1955, respondent sent petitioner circular letters making inquiry as to whether payment was already made on Assessment No. 35-5-125329-48-2, No. 35-5-125371-49-2, No. 35-5-125346-50-2, No. 35-5-52-51-2 for the years 1948, 1949,1950 and 1951; said circular letters are attached hereto as Annexes "B", "C", "D" and "E" respectively;

7. That on July 1, 1955, petitioner in reply to above circular letters of respondent, reiterated its request of May 30, 1953 which may be found on page 61, BIR records;

8. That on September 20, 1955, respondent replied to petitioner's letter dated July 1, 1955, and at the same time reiterated his demand for payment of the income tax assessments for the years 1948, 1949, 1950 and 1951, plus a surcharge of 5%, 1% monthly interest and compromise fees of ₱20.00 each for the years 1948, 1949, 1950 and ₱40.00 for 1951 as shown from pages 69 to 71, BIR records;

9. That petitioner in the letter dated October 15, 1955 to respondent, explained the disallowed items and requested for re-investigation, said letter may be found from pages 77 to 80, BIR records;

10. That after re-investigation, the examiner in a memorandum report dated October 26, 1955 submitted to the Acting Provincial Revenue Officer reiterated his findings and recommended that the previous assessments be affirmed;

11. That in a letter dated September 2, 1959, respondent demanded of petitioner the payment of the said deficiency income taxes for the years 1948, 1949, 1950 and 1951 respectively, as shown on page 89, BIR records;

12. That in its letter dated September 16, 1959, which may be found on page 91, BIR records, petitioner invoked the defense of prescription, and on that ground, denied liability for the deficiency income taxes for the aforesaid years;

13. That in the respondent's letter dated October 13, 1959, the original of which was received by petitioner on October 21, 1959, respondent denied the request for cancellation, alleging that the 5-year period was suspended by the various requests for re-investigation filed with respondent and demanded the payment of the deficiency income tax assessments from 1948 to 1951, the aforesaid letter may be found on pages 94 and 95, BIR records. (Pp. 29-31, CTA rec.)

The only issue raised by the parties is whether or not the right of respondent Commissioner to collect the deficiency income tax assessments in question has already prescribed.

Petitioner contends that the right of respondent Commissioner to collect the deficiency income taxes in question has already prescribed, for the reason that the instant judicial action for collection was initiated beyond the statutory 5-year period. Respondent, however, sustains the contrary view.

claiming that petitioner's several requests to reconsider the assessment persuaded him to withhold the collection. Hence, it is alleged that petitioner is now estopped from raising the defense of prescription.

A perusal of the communications referred to in the stipulation of facts discloses that petitioner had not repeatedly requested or induced respondent Commissioner by positive acts to delay the collection of the assessment. Petitioner merely requested itemized information of the disallowed items, and later, gave its own reason why the disallowed expenses should be deducted, for which reason the reconsideration of the Commissioner's stand was requested. Under the circumstances, the rule applicable, according to the case of Collector vs. Pineda, G.R. No. L-14522, May 31, 1961, is that laid down in Collector vs. Solano, G.R. No. L-11475, July 31, 1958, from which we quote:

> "x x x the petitioner Collector urges that respondent Solano is estopped from putting up the defense of prescription because he repeatedly made verbal requests for extensions of time to pay his tax obligation for 1948, as allegedly shown by the testimony of Bureau of Internal Revenue agent Benjamin S. Valenzuela. The argument is also untenable, first, because Valenzuela categorically declared that respondent Solano did not request for an extension of time within which to pay his 1948 income tax liability (t.s.n. pp. 49-50); and second, the only agreement that could have suspended the running of the prescriptive period for the collection of the tax in question is, as correctly pointed out by the Court of Tax Appeals, a written agreement between Solano and the Collector, entered into before the expiration of the five-year prescriptive period, extending the period of limitation

> prescribed by law (see 332 237, NIRC.). The rule is in accord with the general law on prescription that requires a written acknowledgment of the debtor to renew the cause of action or interrupt the running of the limitation period (Act 190, sec. 50; New Civil Code, Art. 1155). The Court of Tax Appeals found, and the records show, that no such written agreement was ever entered into between respondent Solano and the petitioner Collector."

It appearing that the deficiency assessments in question were made on April 8, 1953 and the respondent's answer to the instant petition for review, which is tantamount to a judicial action for collection (Collector vs. Solano, et al., supra; Collector vs. Clement, et al., G.R. No. L-12194, January 24, 1959; Collector vs. Pineda, supra.), was filed on December 29, 1959 or 6 years, 8 months and 21 days thereafter, it follows that the right of respondent Commissioner to collect said deficiencies has already prescribed.

WHEREFORE, the assessments appealed from are hereby reversed. Without special pronouncement as to costs.

SO ORDERED.

Manila, September 4, 1961.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge