REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DOMINADOR P. CARLAS,
Petitioner,

- versus - C.T.A. CASE NO. 1724

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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#1151774

D E C I S I O N

This case involves a deficiency income tax assessment against petitioner in the amounts of P9,763.32 and P12,007.68, for the years 1956 and 1957 respectively.

Petitioner, during the years involved, was the operator of a bus service, Clark Field Bus Lines, at Clark Field Air Base, Pampanga. He was also the president and general manager of Manila Pencil Company and an owner of a rice mill in San Matias, Sto. Tomas, Pampanga. For the calendar years 1956 and 1957, petitioner filed his income tax returns on April 1, 1957 and March 31, 1958, respectively, indicating his address at c/o Manila Pencil Co., Rizal Avenue Ext., Malabon, Rizal. In said returns, he did not include his income from Clark Field Bus Lines believing that they were not taxable because the Secretary of Justice, in Opinion No. 195, series of 1952, held that "the license granted to Clark Field Bus Lines constitutes a concession and it was, therefore, exempt from the payment of all taxes, fees and licenses, under the provisions of

Art. XVIII of the Base Agreement between the United States of America and the Republic of the Philippines." However, a notation in the returns was made that his income as common carrier or transportation contractor in the U.S. Military Base was not declared therein.

On May 21, 1958, the Supreme Court in G.R. No. L-11305,[1] held that the income from the operation of the Clark Field Bus Lines was subject to income tax. In view of this decision, petitioner's income from his transportation business was investigated by respondent's examiners Raul B. Reyes and Jose P. Jorge of Regional District No. 2, San Fernando, Pampanga.

On November 22, 1961, respondent assessed petitioner the total amount of ₱103,420.04, as deficiency income taxes for the years 1953 to 1957, inclusive of 50% surcharge, 1/2% monthly interest and compromise penalty. Petitioner, on December 21, 1961, protested the assessment and requested that a "reinvestigation be conducted and your assessment reconsidered" on the grounds that there was no explanation as to how the undeclared income from Clark Field Bus Lines was arrived at; that there was no explanation as to what was the basis for the disallowance of depreciation; that there

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[1] 103 Phil. 712

was no basis for considering the returns false and fraudulent; and that the right of the Government to assess the deficiency income taxes for the years 1953 to 1955 had already prescribed. Replying to the said protest, respondent requested petitioner to accomplish a waiver of the statute of limitations in order that his request for reinvestigation may be given due course. On April 27, 1962, however, petitioner informed respondent that he cannot accomplish the required waiver inasmuch as his letter of protest raised purely questions of law which required no reinvestigation and reiterated the arguments and defenses raised in his protest. On June 14, 1962, despite petitioner's failure to accomplish the waiver of the prescriptive period, the Chief, Investigation Branch, Regional District No. 2, upon instruction from respondent, ordered Examiners Raul B. Reyes and Jose P. Jorge to conduct a reinvestigation of the income tax case of petitioner calling particular attention on the points raised by petitioner in his letter of April 27, 1962. Thereafter the examiners, in a memorandum dated June 30, 1962, recommended that the total amount of ₱112,495.72, representing deficiency income taxes for the years 1953 to 1957, inclusive of 50% surcharge, be collected from petitioner.

In a letter dated July 18, 1962, petitioner wrote respondent that "Even after the reinvestigation of the case, we have not been informed of the basis of the disallowance of the depreciation for 1953 to 1957"; he further requested the evaluation of the report of his examiners. On September 11, 1962, petitioner wrote the Chief, Law Division, giving reasons why the 50% surcharge for fraud should not be imposed. On December 5, 1962, the Chief, Appellate Division, recommended to respondent the cancellation of the assessments for the years 1953 to 1955 on ground of prescription and to assess petitioner for the years 1956 and 1957 in the respective amount of ₱9,763.32 and ₱12,007.68. Based on the said recommendation respondent, in a letter of March 18, 1963 issued on April 4, 1963, conceded that the right of the Government to assess deficiency income taxes for the years 1953 to 1955 had already prescribed but insisted in assessing petitioner for 1956 and 1957 in the respective amount of ₱9,763.32 and ₱12,007.68 plus the statutory penalties or a total sum of ₱21,771.00.

On April 19, 1963, petitioner protested this revised assessment and claimed that the right to assess the taxes for 1956 and 1957 has likewise prescribed. On July 1, 1965, respondent informed petitioner that the revised or modified assessment was made within the period prescribed by law inasmuch as the period consumed in the reinvestigation suspended the running of the prescriptive period and accordingly demanded the payment of the total sum of ₱28,443.95, inclusive of 5% surcharge, 1% monthly interest and compromise penalty. In reply thereto, petitioner, in a letter dated July 26, 1965, insisted that the right to assess the taxes in question had already prescribed. On December 10, 1965, respondent answered petitioner that there is no basis to reverse his stand and reiterated the demand for the payment of the sum of ₱28,443.95. Hence, this appeal instituted on January 13, 1966.

The parties raised the following issues:

1. Whether or not the right of the Government to assess the deficiency income taxes for the years 1956 and 1957 has already prescribed pursuant to Section 331 of the Revenue Code; and

2. Whether or not the appeal to this Court was filed within the reglementary period of 30 days prescribed in Section 11 of Republic Act No. 1125.

PRESCRIPTION

Petitioner contends that the right of respondent to assess the 1956 and 1957 deficiency tax had already prescribed when the assessment of March 11, 1963 was issued. His line of thought is that his request for reinvestigation of December 21, 1961 did not suspend the running of the period for prescription of the assessment because there was no reinvestigation at all in the sense that evidence was presented and considered. In this respect petitioner quotes the following portion of the decision in Republic vs. Alano, 12 SCRA 24:

> The state argues that the revised assessment having been the result of Alano's petition for reconsideration, it should be deemed effective as of the date of the original assessment of January 13, 1956. We disagree. This Court has already ruled that a mere protest and petition for reconsideration of the assessment, without a resulting reinvestigation and introduction of new evidence on the part of the taxpayer, does not stop the running of the prescriptive period (Collector vs. Pineda, L-14522, May 31, 1961; Collector vs. Solano, L-11475, July 31, 1958; Republic vs. Ablaza, G.R. No. L-14519, July 26, 1960). The case before us differs from Collector vs. Suyoc Consolidated Mining Co., (L-11527, Nov. 25, 1958) in that here the taxpayer made no attempt to delay the assessment proceedings by repeated requests or other positive acts on his part; he only asked once for reexamination on the same record and evidence that the revenue authorities already had before them, a petition that could have been resolved without any delay if the first assessment had been made according to the facts and the law.

And then petitioner cites the testimony of Raul B. Reyes who said on the witness stand that there was no reinvestigation in this case.

More credible than the testimony of Reyes, however, is the B.I.R. Record (pages 102 to 126 Folder I) which shows that there was in effect a reinvestigation of this case in which evidence was presented. Hereunder we quote the pertinent portion of the Memorandum dated June 30, 1962 of Examiner Jose P. Jorge and Raul B. Reyes, the latter being the very same witness hereinabove mentioned:

> This has reference to the request of the above taxpayer for reinvestigation as requested by Counsel in letter dated April 29, 1962.
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> Reinvestigation on the points taken up show the following:
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> 1. The net income for the years 1953-1957 were arrived at, after available records of the taxpayer during investigation were lost due to flood as alleged, from Clark Air Force Base Exchange Records. However, the Counsel for taxpayer furnished the undersigned copies of Financial Statement for the years 1954, 1956 and 1957 (Exhibits 1 & 2) and copy of reconstructed statement of provision for income tax as amortized (Exhibit "A"). From these evidences obtainable the undersigned has adjusted the net incomes for the years under review (please see the report of examination).

Moreover, in petitioner's letter of July 18, 1962, he speaks of a reinvestigation and of having had an interview "with your Examiner Reyes"; and in a letter of April 19, 1963 petitioner calls the attention of respondent to the fact that he had submitted the financial statements of Clark

Field Bus Line during the reinvestigation. Thus the B.I.R. records convincingly prove that there indeed was a reception of evidence during the reinvestigation of this case, hence the doctrine in the Alano case is not applicable to the case at bar. Apparently it was because of the evidence presented by the petitioner that in the assessment of March 11, 1963 respondent reduced the undeclared income for 1956 by ₱11,326.60 and increased it by ₱1,209.84 for 1957.

The rule applicable to this case was laid down in Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., 104 Phil. 819 where it was held that a taxpayer may not avail himself of the period of limitation if by his repeated requests or positive acts, the government has been for good reasons, persuaded to postpone assessment or collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the government. In that event, the period between the request for reinvestigation or reconsideration and the revised assessment is to be subtracted from the total prescriptive period (Comm. of Int. Rev. vs. Sison, 7 SCRA 884; Querol vs. Coll. of Int. Rev., 6 SCRA 304; Republic vs. Lopez, 7 SCRA 566; Tan Guan vs. Nable, 24 SCRA 93).

The parties are in disagreement as to what is the last unrevised assessment in this case. Respondent urges that it is respondent's letter of March 11, 1963 issued on April 4, 1963, but petitioner for his part insists that respondent's letter of July 1, 1965 is the last unrevised assessment. We think that there is no need to resolve this question because whatever is the last unrevised assessment, be it the first or the second, the determinative assessment falls within the prescriptive period. Assuming that the determinative assessment was that of July 1, 1965, then the last unrevised assessment was made 4 years, 9 months and 5 days from the filing of the return for the taxable year 1956, which is well within the prescriptive period of 5 years provided in Section 331 of the Tax Code. It goes without saying that with respect to the 1957 tax liability of petitioner the assessment was also issued before the prescriptive period expired.

The period of prescription regarding the assessment of internal revenue taxes begins to run from the dates of the filing of the returns, that is, on April 1, 1957 in this case. Said period, however, is suspended by the filing of a request for reconsideration or reinvestigation. From April 1, 1957, the date the 1956 income tax return was filed, to July 23, 1965, the date of receipt by petitioner of the assessment dated July 1, 1965, a total of 8 years, 3 months and 22 days elapsed. However, the period from December 21, 1961, the date the first request for reconsideration or reinvestigation was filed, to April 4, 1963, the date the first assessment of March 11, 1963, was issued which is 1 year, 3 months and 13 days; and from April 19, 1963, the date of filing of the second request for reconsideration or reinvestigation, to July 23, 1965, the date the assessment of July 1, 1965 was received, which is 2 years, 3 months and 4 days, or a total period of 3 years, 6 months and 17 days should be subtracted from the total period of prescription. (Comm. of Int. Rev., vs. Sison, 7 SCRA 884, 885; Republic vs. Lopez 6 SCRA 304, 308; Suyoc Consolidated Mining Co. vs. Coll., supra) All in all, respondent issued his last unrevised or unmodified assessment 4 years, 9 months and 5 days from the date the 1956 income tax return was filed by petitioner, or within the 5 year period of prescription provided under Section 331 of the Tax Code. It is obvious that the assessment, with respect to the 1957 income tax liability of petitioner, had also been issued within the 5 year period prescribed by law.

JURISDICTION

In his memorandum, respondent assails for the first time the jurisdiction of this Court on the ground that the appeal was filed beyond 30 days from receipt of the appealable decision. In support thereof, he contends that the appealable decision is his letter of demand dated March 11, 1963, which revised the original assessment of November 22, 1961, and although there were requests for its reconsideration, they were allegedly pro forma which did not have the effect of suspending the running of the period for appeal. Petitioner, for his part claims that the appealable decision is either respondent's letter of July 1, 1965 or the letter of December 10, 1965.

As in the issue of prescription with respect to the assessment, there is also controversy on the aspect of jurisdiction as to what is the last unrevised assessment, that is, whether it is the assessment of March 11, 1963 or that of July 1, 1965. Whether it be the first or the second the Court would still have jurisdiction over this case and we need not pass on said controversy.

Assuming that the final appealable decision is that of March 11, 1963, this Court would still have jurisdiction over this case. Since there is no evidence as to when notice thereof was made, logically notice should be placed as of April 19, 1963, the date of petitioner's motion for the reconsideration of said assessment. This motion suspended the running of the period for appeal: first, because it raised new issues, namely, prescription of the 1956 and 1957 tax (Felix Montenegro, Inc. vs. Comm. of Int. Rev., CTA Case No. 695, April 30, 1969); second, because verily this is the first request for reconsideration of an appealable decision and the <u>pro forma</u> rule applies only to a second or subsequent request for reconsideration that raises no new issues (Antonio H. Noblejas vs. Comm. of Int. Rev., CTA Case No. 1923, Oct. 4, 1968, Resolution; Coll. of Int. Rev. vs. CTA and Thomson Shirt Factory, 109 Phil. 1027). It commenced to run again on July 23, 1965 when petitioner received respondent's letter denying his motion for reconsideration. On July 26, 1965, the period was again suspended by the filing of another request for reconsideration which cannot be said to be <u>pro forma</u> because it advanced new grounds or defense, to wit, it questioned the applicability of the cases cited by the respondent (Lianga Bay Logging Co., Inc. vs. Comm. of Int. Rev., CTA Case No. 1878, June 30, 1969).

Accordingly, from April 19, 1963, date petitioner wrote his request for reconsideration of the assessment of March 11, 1963, to July 23, 1965, receipt of denial dated July 1, 1965, the period for appeal was suspended; from July 24, 1965, day after receipt of the denial, to July 26, 1965, when the second request for reconsideration was filed, a period of 3 days had been consumed. From July 26, 1965 to January 7, 1966, receipt of the last denial, the period for appeal was again suspended; and from January 8, 1966, day after the receipt of denial, to January 13, 1966, when the appeal was filed, a period of 5 days had elapsed. Consequently, only a total of 9 days of the 30-day period for appeal under Section 11 of Republic Act No. 1125 has been utilized and, therefore, the appeal was seasonably filed.

WHEREFORE, the decision appealed from is hereby affirmed. Petitioner is hereby ordered to pay respondent Commissioner of Internal Revenue or his duly authorized representative the respective amounts of ₱9,763.32 and ₱12,007.68, or a total of ₱21,771.00 as deficiency income taxes for 1956 and 1957, plus the corresponding surcharge and interest incident to delinquency, subject to the limitations imposed by Section 51 of the Revenue Code, as amended by Republic Act No. 2343. With costs against petitioner.

SO ORDERED.

Quezon City, April 15, 1974

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ROMAN M. UMALI
Presiding Judge

Associate Judge ESTANISLAO R. ALVAREZ did not take part.