REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

IN RE CLAIM FOR INCOME TAX
DUE FROM THE INTESTATE ESTATE
OF THE LATE, M. T. HASHIM

June 11, 1956

- versus -

MANILA CIVIL
CASE NO. 71131

REPUBLIC OF THE PHILIPPINES,
Claimant.

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DECISION

This is a claim filed by the Republic of the Philippines against the Intestate Estate of M. T. Hashim, deceased, representing income taxes due the Republic of the Philippines. The claim was originally filed in Special Proceeding No. 71131, before the Court of First Instance of Manila. Pursuant to section 22, Republic Act No. 1125, the case was remanded to this Court for final disposition.

The administrator of the estate filed a motion to dismiss this case on the ground that this Court had no jurisdiction over the case and further interposed the defense that the government's claim was already barred by prescription. On the first ground this Court in its Resolution of July 7, 1955, held that it had jurisdiction over the case and as regards the second ground deferred the determination thereof to the trial on the merits.

Thereafter the parties entered into the following stipulation of facts and submitted the case for decision:

"1. That the former administrator of the testate estate of N. T. Hashim on May 15, 1947, filed an income tax return for 1946 pertaining to the testate estate aforementioned; a certified copy of which is attached and marked as "Annex B" of the claim (pp. 17-18 rec.)

2. That on May 15, 1947, the Collector of Internal Revenue assessed the amount of ₱3,915.12 as income taxes requiring payment of ₱1,957.56 on or before May 15, 1947 and ₱1,957.56 on or before August 15, 1947. A certified copy of said assessment notice is attached and marked as "Annex A" of the claim. (p. 16 rec.)

3. That the aforementioned amount of ₱3,915.12 was based on the return mentioned in par. 1, and the assessment notice was received by the then administrator before May 20, 1947.

4. That on February 15, 1952, the then Collector of Internal Revenue issued a warrant of distraint for the former administrator of the testate estate of N. T. Hashim on March 12, 1952. The original of said warrant is attached and marked as "Annex C" of the claim. (p. 19 rec.)

5. That no properties were actually levied upon by the Collector of Internal Revenue by virtue of the warrant of distraint and levy;

6. That the said warrant was not satisfied and the Collector of Internal Revenue issued a proof of debt dated September 2, 1952. Said proof of debt is attached and marked as "Annex D" of the claim. (p. 20 rec.)

7. That a claim for the amount of ₱3,915.12 as income taxes due from the estate abovementioned was filed on October 18, 1952 with the Court of First Instance of Manila in Special Proceedings No. 71131 entitled "Testate Estate of the late N. T. Hashim."

8. That on February 22, 1955, counsel for the administrator of the said testate estate filed an opposition to the said claim of the Republic of the Philippines.

9. That on May 3, 1955, the Honorable Vicente Santiago of the Court of First Instance of Manila endorsed the aforementioned claim of the Republic of the Philippines to this Honorable Court under the provisions of Republic Act No. 1125.

> 10. The Administrator claims having paid the initial amount of ₱1,957.56 in partial payment abovementioned assessment and the parties agree that the administrator be given a period of 30 days from today within which to produce indubitable proof of such payment and, in the event of the failure of the administrator to produce indubitable proof of payment, the administrator will consider the full amount of ₱3,915.12 as the total subject matter being claimed and resisted in this case on the ground of prescription only; and
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> 11. That should the administrator present said proof of payment of ₱1,957.56 satisfactory to the claimant, then the only subject matter being resisted on the ground of prescription will be the balance of ₱1,957.56, subject to penalties, incident to late payment.

The only issue here is whether the government's claim is now barred by the statute of limitation.

Preliminary to this issue is the question as to whether or not the Administrator is barred in interposing the defense of prescription by virtue of section 10, Rule 87, Rules of Court, which provides that the answer to the claim filed against the estate must be filed within five days after service of a copy of such claim. The record does not show when service of such claim was made upon the executor, and we find that we have no basis of declaring that the answer was not filed on time. However, despite the fact that the reglementary period within which to answer may have expired, it does not necedsarily follow that the claim must be allowed as a matter of course. After the three-year period from the date of the filing of returns, the claim for unpaid income taxes of the deceased filed against the estate and the corresponding answer are generally treated in the same character as complaint and answer (Collector v. Haygood, 65 Phil. 520) and the failure to answer may be ground for a judgment by default. However, the administrator had actually filed his answer to the claim and the same may be taken as leave to file it even after the period (Lama v. Apacible, 79 Phil. 68). In addition, we find it reasonable to infer that any objection thereto should be deemed waived by the fact that the claimant Republic of the Philippines voluntarily filed its reply to the answer of the administrator. A reading of claimant's reply will readily show that it merely contains counter-statement to the defense of prescription presented by the administrator. Finally, we note that the claimant had not, by motion, asked for a judgment of default (see Sec. 6, Rule 35, Rules of Court) and in fact no judgment by default nor approval of claim had been rendered by the Court of First Instance at the time this case was remanded to this Court. We find therefore, the contention of claimant on this preliminary issue as without merit.

Proceeding to the principal issue here involved, we quote hereunder the pertinent portions of sections 51, 331, 332 and 333 of the National Internal Revenue Code which are involved here:

"Sec. 51. x x x x

"(d) Refusal or neglect to make returns; fraudulent returns, etc.- In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment.'

"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 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."

"Sec. 332. Exceptions as to period of limitation of assessment and collection of taxes.- (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.

x x x x

"Sec. 332 (b). Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or 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. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

> "Sec. 333. Suspension of running of statute.- The running of the statute of limitations provided in section 331 or three hundred thirty two on making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which 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."

In accordance with the decisions of the Supreme Court (Collector v. Haygood, supra; Philippine Sugar Estate Development Co. v. Posadas, 68 Phil. 216) and this Court (Vicente J. Francisco v. Collector, C.T.A. Case No. 20, Resolution dated March 18, 1955 cert. denied G. R. No. L-8997, April 12, 1955; A. P. Reyes v. Collector, C.T.A. Case No. 42) as regards the application of section 51, par. (d) of the Revenue Code, the Collector of Internal Revenue has three (3) years from the filing of the taxpayer's income tax returns within which to assess the income tax due and collect the same by the summary methods of distraint and levy.

In the case at bar, the income tax return for 1946 was filed on May 15, 1947 and the corresponding tax assessment made on the same date, (par. 1, Stipulation of Facts) so that, the three-year period within which to exercise the summary methods of collection of the tax expired on May 15, 1950. Thereafter the only remedy available for the purpose of collecting the tax liability was by judicial action, which action had to be filed on or before May 15, 1952 or five (5) years from May 15, 1947 the date of the filing of the return and the assessment of the tax due. While it is true that the Collector of Internal Revenue then issued a warrant of distraint and levy on February 15, 1952, which was served upon the administrator on March 12, 1952, the same was without any effect, as it was in the exercise of a summary mode of collecting the tax no longer permissible under section 51 (d) cited above. Since section 51 (d) of the Tax Code is a special provision applicable to income taxes alone, it must control over sections 331 and 332, which is a general provision applicable to all internal revenue taxes. In any event, the warrant of distraint and levy served on March 12, 1952 could not be deemed to have created any right in favor of the government in view of the fact that the Collector of Internal Revenue had failed to comply with the procedure under sections 318-319 and 324-325 of the Revenue Code, a procedure we have held to be mandatory and strictly observed. (Maria B. Castro v. Collector, C.T.A. Case No. 141, Resolution dated October 31, 1955). In this case, no return of the warrant was made, showing the description of the property seized nor of the steps leading to the sale to satisfy the government's claim and the Collector could not have acquired any right over an act not made in accordance with law. A warrant of distraint and levy issued by the tax authorities is analogous to a levy on execution or final attachment (see U. S. v. Bull, 295 U.S. 247, 79 L. Ed. 421) and like the latter the issuance of the warrant of distraint and levy is not alone sufficient without actual levy on the taxpayer's property.

> "In order, however, that a creditor may acquire a lien by virtue of his attachment, it is not alone sufficient that a writ of attachment has been regularly issued by a competent authority, or even placed in the hands of an officer, but there must be an actual and valid levy on the property of the debtor, and, until such valid levy has been made, the attachment creditor has no rights in his debtor's property." (2 Moran, Comments on the Rules of Court, 1952 Ed. p. 12.)

The Collector of Internal Revenue argues that the statute of limitation contained in sections 331 and/or 332 was suspended by virtue of the fact that the properties of the estate were then <u>in custodia legis</u> and that he was entitled to the benefit of section 333 of the Tax Code. We find this contention without merit. Under section 51 (d) of the Tax Code, the Collector of Internal Revenue is barred only from employing the summary modes of collecting the tax by distraint and levy after the three-year period, but in no way is the Collector barred thereafter but within the five-year period from enforcing collection thereof by judicial action, which he actually tried to do here. We believe that in order to be entitled to the benefit of the suspension of the period of limitation under section 333 of the Tax Code, the situation must be one where neither judicial nor administrative remedy could be availed of during the five-year period involved.

FOR ALL THE FOREGOING, we find and so hold that the government is barred by the statute of limitation from the collection of the income tax liability of ₱3,915.12 from the estate of N. T. Hashim, and pursuant to section 14, Republic Act No. 1125, declare that there is no deficiency of such income tax. Let the claim of the government be, as it is hereby, dismissed, without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, June 11, 1956.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI did not take part.