FLORENCIO SOLANO,
Petitioner,

- versus - C.T.A. CASE NO. 208

THE COLLECTOR OF INTERNAL REVENUE, Respondent.

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Oct. 5, 1956

D E C I S I O N

This is an appeal from a decision of the respondent Collector of Internal Revenue as embodied in the letter , Exhibit D (p. 14, expediente) dated October 10, 1955, of the Chief, Legal Department, Bureau of Internal Revenue, reiterating a demand from the petitioner Florencio Solano of the amount of ₱629.53 as unpaid income tax for the year 1948 exclusive of surcharges and interest with threats to collect the same by summary remedies upon failure of the petitioner to apy said obligation to the City Treasurer of Manila upon receipt thereof.

It appears from the record that since the aforesaid letter-decision of October 10, 1955, was sent and up to the present time, the respondent has not carried out his threat to collect the obligation in question by summary methods or court action.

It is the petitioner who came to this Court on November 18, 1955, by way of a petition for review seeking to annul the assessment, Exhibit E (p. 10 BIR rec.) against him for ₱629.53, exclusive of surcharges and interests, on the ground of payment and prescription and the lifting of the Warrant of Garnishment, Exhibit C (p. 51 BIR Rec.) issued by the respondent on August 24, 1955, to petitioner's employer, the San Miguel Brewery, Inc., garnishing the accrued salary of the petitioner to enforce the collection of the latter's income tax liability for the year 1948 in the amount above-mentioned.

It appears that during the years 1948 to 1952, the petitioner was the Chief, Current Accounts Department, of the San Miguel Brewery, Inc. from which he received monthly salaries, annual bonuses and rice rations of substantial amounts.

On February 28, 1949, the petitioner filed his income tax return, Exhibit A (pp. 9, 11 BIR rec.) for the year 1948 showing a net income of ₱12,188.75 from the San Miguel Brewery, Inc. ₱10,732.60 of which was received in the form of salary, ₱1,500.00 as bonus and ₱264.00 as rice ration. After deducting the exemptions and deductions for taxes, interests and charity, the petitioner declared an income subject to tax in the amount of ₱8,688.75 and income tax due in the sum of ₱629.53. On March 31, 1949, the respondent issued against the petitioner, Income Tax Assessment Notice No. A-204-99-48, Exhibit E (p. 16 BIR rec.) assessing the declared sum of ₱629.53 as the income tax due, and requesting payment thereof to the City Treasurer of Manila on or before May 15, 1949, or at the option of the petitioner, in two installments as follows: (1) ₱314.77 payable on or before May 15, 1949, and (2) ₱314.76 payable on or before August 15, 1949.

On February 23, 1950, the petitioner filed his income tax return, (pp. 6, 8 BIR rec.) for the year 1949, showing a net income of ₱12,058.35 derived from his employer in the form of salaries and bonus; an income subject to tax in the amount of ₱8,558.35 and income tax due in the sum of ₱692.58. On March 24, 1950, the respondent issued against the petitioner. Income Tax Assessment Notice No. 14571-49 (p. 7 BIR rec.) assessing the declared sum of ₱692.58 as the income tax due and requesting payment thereof to the City Treasurer of Manila on or before May 15, 1950 or at the option of the petitioner, in two installments as follows: (1) ₱346.29 payable on or before May 15, 1950, and (2) ₱346.29 payable on or before August 15, 1950.

On February 22, 1951, the petitioner filed his income tax return (pp. 3, 5 BIR rec.) for the year 1950, showing a net income of ₱12,409.35 derived from his employer in the form of salaries and bonus; and income subject to tax in the amount of ₱7,609.35; and income tax due in the sum of ₱789.68. On Mary 21, 1951, the respondent issued against the petitioner Income Tax Assessment Notice No. A-11686-50 (p. 4 BIR rec.) assessing the declared sum of ₱790.00 as the income tax due, and requesting payment thereof to the City Treasurer of Manila on or before May 15, 1951, or at the option of thepetitioner, in two installe ments as follows: (1) ₱395.00 payable on or before

May 15, 1951, and (2) ₱395.00 payable on or before August 15, 1951.

On June 28, 1953, the petitioner filed his income tax return (pp. 1, 2 BIR rec.) for the year 1952, showing a net income of ₱15,422.85 derived from his employer inthe form of salaries and bonus; an income subject to tax in the amount of ₱10,022.85 and income tax due in the sum of ₱1,225.48. The corresponding Income Tax Assessment Notice was issued against the petitioner requiring him to pay the amount of ₱13.10 as income tax for the year 1953 after allowing him a tax credit of ₱1,211.90.

Notwithstanding his substantial annual income which averaged five figures and the amount of income tax declared by him, which was relatively small, the petitioner failed to pay all the income taxes declared, assessed and due from him for the years in question on the date of maturity as a result of which the respondent, on March 20, 1954 (pp. 29, 30 BIR rec.) referred the matter to the City Fiscal of Manila for criminal prosecution ofr violation of section 51 (d) of the National Internal Revenue Code in relation to section 73 thereof.

Faced with the bleak prospect of going to jail for tax evasion and finding himself with not other alternative to ward off the contemplated criminal action against him but to pay, the petitioner on April 30, 1954, paid all the income taxes due from him for the years 1949, 1950 and 1952 in the total amount of

₱2,206.90 as evidenced by Income Tax Receipt No. 456318, Exhibit F (p. 15 expediente).

However, finding a legal loophole worthwhile exploiting with respect to his income tax liability for the year 1948, the petitioner raised the question of prescription before the City Fiscal's Office. Apparently, the petitioner won his point. In a letter, Exhibit a (p. 45 BIR rec.) dated June 9, 1954, addressed to the respondent by Assistant City Fiscal Gaudencio T, Bocobo, who was assigned to handle and presecute the case, the said official rendered an opinion to the effect that criminal action against the petitioner for tax evasion was unwarranted and untenable with respect to his income tax liability for the year 1948, the action against him having already prescribed. The respondent did not question the opinion of the Fiscal and the case was left at that without any criminal action having being filed against the petitioner.

This appeal narrows down to the following issues:

(1) Whether or not the uncorroborated testimony of petitioner to the effect that sometime in 1949 he paid in two installments his income tax liability for the year 1948 is worthy of belief; and

2. Should this Court decide the first question of credibility in the negative, whether or not the respondent can still collect at present either by summary methods or judicial action the income tax in question.

The petitioner took the witness stand and testified that he filed his 1948 income tax return in February 1949; that he received an assessment notice demanding the payment of the amount of ₱629.53 based on the return; that he paid the assessment in two installments on May 15 and August 15, 1949; that he cannot present the corresponding receipts to support his testimony because he "might have lost them. It might have gotten lost because I transferred mu residence in 1950 and I carried a box containing all my personal documents. It might have been lost when we transferred on that day"; and that he tried to search for the receipts but could not find them.

Judging by his manner of testifying before this Court, we cannot believe in the least and uncorroborated testimony of the petitioner to the effect that sometime in 1949, he paid in two installments his income tax liability to the Government for the year 1948, in the amount of ₱629.53. Much less can we believe his uncorroborated testimony that he lost the receipts covering such payments. As we see it, the Bureau of Internal Revenue unwittingly supplied the petitioner with a legal loophole (prescription) to evade payment of his income tax liability for the year 1948, and intelligent as he is, the petitioner exploited it to full advantage before the City Fiscal's Office as well as before this Court.

The petitioner readily presented the receipt, Exhibit F (p. 15, expediente) evidencing payment of his income tax liability for the years 1949, 1950 and 1952. The Bureau of Internal Revenue has no record whatsoever evidencing the alleged payment by petitioner of his income tax liability for the year 1948. If the petitioner had really paid his income tax liability for the year 1948 as he claims, he could have easily obtained, had he wanted to, a certified copy of the receipt or receipts from the City Treasurer's Office where he claims to have paid the amount. The petitioner utterly failed to obtain certified copies of the receipts to corroborate his claim that he paid the amount in question. One will note that in his income tax return for the year 1949, (filed on February 23, 1950) the space "If you paid income tax for the preceding year, give receipt number" was left in blamk and unaccomplished by the petitioner thereby disproving his claim that he paid his income tax liability for the previous year. Moreover, upon being asked by this Court why he did not make timely representations with the Bureau of Internal Revenue that he paid the amount in question as he now claims, when the warrants of distraint, levy and garnishment were issued against him, the petitioner was at a loss to give satisfactory explanation. All he could say was "Because I did not have the receipts to prove that I paid. What was the use of my going there if they were going to deny the same." (p. 8, t.s.n.)

This much we can say of thepetitioner Florencio Solano as regards his credibility as a witness, as a taxpayer and as a citizen. We do not believe in the least his uncorroborated testimony to the effect that he paid in two installments sometime in 1949 his income tax liability for the year 1948 and that he lost the receipts evidencing his payments. We cannot consider one as a reliable taxpayer nor a model citizen who, after declaring in his income tax returns for the years 1948, 1949, 1950 and 1952 such substantial net income as ₱12,188.75, ₱12,058.35, ₱12,409.35 and ₱15,422.85, respectively, chooses not to pay the declared income tax due thereon for the years 1949, 1950 and 1952, within the period prescribed by law, but instead defers payment thereof until 1954, only after his case was referred to the City Fiscal of Manila for criminal prosecution (pp. 29,30,42, 43 BIR rec.). Obviously, the petitioner paid on April 30, 1954, all the income taxes due from him for the years 1949, 1950 and 1952, totalling ₱2,206.90 as he himself had declared in his returns, because that was the last recourse left to ward off the contemplated criminal action against him. And, as heretofore stated, with respect to his income tax liability for the year 1948, the petitioner saw a good legal loophole to evade payment of said tax liability which he exploited to great advantage in his favor before the City Fiscal's Office as well as before this Court. We ask: Is it asking too much from the petitioner with a declared total net income of ₱39,890.55 for 1949, 1950 and 1952 and a declared total taxable income of ₱26,190.55 for the same years, to pay on time the corresponding income taxes due thereon amounting to only ₱2,206.90? With such a substantial net and taxable income, must one have to wait that he be prosecuted or threatened with criminal prosecution for tax evasion before paying the income taxes due thereon which the petitioner himself admitted in his returns to be his legitimate liability to the Government?

Coming now to thequestion of prescription.

We note from the pleadings of both parties with respect to this second issue, that all their attention has been focused on the provision of section 332 (c) of the National Internal Revenue Code regarding the five-year period of prescription within which the Collector of Internal Revenue may exercise summary methods of collection of taxes. The opposing counsel have overlooked the fact that this is a case involving income tax and therefore what governs is the three-year prescriptive period for the collection of income taxes by summary methods as fixed under section 51 (d) of the National Internal Revenue Code and not the five-year prescriptive period prescribed in section 332 (c) of the same Code, which is applicable to other taxes. Thus, when a taxpayer filed a fraudulent income tax return or refuses or neglects to make a return or as in the present case files a correct beturn but does not pay the income tax due as declared by him within the period prescribed by law, the Collector of Internal Revenue has only three (3) years from the date when the return was file or should have been filed within which to exercise summary remedies of collection (section 51-d, National Internal Revenue Code; Collector of Internal Revenue vs. Espiridion Villegas 56 Phil. 554-561; Juan de la Viña vs. Government of the Philippines 65 Phil. 262-266; Collector of Internal Revenue vs. Haygood 65 Phil. 520; Philippine Sugar Estate Development Co. vs. Posadas 68 Phil. 216). However, with respect to the collection of income taxes by an action in court, like all other taxes, the five year prescriptive period from the date of assessment as prescribed in section 332 (c) of the National Internal Revenue Code shall govern. And in 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 ommission (section 332-a National Internal Revenue Code.)

In the answer of the respondent as well as from the evidence presented in his defense, there is not the slightest insinuation that the petitioner's income tax return for the year 1948 was false or fraudulent and therefore the ten-year prescriptive period prescribed in section 332 (a) of the National Internal Revenue Code cannot be applied. The case of petitioner, from all appearances, is one involving a taxpayer who declared his true income in his return but simply would not pay on time the income tax due as declared by him.

The Government has not, within five years from March 31, 1949, the date of assessment of petitioner's income tax liability for the year 1948, filed any suit in court for the collection of said liability. Under Section 332 (s) of the National Internal Revenue Code, the court action has prescribed and it is now too late to institute one for the collection of said amount. Likewise, it would be in violation of section 51 (d) of the National Internal Revenue Code as well as the established jursiprudence on the matter if the respondent were to carry out at this stage the threat, as contained in his letter, Exhibit D (p. 14 expediente) dated October 10, 1955, to the petitioner that he would exercise summary remedies of collection upon failure of the petitioner to settle his incomr tax liability for the year 1948.

Applying section 51(d) of the National Internal Revenue Code as well as the established jurisprudence on the matter, we also find that the Warrant of Distraint and Levy, Exhibit 3 (p. 12 BIR rec.) issued on August 6, 1953, against the personal properties of the petitioner as well as the Warrants of Garnishment (pp. 33, 34, 35, 51 BIR rec.) issued on March 24, 1954 and August 24, 1955, to petitioner's employer, the San Miguel Brewery, Inc., garnishing the accrued salary of the petitioner to enforce the collection of his income tax liability for the year 1948, as all having been issued beyond the three-year prescriptive period counting from February 28, 1949, when the income tax return for the year 1948 was filed. We have repeatedly held, following the ruling of the Supreme Court in a long line of decisions, that with respect to income taxes, the Collector of Internal Revenue has only three years from the date when the income tax return was filed or should have been filed within which to exercise summary methods of collection. We hold, therefore, that the warrants in question, whether served properly or not, are all illegal and of no binding force and effect, they having been issued beyond the three-year prescriptive period fixed under section 51(d) of the National Internal Revenue Code.

As we see it, the only possible circumstance under section 332 (c) of the National Internal Revenue Code which could still render tenable at the present time the collection of the tax now in question by a proceeding in court, is a written agreement entered into by and between the petitioner and the respondent, extending the five-year statutory period of limitation. However, the respondent has not presented such a written agreement and the records of the Bureau of Internal Revenue relative to this case which we have on hand into.

It is quite unfortunate indeed for the Government, that notwithstanding all the prerogatives given to the Collector of Internal Revenue by the National Internal Revenue Code for the summary as well as judicial collection of taxes and with all the resources at his command, the taxpayer herein, got scot free from the payment of his income tax liability for the year 1948 which he himself declared in his returns to be his legitimate obligation to the Government. Our tax collection agency has slept on its rights and the taxpayer has taken full advantage of it by invoking the defense of prescription. Judging by his substantial income, thepetitioner could have easily been made to pay such tax liability amounting to only ₱629.53 had the Bureau of Internal Revenue exercised all the prerogatives at its command within the statutory period. In the first place, why was the Writ of Garnishment, Exhibit C (p. 51 BIR rec.) issued after a period of more than five years from the date of assessment when from the very income tax returns of the petitioner for the years 1948, 1949, 1950 and 1952, it could readily be seen that his only source of income is his salary and bonus from the San Miguel Brewery, Inc. In the second place, why was the Solicitor General not requested to file the corresponding court action against the petitioner within the statutory period of five years after the petitioner had repeatedly failed to pay the income tax due from him as declared in his returns for the years 1948, 1949, 1950 and 1952? Small as the anount may seem, the Government has lost such needed revenue from a taxpayer who was in a financial position to pay, for failure on the part of the Bureau of Internal Revenue to exercise all the prerogatives conferred upon it by the National Internal Revenue Code within the statutory period.

WHERRFORE, finding ourselves with no other alternative but to apply sections 51 (d) and 332 (d) of the National Internal Revenue Code, the Warrant of Distraint and Levy Issued by the respondent on August 6, 1953, as well as the warrant of Garnishment issued on August 24, 1955 are hereby declared null and void and of no legal force and effect on the ground of prescription, and the respondent is hereby ordered to desist from taking any furbher action to collect from the petitioner through summary methods the income tax assessed against him in the anount of ₱629.53 for the year 1948.

Let a copy of this decision be sent to the Cashier of San Miguel Brewery, Inc. for his information and guidance.

SO ORDERED.

Manila, Philippines October 5, 1956.

(SGD.) AUGUSTO LUCIANO
Associate Judge

WE CON)

cur:

(SGD.) MARIANO NABLE
Presiding Judge

(SGD.))ROMAN M. UMALI
Associate Judge