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PATROCINIO BAYOT,
Petitioner,

-versus- C.T.A. CASE No. 1130

THE COLLECTOR OF
INTERNAL REVENUE,
Respondent.

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

June 21, 1965

D E C I S I O N

This is an appeal from the decision of the Collector (now Commissioner) of Internal Revenue holding the petitioner liable for the payment of ₱645.00 as deficiency income tax for the year 1952, including 50% fraud penalty.

Petitioner filed her income tax return for the year 1952 on March 30, 1953. On the basis of this return, an assessment was made against her in May, 1953, in the amount of ₱390.00 which was paid under Official Receipt No. 254724 on March 15, 1955. Upon investigation, petitioner received on February 28, 1957, another assessment for ₱702.00, and after deducting therefrom the amount of ₱390.00, she was required to pay a deficiency income tax in the sum of ₱468.00, including 50% surcharge. On February 19, 1958, another assessment notice was issued to petitioner in the amount of ₱645.00.

Petitioner, in a letter to the Provincial Revenue Officer of Masbate, refused to pay the deficiency tax, contending that the demand for payment of the tax had long prescribed under Sec. 51(d) of the Revenue Code. In reply thereto, the Regional Director contended that with the repeal of Section 51(d) of the Revenue Code by Republic Act No. 2343, the law applicable is Sections 331 and 332 of the same Code. Consequently, he reiterated the demand for payment of the deficiency tax in the amount of ₱645.00, including the surcharge. Not satisfied with this decision, petitioner appealed the case to this Court on September 4, 1961. Subsequently, petitioner filed a motion to suspend the collection of the deficiency tax, which motion was denied by this Court.

The only issue to be resolved in this case is whether or not the right of the respondent to assess and collect the deficiency income tax in question has already prescribed.

Petitioner contends that since the collection of the deficiency income tax was attempted for the first time on February 28, 1957 and for the last time on February 19, 1958, both dates falling during the effectivity of Sec. 51(d) of the Revenue Code, the law applicable should be the said Section 51(d) which reads:

> "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."

Accordingly, it is alleged that the collection can no longer be effected as the same was attempted beyond the three-year statutory period provided in the above section.

It is also argued that even if Sec. 51(d) is no longer applicable, respondent's right to assess the tax has already prescribed pursuant to Sec. 331 because five years have already elapsed from the filing of the return.

We find petitioner's stand untenable. Taxes may be collected either by distraint or by judicial action. The period of three years prescribed in Sec. 51(d) of the Revenue Code refers solely to the right of the Government to collect income tax by the summary proceeding of distraint and levy. This codal provision does not bar assessment beyond the three-year period as a step preliminary to collection by judicial action. (Coll. v. Villegas, 56 Phil. 554 cited in Alhambra Cigar & Cigarette Mfg. Co., G.R. Nos. L-12026 & L-12131, May 29, 1959; Rep. of the Phil. v. Gamboa, G.R. No. L-16504, Oct. 27, 1961.) We agree with respondent that the present action is a judicial proceeding for the collection of deficiency tax. The law applicable is found in section 332(a) and (c) of the Revenue Code, which provides as follows:

> "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.
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> x x x x x x
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> (c) 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, x x x."

It appears that the return was filed on March 30, 1953; the last assessment was made on February 19, 1958; and the petition for review in the instant case was filed on September 4, 1961. The last assessment was made 4 years, 10 months and 19 days from the date the income tax return was filed. And the instant petition for review, which is considered as a judicial action, was filed with this Court 3 years, 6 months and 15 days from the date of the last assessment. Obviously, the assessment was effected and the judicial action for collection was commenced within the prescriptive periods prescribed in Sections 331 and 332(c) of the Revenue Code.

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner Patrocinio Bayot is ordered to pay respondent the sum of ₱645.00, as deficiency income tax, plus 5% surcharge and 1% monthly interest, pursuant to Sec. 51(e) of the Revenue Code, within thirty days from the date this decision becomes final. With costs against petitioner.

SO ORDERED.

Quezon City, June 21, 1965.

R M Umali
ROMAN M. UMALI
Associate Judge

I CONCUR:

Teofilo D R
TEOFILO D. REYES, Sr.
Presiding Judge