Library

May 29/64

ANGEL LIMJOCO, JR.,
Petitioner

versus C. T. A. CASE NO. 1191

MELECIO R. DOMINGO, in his capacity as Commissioner of Internal Revenue,
Respondent.

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

D E C I S I O N

This is an appeal from the decision of the Commissioner of Internal Revenue assessing against and demanding from petitioner the total amount of ₱1,845.74 as deficiency income tax, inclusive of surcharge, interests and compromise penalty, for the year 1952.

Petitioner Angel Limjoco, Jr. was a law practitioner and an officer of a corporation before and during the fiscal year 1952. On March 19, 1953, he filed an income tax return for the year 1952 (Exh. 1), claiming a loss in the amount of ₱3,675.00 for Philippine National Bank circulating notes which he had previously deposited with the Treasurer of the Philippines and which notes were not redeemed by the Philippine Government.

On the basis of the 1952 return and after disallowing the loss claimed therein, respondent, on March 31, 1953, assessed against petitioner an income tax for the year 1952 in the sum of ₱2,420.00 (Exh. B).

Petitioner paid respondent only the sum of ₱1,538.00, thereby leaving a balance of ₱882.00. This balance corresponds to the tax resulting from the disallowance of the loss claimed as a deduction.

On December 16, 1957, Moises San Agustin, Chief of the Collection Branch of Regional District No. 4, wrote a letter to petitioner (Exh. D), inquiring if the balance has already been paid. In reply thereto, petitioner, in a letter dated December 24, 1957 (Exh. C), informed the Regional Director of District No. 4 that the assessment had been the subject of protest; reiterated the full settlement of the 1952 income tax liability; and, presumed that the protest had been accepted and the case was already closed.

Subsequently, on July 23, 1958, the Regional Director demanded from petitioner the payment of the balance of ₱882.00, plus 5% surcharge and interest, and threatened to enforce the collection thereof thru the remedies provided for by law (Exh. E).

On August 28, 1958, petitioner requested for reconsideration of the assessment on the ground that the PNB circulating notes came into his possession in the normal course of his trade or business and were therefore deductible under Section 30(d) of the Tax Code. Likewise he requested for a hearing before the Appellate Division of the BIR (Exh. F).

On October 2, 1958, the Regional Director again demanded the payment of the unpaid balance of ₱882.00, plus surcharge, interest and compromise penalty, and threatened to enforce collection against petitioner by court action (Exh. 5).

On February 2, 1960, petitioner wrote a letter to respondent, assailing the right of respondent to collect the deficiency tax on the ground of prescription (Exh. G).

On June 20, 1960, respondent acted on petitioner's request to elevate the case to the Appellate Division of the BIR favorably, but on the condition that petitioner first execute a waiver of the statute of limitations to which petitioner did not agree.

Finally, on January 29, 1962 (Exh. 8), respondent Commissioner of Internal Revenue, in his letter which he declared final for purposes of Republic Act No. 1125, demanded from petitioner the payment of the balance of tax due in the sum of ₱882.00, plus 5% surcharge, monthly interest and compromise penalty, or a total amount of ₱1,845.74 (Exh. 8). This final decision was received by petitioner on February 23, 1962. And on March 21, 1962, petitioner filed his petition for review, to which respondent answered on April 6, 1962.

It must be stated beforehand that the issue of jurisdiction raised by respondent as a special and affirmative defense in his answer was abandoned by him. Hence, the only remaining issues to be determined in this appeal are as follows:

(1) Whether or not the right to collect the deficiency income tax for 1952 in the

total amount of ₱1,845.74 has prescribed; and in the negative;

(2) Whether or not the losses representing the unredeemed PNB circulating notes are deductible from gross income under Section 30(d) of the Tax Code.

With respect to the first issue, petitioner contends that the right of the Commissioner of Internal Revenue to collect by judicial action the deficiency tax in question has prescribed. On the other hand, respondent contends otherwise, insisting that petitioner had waived the defense of prescription since by his positive acts, consisting of protests against the assessment, he has induced respondent to postpone the collection of the tax. Respondent cites the cases of Suyoc Consolidated Mining Co. (G. R. No. L-11527, Nov. 25, 1958), Manuel B. Pineda (G. R. No. L-14522, May 31, 1961) and Joseph Arcache, et al. (G. R. No. L-15547, Feb. 29, 1965) in support of his contention.

We agree with petitioner that the right of respondent to collect the deficiency income tax in question has prescribed. The income tax was assessed on March 31, 1953, well within five (5) years from the date of the filing of the return on March 19, 1953. (See Sec. 331, Tax Code). Under the provisions of Sec. 332(c) of the Tax Code, where a tax has been seasonably assessed, a proceeding in court to collect the same should be instituted within five (5) years from the assessment of the tax. In the case at bar, the judicial proceeding to collect the deficiency tax was commenced with the filing of the petition for review on March 21, 1962. (See Manuel P. Suñga vs. Coll. of Int. Rev., C. T. A. Case No. 676, Oct. 25, 1961; Alhambra Cigar & Cigarette Manufacturing Co. v. Coll. of Int. Rev., G. R. Nos. L-12026 & 12131, May 29, 1959; Bohol Land Transportation Co. vs. Coll. of Int. Rev., G. R. Nos. L-13099 & L-13462, April 29, 1960; Gancayco vs. Coll. of Int. Rev., G. R. No. L-13325, April 20, 1961.) The judicial action to collect the tax having been filed more than five (5) years from March 31, 1953, the right of respondent Commissioner to collect the deficiency income tax in question has already prescribed. (Coll. of Int. Rev. vs. De Los Angeles, G. R. No. L-9899, Aug. 13, 1957.)

The cases which respondent cited as authority to sustain his contention that the petitioner has waived the defense of prescription are not in point. In the case of Suyoc Consolidated Mining Co., supra, the taxpayer therein has been found to have, by positive acts, induced respondent to suspend the collection of the tax assessed against it. On the other hand, in the present case, at no time did petitioner seek the suspension of the collection of the tax. He merely disputed or questioned the legality of that portion of the assessment which pertains to the disallowance of his claim for deduction by giving reasons why the deduction should be allowed and why he should not pay the said deficiency tax.

In the Pineda case, supra, the taxpayer contended that the tax sought to be collected was not due and gave reasons therefor. He had a perfectly legitimate right to do so and the same did not suffice to estop him from invoking the statute of limitations. This is what was also held in the analogous case of Collector of Internal Revenue vs. Solano, G. R. No. L-11475, promulgated on July 31, 1958.

The case of Joseph Arcache, et al., supra, is equally inapplicable as that case stands on facts entirely divergent from the facts of the case at bar.

Having disposed of the first issue on prescription adverse to respondent's contention, we find it unnecessary to determine the other issue raised in this case.

WHEREFORE, the decision appealed from is hereby reversed and respondent Commissioner of Internal Revenue is hereby enjoined from collecting the deficiency income tax for the year 1952 in the total amount of ₱1,845.74, inclusive of surcharge, interests and compromise penalty, without pronouncement as to costs.

SO ORDERED.

Manila, May 29, 1964.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge