Republic of the Philippines
COURT OF TAX APPEALS
MANILA

MANUEL P. SUÑGA,
Petitioner,

\- versus - C.T.A. CASE NO. 676

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is an appeal from the decision of the respondent holding the petitioner liable for deficiency income tax in the sums of ₱616.00, ₱703,00 and ₱641.00 for the years 1951, 1952 and 1953, respectively.

The parties submitted a stipulation of facts, as follows:

> "1. That the petitioner filed his income tax return for the year 1951 on February 19, 1952; that from his gross income of ₱13,000.00 for said year, the amount of tax withheld and paid to the Bureau of Internal Revenue by the International Harvester Company of Philippines was ₱753.40; and that no part of this amount withheld was refunded, according to the records of the Withholding Tax Unit of the Bureau of Internal Revenue produced in court on June 3, 1960 pursuant to a subpoena <u>duces tecum</u> issued to it;
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> "2. That the petitioner filed his income tax return for the year 1952 on February 12, 1953; that from his gross income of ₱14,284.61 for said year, the amount of tax withheld and paid to the Bureau of Internal Revenue by the International Harvester Company of Philippines was ₱967.80 and that of the said amount of tax withheld, the sum of ₱388.80 was refunded to the petitioner per treasury warrant No. 17787, according to the records of the Withholding Tax Unit of the Bureau of Internal Revenue produced in Court on June 3, 1960;
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> "3. That the petitioner filed his income tax return for the year 1953 on February 19, 1954; that from his gross income of ₱15,160.00 for said year, the amount of tax withheld and paid to the Bureau of Internal

(67)

Revenue by the International Harvester Company of the Philippines was ₱948.00 and that from said amount of tax withheld, the sum of ₱291.00 was refunded to the petitioner per treasury warrant No. 48557, according to the records of the Withholding Tax Unit of the Bureau of Internal Revenue produced in court on June 3, 1960;

"4. That the deficiency income tax assessed by the respondent for 1951 was based on the following disallowances:

Driver's salary.......	₱1,920.00
Repairs of car	300.00
Depreciation of car ..	600.00
Representation and travel expenses.....	600.00
T o t a l	₱3,420.00

"5. That the deficiency income tax assessment made by the respondent for 1952 was based on the following disallowances:

Driver's salary....	₱1,920.00
Repairs of car	700.00
Depreciation of car	600.00
Transportation and promotional expenses	600.00
T o t a l	₱3,820.00

"6. That the deficiency income tax assessment made by the respondent for 1953 was based on the following disallowances:

Driver's salary ...	₱1,920.00
Repairs of car	1,500.00
Depreciation of car	600.00
Transportation and promotional expenses	600.00
T o t a l	₱4,620.00

"7. That according to the memorandum of the mailing clerk to the Chief, Administrative Branch, Bureau of Internal Revenue, dated March 20, 1959, appearing on page 136 of the record of the Bureau of Internal Revenue now in court, the records of the Bureau failed to show that Assessment Notices Nos. 90-5-13433-56-51, 90-5-4135-56/52 and 90-5-5751-56/53 now in question, all issued on December 15, 1956, were mailed either by ordinary, special delivery or registered mail;

"8. That on December 12, 1957, the petitioner received a letter from the Assistant Regional Director, Regional District No. 3, Bureau of Internal Revenue, dated December 2, 1957, demanding from him the payment of alleged deficiency income taxes due from him for the years 1951, 1952, 1953 and 1954, respectively, as per Annex 'A' of the instant petition;

"9. That on the same date, the petitioner replied to the Bureau of Internal Revenue's letter of December 2, 1957, referred to in the immediately preceding paragraph 4 hereof, stating that he has not received any assessment notices for his tax liabilities for the years 1951, 1952 and 1953 and at the same time requested for a reconsideration and reinvestigation of respondent's tax assessments for said years as per Annex 'B' of the instant petition;

"10. That without first resolving petitioner's request for reconsideration and reinvestigation of his 1951, 1952 and 1953 income tax assessments as stated in the preceding paragraph, respondent filed a complaint to recover deficiency income taxes for the said years with the Court of First Instance of Manila on January 14, 1958, docketed as Civil Case No. 34833 per Annex 'C' of the petition; that the petitioner filed his answer to the aforementioned Civil Case No. 34833, dated January 23, 1958, as per Annex 'D' of the instant petition;

"11. That the Regional Director of the Regional District No. 3 sent a memorandum to the Chief, Tax Audit Branch, Manila, dated April 7, 1959, requesting a resolution of the request for reconsideration and reinvestigation filed by the petitioner dated December 12, 1957, which memorandum appears on page 149 of the record of the Bureau of Internal Revenue now in court, and which was followed by another 'Rush' tracer-letter dated June 8, 1959, reiterating the Regional Director's (Regional District No. 3) request for a resolution of petitioner's request for reconsideration and reinvestigation which letter appears on page 184 of the record of the Bureau of Internal Revenue now in court;

"12. That the Regional Director finally wrote a letter to the petitioner dated June 2, 1959, denying the latter's request for a reconsideration and reinvestigation of the assessments in question and reiterating its demand for payment of said deficiency income tax assessments, which letter appears on page 186 of the record of the Bureau of

64

Internal Revenue now in Court;

"13. That respondent accordingly filed a manifestation in court thru his counsel, in Civil Case No. 34833, dated June 11, 1959 to the effect that his complaint was indeed filed prematurely as per Annex 'F' of the instant petition;

"14. That the Court of First Instance of Manila accordingly issued an order dated June 13, 1959, dismissing respondent's complaint in Civil Case No. 34823 without prejudice;

"15. That the documents subject of this stipulation will be marked as exhibits and presented in evidence in this case during the trial thereof and the parties reserve their right to present evidence with respect to other matters not covered by this stipulation." (See Partial Stipulation of Facts, pp. 40-43, CTA records.)

It appears that petitioner was, during the period under review, the Chief Legal Counsel and Secretary of the Board of Directors of International Harvester Company of the Philippines. He received a fixed salary and bonus. Income tax was withheld from his salary by his employer and paid to the Bureau of Internal Revenue. When he filed his annual income tax return, the income tax withheld from his salary was applied to the income tax due on the basis of the return filed, and any excess of the tax withheld over the tax due in accordance with the return was refunded to him. Subsequently, upon examination of petitioner's returns, respondent found that petitioner claimed deductions for his driver's salary, repairs of his car, depreciation of said car, traveling and representation expenses, itemized in the stipulation of facts quoted above, which deductions were disallowed, thereby resulting in the deficiency income tax in the amounts already mentioned.

Petitioner questions the legality of the assessment on the grounds that (1) respondent is estopped from making a reassessment after he had refunded to petitioner certain amounts, representing the excess of the withholding tax over the amount due on the basis of the return; (2) the right of the Government to assess and collect the alleged deficiency tax has prescribed; and (3) on the assumption that the right to assess and collect has not yet prescribed, the disallowance of the deductions in question is not in order.

The case was submitted for decision without counsel for petitioner submitting any memorandum, relying solely on the stipulation of facts and the documentary evidence submitted during the trial.

On the question whether or not respondent is permitted to make a reassessment of the income tax due from a taxpayer, the rule is well established that he has such power. This power proceeds from the general authority conferred upon him by law to collect all national internal revenue taxes and to enforce all laws in relation thereto. (Sec. 3, et seq., National Int. Rev. Code.) If the Commissioner of Internal Revenue is precluded from making an assessment except the one made on the basis of the taxpayer's return, the Government would be at the mercy of the taxpayer, who can determine what income to report and how much to pay. The doctrine of estoppel does not apply against tax collectors in the collection of taxes, except in compromise cases validly entered into under Section 309 of the National Internal Revenue Code.

As regards prescription, it appears that the income tax return of petitioner for 1951 was filed on February 19, 1952; that for 1952, on February 12, 1953; and that for 1953, on February 19, 1954. The records of the Bureau of Internal Revenue show that assessment notices dated December 15, 1956 were prepared for mailing to petitioner, but there is no evidence that said assessment notices were actually mailed or otherwise delivered to petitioner. (See par. 7, Stipulation of Facts.) It was only on December 12, 1957, that petitioner received a letter from the Assistant Regional Director, Regional District No. 3, Bureau of Internal Revenue, dated December 2, 1957, wherein demand was made for the payment of the deficiency income tax in question. Since petitioner denies having received the assessment notices dated December 15, 1956, and there is no evidence of its delivery by mail or otherwise, the assessment is deemed to have been legally made on December 12, 1957, when petitioner received the letter dated December 2, 1957, demanding payment of the deficiency income tax.

Section 331 of the Revenue Code provides that an internal revenue tax may be assessed within five years from the date the return was filed, or from the last day of filing such return if it was filed prior to such last day, and Section 332 provides that the tax so assessed may be collected within five years from the date of assessment. In this case, the return for 1951 was filed on February 19, 1952, so that the five-year period starts from March 1, 1952. Since the assessment was made on December 12, 1957, more than five years after the return was due on March 1, 1952, the right of the Government to assess the deficiency tax for 1951 has prescribed.

With respect to the deficiency income tax for 1952, the five-year period within which to assess is to be counted from March 1, 1953, when the return was due. Since the assessment was made on December 12, 1957, or a period of less than five years from March 1, 1953, the same was made within the period of limitation provided by law. The same is true as regards the deficiency income tax for 1953. As the deficiency income tax for the years 1952 and 1953 was assessed within the statutory period, the next question is whether or not the right of the Government to collect the same has prescribed.

The statutory period of five years within which an internal revenue tax may be collected by distraint or levy or by judicial action is to be counted from the date of assessment, if an assessment has been made. The assessment in this case was made on December 12, 1957, and the judicial action was commenced by petitioner himself when he instituted the present appeal in this Court on July 1, 1959, or less than two years from the date of assessment. Therefore, the right of the Government to collect the tax has not prescribed.

It is to be noted that we reckoned the five-year period of collection from the date of assessment to the date of the filing of the present appeal by petitioner himself. There has been some conflict as to meaning of the term "judicial action" found in Sections 316 and 332 of the Revenue Code. In some cases, it was held that in case of an appeal to this Court by the taxpayer, the judicial action for collection of the tax in controversy is deemed commenced by the filing by the Commissioner of Internal Revenue of his answer to the petition for review. (Solano v. Coll. of Int. Rev., C.T.A. No. 208, Oct. 5, 1956, affd. in G. R. No. L-11457, July 31, 1958; Pineda v. Coll. of Int. Rev., C.T.A. No. 364, Aug. 30, 1958, affd. in G. R. No. L-14522, May 31, 1961.) And in some cases, it was held that "judicial action" is commenced when the taxpayer himself files an appeal in this Court from the decision of the Commissioner of Internal Revenue. (Jose Ng Suy v. Coll. of Int. Rev., C.T.A. No. 321, July 1, 1957; Alhambra Cigar & Cigarette Mfg. Co. v. Coll. of Int. Rev., C.T.A. No. 143, Jan. 31, 1957, affd. in G. R. Nos. L-12026 & L-12131, May 29, 1959; Bohol Land Transp. v. Coll. of Int. Rev., C.T.A. No. 261, Sept. 25, 1957, affd. in G. R. Nos. L-13099 & L-13462, April 29, 1960; Gancayco v. Coll. of Int. Rev., C.T.A. No. 287, Nov. 14, 1957, affd. in G. R. No. L-13325, April 20, 1961.)

After a careful study of the question and review of the cases decided, the majority of this Court is of the opinion that the judicial action for collection of an internal revenue tax, where the taxpayer appeals to this Court, is commenced from the date of filing of the appeal and not from the date of the filing of the answer of the Commissioner of Internal Revenue. In those cases where it was held that the judicial action was deemed to have been commenced from the date of the filing of the answer, the issue was not squarely raised, both the Government and the taxpayer concerned apparently conceding the correctness of the opinion inasmuch as the result would not have been materially affected if the opinion was otherwise. However, in those cases where the holding was that judicial action was deemed to have been commenced with the filing of the taxpayer's appeal, the issue was squarely raised. Thus in Bohol Land Transp. Co. v. Coll. of Int. Rev., C.T.A. No. 261, Sept. 25, 1957, this Court, through the Honorable, the Presiding Judge, held:

> With respect to the third issue, Bohol Company contends that since "the present petition is one for review brought not by the collecting authority but by the taxpayer," the Collector ought to file a judicial action for collection of the taxes herein involved in a proceeding apart and independent of the instant appeal. In other words, according to petitioner, the present petition for review should not be treated as equivalent to the judicial action contemplated by Section 332 (a) of the Tax Code for the collection of the tax. We find this theory not well taken. The "judicial action" contemplated may refer not only to the civil case instituted by the government to collect the tax but also to a case where the taxpayer takes the initiative to contest the validity of the assessment or collection of taxes by the Collector of Internal Revenue. The objective in both cases is the same--the validity and correctness of the determination and collection of the tax. Thus,

a simple claim filed by the Collector of Internal Revenue against the estate of a deceased in a probate case has been recognized as tantamount to the judicial collection of taxes (Collector v. Annie Laurie Haygood, 65 Phil. 520). On the other hand, in a claim for refund instituted against the Collector of Internal Revenue, the Supreme Court considered the taxpayer's suit for refund as sufficient "judicial action" for the collection of taxes on the part of the former (see Phil. Sugar Estate Dev. Co., Inc. vs. Posadas, 68 Phil. 216).

Thus, on the same issue previously brought before this Court, we held:

> "As aforestated, petitioner filed his petition for review of the decision of the Collector of Internal Revenue on October 4, 1956, and the latter submitted his answer thereto on October 25, 1956, praying among other things, for the rendition of a judgment ordering the petitioner to pay the deficiency income tax assessed against him. <u>The appeal to this Court is, we believe, equivalent to a judicial action for the collection of deficiency income tax</u> within the purview of said section 332(c). It set the machinery of this Court into operation for the purpose of determining the question relative to the assessment and/or collection of the tax. Thus, where a taxpayer paid income taxes after the collection by summary methods has been barred,

71

> and thereafter instituted action for its refund, it was held that the collection became 'judicial and the right of the Collector of Internal Revenue to effect the collection through that means has not prescribed.' (Phil. Sugar Estate Dev. Co., Inc. v. Posadas, 63 Phil. 216). In view of the nature and subject matter of the instant petition for review, there is every reason to treat the present appeal as an action in court which involves the collection of a deficiency tax assessment." (Jose Ng Suy v. Collector, CTA Case No. 321, July 1, 1957; underscoring supplied.)
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> Considering further that the operations of the government depend upon the prompt collection of taxes, we believe it could not have been the intention of Congress in the creation of this Court to require the Collector of Internal Revenue, in a similar situation as the case at bar, to institute a separate judicial action solely for the collection of taxes, when the same matter can sufficiently and more speedily be determined in a case involving the review by this Court of the assessment, upon an appeal interposed by the taxpayer. Consequently, we are of the opinion, and so hold, that the instant proceedings before the Court, though instituted by the taxpayer, is equivalent to a "judicial action for the collection of deficiency taxes within the purview of section 332 (c) of the Tax Code. (See pp. 12-14, Bohol Land Transp. Co. v. Coll. of Int. Rev., C.T.A. No. 261, Sept. 25, 1957.)

The same question was squarely raised in the Supreme Court on appeal, and said Court, in affirming our decision, discussed extensively the meaning of "judicial action." Said the Supreme Court:

> We agree with the foregoing view. Indeed, had the company not taken the matter to the Court of Tax Appeals, the Collector would have seasonably taken a similar action for, as it should be noted, he has already taken the preliminary step, which is the collection by distraint and levy, to insure the effective collection of the tax assessed

72

> against the company. And when the company appealed the Collector's decision, the Collector was placed in the alternative of sustaining his decision, which is tantamount to a judicial action. As the Court of Tax Appeals well observed, "The objective in both cases is the same - the validity and correctness of the determination and collection of the tax." Indeed, the action of the Collector cannot be taken in any other light. It is a judicial action pure and simple. (G. R. Nos. L-13099 & L-13462, April 29, 1960.)

The same opinion was restated in Alhambra Cigar & Cigarette Mfg. Co. v. Coll. of Int. Rev., supra, and Gancayco v. Coll. of Int. Rev., supra, in both of which the question was squarely raised and passed upon by this Court and the Supreme Court. Thus, in the case of Gancayco decided by the Supreme Court on April 20, 1961, it was held:

> Neither could said statute have begun to run from May 14, 1951, the date of the first deficiency income tax assessment of ₱29,554.05, because the same was, upon Gancayco's request, reconsidered or modified by the assessment made on April 8, 1953, for ₱16,860.31. Indeed, this last assessment is what Gancayco contested in the amended petition filed by him with the Court of Tax Appeals. The amount involved in such assessment which Gancayco refused to pay and respondent tried to collect by warrant of distraint and/or levy, is the one in issue between the parties. Hence, the five-year period aforementioned should be counted from April 8, 1953, so that the statute of limitations does not bar the present proceedings, instituted on April 12, 1956, if the same is a judicial action, as contemplated in section 316 of the Tax Code, which petitioner denies, upon the ground that -
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> > a. "The Court of Tax Appeals does not have original jurisdiction to entertain an action for the collection of the tax due;

> b. "The proper party to commence the judicial action to collect the tax due is the government, and
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> c. "The remedies provided by law for the collection of the tax are exclusive."

Said section 316 provides:

> "The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.
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> "No exemption shall be allowed against the internal revenue taxes in any case."

Petitioner contends that the judicial action referred to in this provision is commenced by filing, with a court of first instance, of a complaint for the collection of taxes. This was true at the time of the approval of Commonwealth Act No. 466, on June 15, 1939. However, Republic Act No. 1125 has vested the Court of Tax Appeals, not only with exclusive appellate jurisdiction to review decisions of the Collector (now Commissioner) of Internal Revenue in cases involving disputed assessments, like the one at bar, but, also, with authority to decide "all cases involving disputed assessments of Internal Revenue taxes or customs duties pending determination before the court of first instance" at the time of the approval of said Act, on June 16, 1954 (Section 22, Republic Act No. 1125). Moreover, this jurisdiction to decide all cases involving disputed assessments of internal revenue taxes and customs duties

> necessarily implies the power to authorize and sanction the collection of the taxes and duties involved in such assessments as may be upheld by the Court of Tax Appeals. At any rate, the same now has the authority formerly vested in courts of first instance to hear and decide cases involving disputed assessments of internal revenue taxes and customs duties. Inasmuch as those cases filed with courts of first instance constituted judicial actions, such is, likewise, the nature of the proceedings before the Court of Tax Appeals, insofar as sections 316 and 332 of the Tax Code are concerned. (Underscoring supplied.)

It is but logical to conclude that the judicial action for collection of an internal revenue tax is deemed commenced with the filing of the taxpayer's appeal with this Court, for the purpose of reckoning the prescriptive period for collection under Sections 316 and 332 of the Revenue Code, for the following reasons. In the first place, when the taxpayer appeals from the decision of the Commissioner of Internal Revenue, the latter is precluded from instituting an action for collection in the ordinary courts. (See Ledesma v. C.T.A., G. R. No. L-11343, Jan. 29, 1958.) If the appeal is filed on the last day of the fifth year after assessment, and the answer of the Commissioner is filed after fifteen days, is it just that the Government be declared barred from collecting the tax because the answer was filed fifteen days after the five-year period for collection, when it was prohibited from instituting judicial action upon the filing of the taxpayer's appeal? In the second place, if the Commissioner, through oversight, negligence or otherwise of his counsel, should

75

fail to file answer and he is declared in default, as has actually happened in some cases, is it reasonable to conclude that no judicial action has been commenced despite the pendency of the appeal and the authority of this Court to pronounce judgment as to the taxpayer's liability? If such be the case, the running of the prescriptive period would continue to run notwithstanding the pendency of the appeal, which is admittedly unreasonable and unjust on the part of the Government, and contrary to the doctrine laid down by the Supreme Court in the cases of the Alhambra Cigar & Cigarette Mfg. Co., Bohol Land Transp. Co. and Gancayco, supra.

The third and last issue relates to the legality of the disallowance of the deduction for driver's salary, repairs of car, depreciation of car, traveling and representation expenses. These deductions were disallowed by respondent on the ground that petitioner was an employee receiving a fixed salary and the alleged expenses were therefore in the nature of personal expenses not allowable as deductions under Section 31(a)(1) of the Revenue Code. As already stated, counsel for petitioner did not file any memorandum in support of the legality of the claimed deductions. The petition for review does not state facts to justify the deductibility of said expenses. Even while the case was pending in the Bureau of Internal Revenue, he refused to discuss the legality of the claimed deductions. We quote from a report of an examiner who interviewed petitioner:

76

> "Attached herewith is the amended report of examination for the years 1954 and 1955 embodying the above findings. Please note that with respect to the years 1951, 1952 and 1953, no action was taken as Atty. Sunga vehemently refused to discuss further the disallowances made by Examiner B. Divina alleging that since the right of the Bureau to collect from him has already prescribed, the issue has therefore become academic." (Report of Examiner Romeo de Guia, April 29, 1959, page 163, BIR records.)

In order that an item of expenditure may be deductible, it is required that each year's return, so far as practicable, both as to gross income and deductions therefrom, should be complete in itself, and taxpayers are expected to make every reasonable effort to ascertain the facts necessary to make a correct return. (Sec. 76, Rev. Regulations No. 2.) Petitioner having failed to comply with this requirement, we are constrained to affirm the decision of respondent disallowing said deductions. (See Gancayco v. Collector of Int. Rev., C.T.A. No. 287, Nov. 14, 1957, affd. in G. R. No. L-13325, April 20, 1961.)

FOR THE FOREGOING CONSIDERATIONS, the decision appealed from is hereby modified in the sense that petitioner is liable only for the deficiency income tax for the years 1952 and 1953, in the sums of ₱703.00 and ₱641.00, respectively, or a total of ₱1,344.00. Accordingly, petitioner is ordered to pay the said sum of ₱1,344.00 plus 5% surcharge and 1% monthly interest from January 1, 1958, to the date of payment, subject to the limitations imposed by Sec-

77

tion 51(e)(2) of the Revenue Code, as amended by Republic Act No. 2343. With costs against petitioner.

SO ORDERED.

Manila, October 25, 1961.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge