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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EDUARDO Q. MARAVILLA,
Petitioner,

- versus -

C.T.A. CASE NO. 5299

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 21 1997 Dmarganeth

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DECISION

This petition for review seeks to set aside and declare void the warrant of distraint and levy issued by respondent to enforoe oolleotion from petitioner the amount of P1,178,437.26 as defloienoy capital gains tax for 1988.

The records of the case bear witness to the following faots:

On June 5, 1987 petitioner sold in favor of Manuel Yermo, et al. several paroels of land all looated in Saravia, Negros Occidental, and covered by Transfer Certificate of Title Nos. T-142022 and T-142021 of the Registry of Deeds for the province of Negros Occidental (Deed of Absolute Sale, pp.13-17, BIR reo.). For the said sale transaction, petitioner paid the amount of P27,250.00 as documentary stamp tax covered by P.O. No.

3526510 and C.R. No. 1500196 both dated September 8, 1988, and P3.00 as certification fee evidenced by C.R. No. 2334679 also dated September 8, 1988. No capital gains tax was imposed and/or paid as the real properties sold were agricultural lands used in business, and were declared **EXEMPT** by respondent's Revenue District Office No. 55 at Victorias, Revenue Region No. 6B, Bacolod.

Upon review of the capital gains tax return filed by petitioner, respondent's National Audit Review Division found out that there was a gain realized in the subject sale transaction, and such gain is SUBJECT to income tax pursuant to Section 28(a) of the Tax Code (Transcript of Assessment, p. 35, BIR rec.). Hence, in a letter, dated March 22, 1990, sent to petitioner at No. 6 Oakville Street, Quezon City, respondent demanded from petitioner payment of his deficiency capital gains tax in the total amount of P1,178,437.26 inclusive of interest, surcharge and penalties.

Petitioner did not receive respondent's demand letter as he allegedly did not reside at No. 6 Oakville Street, Quezon City. Apparently, the letter landed in the hands of another Eduardo Maravilla whose middle initial is "M" standing for Marzan (pp. 53 & 55, BIR rec.).

On October 21, 1992, the Assistant Commissioner of respondent's Colleotion Office forwarded to Revenue Region in Baoolod City the assessment records of petitioner together with Warrant of Distraint and/or Levy, and also Notice of Tax Lien addressed to the Provincial Assessor of Negros Occidental (p. 75, BIR reo.).

The Warrant of Distraint and/or Levy was served on January 25, 1993 at the office of petitioner at Mandalagan, Baoolod City and the same was received by his representative, Mr. Cesar Alamon (pp. 84 and 93, BIR reo.).

On March 4, 1993, petitioner, through his Attorney-in Fact, Francisco W. Maravilla, requested the Regional Director of Baoolod City to hold the warrant in abeyance pending the final action of respondent on petitioner's protest (p. 90, BIR reo.). The protest referred to was the letter of Syclp Gorres Velayo dated March 1, 1993 and signed by S.U. Salvador, Jr. stating that the sale of lands which led to the deficiency capital gains tax assessment for 1988 of petitioner, is also the subject of an earlier assessment issued against petitioner for the taxable year 1987 (p. 71, BIR reo.)

In a letter dated March 23, 1993 (p. 91, BIR rec.), respondent's Assistant Regional Director in Bacolod granted petitioner's request to hold in abeyance the execution of the warrant of distraint and levy. As the request for the cancellation of petitioner's assessment and the recall of the Warrant of Distraint and/or Levy was lodged with the national office of respondent, the Regional Director in Bacolod forwarded the records of petitioner's case to that office (p. 95, BIR rec.).

On October 22, 1993 respondent's National Audit Review Division sent a letter to S. U. Salvador of Sycip Gorres Velayo & Co. requesting him to submit documentary evidence proving that petitioner has already paid his capital gains tax liability (p. 103, BIR rec.).

There being no response and/or action on the part of petitioner, on May 20, 1994 respondent's Regional Director in Bacolod recommended to the City Prosecutor the criminal prosecution of petitioner for his refusal and/or failure to pay his capital gains tax liability for 1988, a violation of Section 21(e) of the Tax Code, as amended, and punishable under Section 254 of the same code (pp. 111-112, BIR rec.).

On September 12, 1994, the City Prosecutor issued a Resolution (pp. 159-162, BIR rec.) recommending the filing of a criminal action in Court. Said action was filed and docketed as Criminal Case No. 94-16717 in the

Regional Trial Court of Bacolod City, Branoh 49 (p. 163, BIR rec.)

On September 1, 1995, petitioner filed with this Court the instant petition.

In lieu of an answer, on December 13, 1995 respondent filed a Motion to Dismiss on the ground that this Court has no jurisdiction over the instant case pursuant to the provisions of Republic Act No. 1125 (pp. 31-34, CTA rec.).

On January 16, 1996 petitioner filed an Opposition to Motion to Dismiss (pp. 35-37, CTA rec.).

In a Resolution promulgated on April 22, 1996, this Court denied respondent's Motion to Dismiss on the ground that it has jurisdiction over the instant case for the latter falls under "other matters arising under the National Internal Revenue Code x x x," as provided for under paragraph 1, Section 7 of R.A. 1125 (pp. 42-45, CTA reo.), however, in that same resolution this Court reserved our right to dismiss the case "on any other ground related to jurisdiction, if further hearings on this case reveals that there are other reasons justifying its dismissal".

On May 28, 1996 respondent filed her Answer (pp. 50-54, CTA rec.) alleging as Special and Affirmative Defenses the following:

1. Petitioner has been informed of his capital gains tax liability for 1988 thru the warrants of distraint and levy served upon him on January 25, 1993;

2. Petitioner, thru his Attorney-In-Fact, has requested the holding in abeyance of the warrants of distraint and levy pending outcome of a letter of protest dated October 17, 1990;

3. Respondent has filed against petitioner a criminal charge for violation of Section 21(e) in relation to Section 254 of the Tax Code, docketed as Criminal Case No. 94-16717 of the Regional Trial Court, Bacolod City, subject matter of which is petitioner's 1988 deficiency capital gains tax liability in the amount of P1,178,437.26; and

4. As the tax assessment involved in the case at bar has long become final, executory and demandable, this Court has no jurisdiction to try the case pursuant to Section 7 in relation to Section 11 of Republic Aot No. 1125.

On July 31, 1996 petitioner filed a Motion for Judgment on the Pleadings (pp. 58-60, CTA rec.). As there was no opposition and/or objection raised by respondent to the said motion (see Minutes of hearing on September 6, 1996, p. 63, CTA reo.), the Court in its Resolution promulgated on Ootober 16, 1996 granted that motion (p. 64, CTA reo.).

The sole issue needing ventilation in this case is whether or not this Court has jurisdiction to try the instant case.

Respondent holds the negative view that this Court lacks jurisdiction to try the case at bar. In her

"Motion to Dismiss," respondent capitalized on petitioner's allegation that the latter has not been served with the assessment in question. Hence, the said assessment could not become final, and the warrant of distraint and levy that was issued by respondent is null and void (see par. 2, Motion to Dismiss; p. 32, CTA rec.). Impliedly, respondent wanted to impart that if there was no assessment received by petitioner, there would not be a disputed assessment properly appealable to this Court. Thus, borrowing the words of petitioner, he stated that:

> "The Motion to Dismiss is founded on the proposition that the Honorable Court of Tax Appeals has no jurisdiction over the instant petition since the same is not addressed to a decision or ruling of the respondent which can be raised on appeal before this Court." (par. 1, Opposition to Motion to Dismiss; p. 35, CTA rec.)

On the contrary, petitioner is of the affirmative view that this Court has jurisdiction over the subject matter of the instant case. He argued that the decision that can be raised on appeal before this Court may be in any form so long as it communicates to the taxpayer the final action taken by the Commissioner on the matter. He explained that:

> "In the case at bar, the fact that the Commissioner of Internal Revenue has taken the position that his assessment is already final, notwithstanding the non-

> receipt of a copy thereof by the taxpayer, has been amply demonstrated by the following:
>
> > a) the issuance of the Warrant of Distraint and Levy indicating that as far as the Commissioner of Internal Revenue is concerned, the assessment has already become final and that the recourse of the taxpayer lies elsewhere; and
> >
> > b) the filing of a criminal case for the purpose of enforcing the collection of the alleged deficiency capital gains tax x x x." (par. 3, Ibid.; pp. 36-37, CTA rec.)

Simply stated, it is petitioner's contention that Mr. Jose U. Ong, then Commissioner of Internal Revenue, has communicated his final word relative to the capital gains tax assessment of petitioner, on two occasions: first, when he was served or issued thru his employee the warrant of distraint and levy; and second, when the criminal case was filed for the collection of the deficiency capital gains tax.

The Court has to indicate and/or supply the dates of the occasions just mentioned, as they are vital in resolving the issue on hand. There is no quarrel that January 25, 1993 was the date of service of the warrant of distraint and levy for it is clearly reflected in the warrant itself, a copy of which is in the BIR records of the case, page 84 thereof. The problem lies on the date of filing of the criminal charge. Both records of the BIR and the CTA relative to the oase at bar do not show the exact date when the criminal charge against petitioner was filed in the Regional Trial Court of Bacolod City. However, as there were documents showing that on September 12, 1994, the prosecutor's office in Bacolod issued a resolution (pp. 159-162, BIR rec.) granting respondent's request for the filing of a criminal oharge, and that on October 24, 1994, a warrant of arrest was issued by the Regional Trial Court of Bacolod City, Branch 49, against petitioner (see Order dated April 4, 1995; p. 163, BIR rec.), the Court approximated that the criminal charge was filed anytime after September 12, 1994 and before October 24, 1994.

Striotly speaking, petitioner's view that there were two final decisions made by respondent oan not be accepted by the Court. This is confusing as there will be two dates to reckon with in computing the thirty-day period to appeal to this Court. Be that as it may, oounting from either of the two dates involved up to the date of filing the instant petition, will show that in both oooasions, more than thirty (30) days have already lapsed. To be exact, from January 25, 1993, date of servioe of warrant of distraint and levy, up to September

1, 1995, date of filing the subject petition, two years and seven months have already lapsed. And even counting from the date of filing the criminal charge against petitioner, which was approximated to be either September 1994 or October, 1994, up to September 1, 1995, more or less a year has already passed. Clearly, therefore, the instant petition was filed out of time and should be dismissed for lack of jurisdiction. It is mandated under Section II of Republic Act No. 1125 that appeal to this Court must be made within thirty (30) days from receipt of the decision of the Commissioner of Internal Revenue. Otherwise, this Court acquires no jurisdiction. This was upheld by the Supreme Court in the cases of **Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals**, 64 SCRA 555 and **Commissioner of Internal Revenue versus Algue, Inc.**, 158 SCRA 9.

As far as this Court is concerned, the warrant of distraint and levy served on January 25, 1993 is not yet the final decision appealable to this Court. Rather, it was on that date that petitioner was first informed of, or came to know of his alleged deficiency capital gains tax assessment. Precisely, it was only on March 1, 1993, which was after such service of warrant, that petitioner made his written protest on the said assessment. Unfortunately for petitioner, the protest was also filed out of time as more than thirty (30) days have lapsed from January 25, 1993 up to March 1, 1993. Under Section 229 of the Tax Code of 1988 (now Section 319-A), it is required that protest to an assessment must be made in the administrative level within thirty (30) days from receipt, otherwise, the decision shall become final, executory and demandable.

Consequently, as the administrative protest was filed out of time, it is as if no protest was filed and the subject assessment remained uncontested or undisputed. What has been appealed to this Court was the assessment itself and never a decision of the Commissioner of Internal Revenue. With this situation prevailing, this Court has no recourse but to dismiss the case for lack of jurisdiction.

It is mandatorily required under paragraph 1, Section 7 of Republic Act 1125 that this Court shall have jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. Thus, in the case of **Commissioner of Internal Revenue vs. Villa**, 22 SCRA 3, p. 7, it was held that:

> "Since in the instant case the taxpayer appealed from the assessment of the Commissioner of Internal Revenue without previously contesting the same, the appeal was premature and the Court of

> Tax Appeals had no jurisdiction to entertain said appeal. For, as stated, the jurisdiction of the Tax Court is to review by appeal decisions of the Commissioner of Internal Revenue on disputed assessments. The Tax Court is a court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction."

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DISMISSED** for lack of jurisdiction--the subject assessment having become final and unappealable.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals