REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners,

- versus -

C.T.A. CASE No. 1718

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Dec 27/69

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ALLISON J. GIBBS and
ESTHER K. GIBBS,
Petitioners,

Dec 27/69

- versus -

C.T.A. CASE No. 1719

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

These are appeals from a decision dated December 8, 1965 of the Commissioner of Internal Revenue assessing against and demanding from petitioners the sums of ₱11,218.00 and ₱23,418.00 as deficiency income taxes, exclusive of delinquency penalties, for the years 1952 and 1956, respectively.

These cases were jointly tried and heard by this Court.

On March 2, 1953 and April 29, 1957, petitioners, husband and wife, filed their joint income tax returns for the taxable years 1952 and 1956 and paid the income tax due on the basis of said returns.

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On March 3, 1958, respondent issued a deficiency assessment notice against petitioners for the year 1952 and demanded payment of ₱11,218.00 (Exhs. 19 & VVV, p. 233, Vol 1, BIR rec.), which assessment was received by petitioners on the same day.

On March 10, 1958, petitioners wrote a letter to respondent denying liability and alleging that they had paid their income tax for that year.

In a letter dated March 17, 1958, respondent reiterated the assessment of ₱11,218.00 for 1952, and at the same time assessed deficiency income tax for 1956, among other years, in the total amount of ₱23,418.00, arrived at as follows:

<u>1956 Deficiency Income Tax Assessment</u>

Net income per return ----------------		₱102,337.20
Unallowable deductions and additional income:		
1. Credits to interest account ------------	₱ 19.81	
2. Entertainment & representation --------	3,000.00	
3. Post, cable & telegram (overclaimed) --	73.18	
4. Management Fees (no book) ----------------	1,210.50	
5. Automobile expenses (book bal. allowed) -	2,158.15	
6. Bad debts & losses (Charged arbitrarily)	<u>14,750.00</u>	<u>21,331.64</u>
Net income per investigation ----------		₱123,668.84
Less: Personal & additional exemptions ----------------------		<u>6,000.00</u>
Amount of income subject to tax -------		<u>₱117,668.00</u>

Tax due thereon ------------------------		₱ 46,407.00
Less: Amount already assessed ---------		35,389.00
Balance -------------------------------		₱ 11,018.00
Add: Compromise (No CPA certification)-		200.00
TOTAL AMOUNT STILL DUE		₱ 11,218.00

1956 Deficiency Income Tax Assessment

Net income per return ----------------		₱117,858.20
Unallowable deductions and additional income:		
1. Entertainment & Representations -----	₱ 4,835.14	
2. Automobile Expenses (Personal) --------	7,108.49	
3. Telephone (Personal)	288.00	
4. Depreciation (Various cars) ------------	1,665.16	
5. Business Expenses (TMCCO) -----------	43,200.00	57,096.79
Net income per investigation ----------		₱174,954.99
Less: Personal & additional exemptions ----------------------		6,000.00
Amount of income subject to tax -------		₱168,954.00
Tax due thereon -----------------------		₱ 55,141.00
Less: Amount already assessed --------		31,923.00
Balance -------------------------------		₱ 23,218.00
Add; Compromise (No CPA certification)-		200.00
TOTAL AMOUNT STILL DUE		₱ 23,418.00

Petitioners received the assessment dated March 17, 1958 on June 5, 1958.

Petitioners again protested the aforesaid deficiency income tax assessment for 1952 in their letters dated June 20, 1958, June 27, 1958 and August 13, 1958 and requested the reconsideration and cancellation of the same. Petitioners also protested the 1956 deficiency assessment in their letters dated June 24, 1958, July 8, 1958 and August 13, 1958 and requested reconsideration and cancellation of the same.

While petitioners' various protests against the 1952 and 1956 deficiency income tax assessments were pending, they filed, on June 28, 1958, a petition for review docketed as CTA Case No. 547, seeking the refund of the sum of ₱1,862.00 which they alleged to have erroneously paid in 1954, and at the same time disputing the deficiency income tax assessed for that same year in the amount of ₱10,574.00. (Exh. 5-A, pp. 1-8, CTA 547 rec.). In the answer filed by respondent on July 23, 1958, he interposed therein, as counterclaim, the deficiency income tax assessed previously against petitioners for the years 1952 and 1956 in the aforesaid amounts of ₱11,218.00 and ₱23,418.00, respectively. However, on motion of petitioners, the counterclaim was dismissed in the resolution of this Court dated March 14, 1960, and received by petitioners on March 28, 1960, on the ground that respondent had not yet ruled on the protests of petitioners.

Under date of July 3, 1962, or more than two years from the date of dismissal of the counterclaim, respondent issued a warrant of distraint and levy which was served on petitioners on July 23, 1962. Petitioners, however, refused to accept a copy of the warrant of distraint and levy. No further action was taken by respondent on the warrant of distraint and levy.

On September 16, 1963, no advice having been received from respondent on petitioners' various protests, petitioners again filed a request for reinvestigation of the said deficiency income tax assessments. On October 14, 1963, respondent replied that the request for reinvestigation would be granted provided petitioners would execute a waiver of the statute of limitations, which petitioners refused to do.

On December 3, 1965, respondent, finally acting on the protests or requests for reconsideration, reiterated the demand for the payment of ₱11,218.00 and ₱23,418.00 against petitioners as deficiency income tax for the years 1952 and 1956, which letter reads as follows:

> This refers to your letters requesting reconsideration of the deficiency income tax assessments issued against you for the years 1952 and 1956 involving the amounts of ₱11,218.00 and ₱23,418.00, respectively, exclusive of delinquency penalties, on the ground that, as alleged by you, this Office erred in disallowing, in whole or in part, the deductions claimed in your 1952 and 1956 income tax returns.
>
> In reply thereto, please be informed that the disallowances of the deductions, in whole or in part, claimed in your 1952 and 1956 income tax returns, are justified and, therefore, this Office finds no justifiable grounds to revise or amend the deficiency income tax assessments for 1952 and 1956 in our letter to you dated March 17, 1958. You are, therefore, requested to pay within ten (10) days upon receipt hereof the aforesaid deficiency income tax assessments to our collection agent at the BIR Regional District No. 6, Canonigo, Paco,

Manila; otherwise, this Office will be constrained to resort to the remedies provided by law to effect the collection thereof.

This letter is the final decision of this Office on your aforementioned requests for reconsideration which you may appeal to the Court of Tax Appeals pursuant to Republic Act No. 1125. (Underlining ours.)

On December 24, 1965, petitioners filed the instant petitions for review praying, among others, that this Court "Reverse the Respondent's decision of December 8, 1965." On April 1, 1966, respondent filed his answers to the aforesaid petitions for review.

The issues raised by the parties are:

(1) Whether or not this Court has jurisdiction over the cases;

(2) Whether or not the right to collect the deficiency income tax for 1952 and 1956 has prescribed; and

(3) Whether or not the disallowances for 1952 and 1956 made by respondent are legal and justified.

With respect to the first issue, petitioners contend that this Court lacks jurisdiction over these cases because respondent has not rendered a decision on their protests against the 1952 and 1956 deficiency income tax assessments. In effect, they are of the opinion that the letter of respondent dated December 8, 1965 is not the decision appealable to this Court.

On the other hand, respondent contends otherwise insisting that his letter of December 5, 1965 is rightly the final decision appealable to this Court as it is a denial of petitioners' protests seeking the reconsideration of the 1952 and 1956 deficiency income tax assessments.

The contention of petitioners is without merit. The pertinent portion of Section 7 of Republic Act No. 1125 reads as follows:

> SEC. 7.- Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided --
>
> (1) Decisions of the Collector of Internal Revenue (now Commissioner) in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.
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> xx xx xx

(The decision of the Commissioner of Internal Revenue on the disputed assessment referred to in said provision is construed to mean the final decision rendered by the Commissioner of Internal Revenue upon a protest filed against the assessment.) (St. Stephen's Association, et al. vs. Coll. of Int. Rev., 104 Phil. 314, 317; Comm. of Int. Rev. vs. Villa, G.R. No. L-23988, Jan. 2, 1968.) In these cases, the 1952 and 1956 deficiency income tax assessments were protested and subjected to several requests for reconsideration, on the basis of which respondent, on December 8, 1965, rendered his final decision. The letter of respondent dated December 8, 1965 is clearly the final decision because of the statement made therein, which reads:

> This letter is the final decision of this Office on your aforementioned requests for reconsideration which you may appeal to the Court of Tax Appeals pursuant to Republic Act No. 1125. (Last paragraph, Exhs. 14 & NNN, p. 4, Vol. III, BIR rec.)

The petitions for review in the cases at bar having been filed within the 30-day period from the receipt of the decision dated December 8, 1965, this Court has jurisdiction over said petitions for review.

It is, however, argued by petitioners that the 1952 deficiency income tax assessment of March 3, 1958 in the sum of ₱11,218.00 is not a valid and legal assessment because respondent did not personally sign his name on the assessment and, therefore, there could not be any decision thereon from which an appeal can be taken. There is no merit in this argument because whether respondent signs it himself or someone else, the *prima facie* validity and correctness of the assessment is not destroyed, nor can this Court, by that fact alone, infer that the assessment is invalid, or is not that of the Commissioner. (Coll. of Int. Rev.

vs. Bohol Land Transportation Co., G.R. No. L-13099, April 29, 1960.) Although there is evidence that he did not personally sign the assessment, it is nonetheless valid because he has ratified the same in his subsequent letter-assessment to petitioners dated March 17, 1958 (Exhs. 9 & GG, pp. 187-189, Vol. I, BIR rec.) wherein he stated that -

> x x x. The corresponding assessment notice for the year 1952 has already been received by you as evidenced by your letter of March 10, 1958.

We now come to the second issue. Petitioners contend that respondent's right to collect the 1952 and 1956 deficiency income tax has prescribed pursuant to Section 332(c) of the Revenue Code, which reads thus -

> SEC. 332. Exceptions as to period of limitation of assessment and collection of taxes.-
>
> xx xx xx xx
>
> (c) Where the assessment of any internal-revenue tax has been made within the period of limitation above-prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Respondent, however, contends the contrary, arguing in support thereof, firstly, that the filing of the counterclaim in CTA No. 947 suspended the period within which to collect the deficiency tax; secondly, that the protests of petitioners requesting reconsideration or reinvestigation suspended the running of the period of limitation; and, third and lastly, that petitioners are estopped to raise the issue of prescription. On the third argument, it is claimed that the filing of the request for reinvestigation on September 16, 1963, after the receipt by petitioners of the resolution of this Court dismissing the counterclaim in CTA No. 947 on March 28, 1960, precludes them from raising that defense. Respondent bolstered his claim by invoking the principle, enunciated in the case of Collector of Internal Revenue vs. Suyoc Consolidated Mining Co., et al. (G.R. No. L-11527, Nov. 25, 1958, 104 Phil. 819, 823-824), that "he who prevents a thing from being done may not avail himself of the non-performance which he has himself occasioned, for the law says to him in effect 'This is your own act, and therefore you are not damnified.' (R.H. Stearns Co. v. U.S., 78 L. ed., 647)".

We find ourselves in accord with the position taken by petitioners that the right of respondent to collect the deficiency income tax assessed against them for 1952 and 1956 has prescribed.

Under Section 332(c) of the National Internal Revenue Code, quoted above, respondent has only five (5) years from the date of assessment within which to collect a national internal revenue tax, otherwise he is forever barred. Contrary to what respondent has stated, the five-year period within which to collect the tax can not be suspended by the mere filing of a request for reconsideration or reinvestigation. (Coll. of Int. Rev. vs. Suyoc Consolidated Mining Co., et al., supra.; Republic of the Philippines vs. Felix B. Acebedo, G.R. No. L-20477, March 29, 1968; Jose Yulo vs. Jose B. Lingad, etc., CTA No. 1274, Sept. 28, 1964.) The only means by which the period can be suspended is by the execution of a waiver of the statute of limitation by the taxpayer (Section 332(c), NIRC), or by reason of taxpayer's positive acts, he has persuaded the Commissioner in postponing the collection of the tax assessed against him. (Coll. of Int. Rev. vs. Suyoc Consolidated Mining Co. et al., supra.) In such cases, the period during which the protest or request for reconsideration by petitioners was pending may be deducted from the computation of the five-year period of limitation within which to collect the deficiency tax; otherwise, "there would be no point in the legal requirement (in Section 332/c7 of the NIRC) that the extension of the original period be agreed upon in writing." (Republic of the Philippines vs. Acebedo, op. cit.)

While it is true that the filing of an answer and interposing therein respondent's counterclaim against petitioners in CTA No. 547 is considered as a judicial action for collection (Coll. of Int. Rev. vs Solano, et al., G.R. No. L-11475, July 31, 1958; Coll. of Int. Rev. vs. Pineda, etc., G.R. No. L-14522, May 31, 1961; Alfredo Bollozo vs. CTA, et al., G.R. No. L-16441, March 31, 1965; Rep. of the Phil. vs. Ker & Co., Ltd., G.R. No. L-21609, Sept. 29, 1966), and operates to suspend the period of prescription (Coll. of Int. Rev. vs. Clement, G.R. No. L-12194, Jan. 24, 1959), the period begins to run again when the counterclaim was dismissed. In other words, the counterclaim interrupts the running of the period within which to collect as long as it is pending adjudication before this Court.

Applying Section 332(c) of the National Internal Revenue Code, the period consumed by respondent in collecting the 1952 and 1956 deficiency income tax in question is computed as follows:

1952 Deficiency Income Tax	Period Consumed
From Mar. 1, 1958, the receipt by petitioners of the 1952 deficiency income tax assessment to July 23, 1958, the filing of the answer with counterclaim in CTA No. 547 ----------------	4 months and 20 days
From July 23, 1958 to March 28, 1960, the date of receipt of the resolution in CTA No. 547 dismissing the counterclaim ---	The period is suspended.
From March 28, 1960 to April 1, 1966, the date of filing of the answer in CTA No. 1718 ---------	6 years & 3 days
TOTAL PERIOD CONSUMED -------	6 years, 4 months and 23 days.

1956 Deficiency Income Tax	Period Consumed
From June 5, 1958, receipt by petitioners of the 1956 deficiency income tax assessment, to July 23, 1958, the filing of the answer with counterclaim in CTA No. 547 ----------------	1 month and 8 days
From July 23, 1958 to March 28, 1960, the date of receipt of the resolution in CTA No. 547 dismissing the counterclaim ----	The period is suspended.
From March 28, 1960 to April 1, 1966, the date of filing of the answer in CTA No. 1719 -----	6 years and 3 days
TOTAL PERIOD CONSUMED -------	6 years, 1 month and 11 days

When the petitions for review in these cases were filed on December 24, 1965, it was already beyond the five-year period within which to collect the deficiency tax. Consequently, we are of the opinion and so hold that respondent Commissioner of Internal Revenue is barred from collecting the 1952 and 1956 deficiency income tax assessments.

The case of Suyoc Consolidated Mining Co., Inc., supra, invoked by respondent to support his claim that petitioners are estopped from setting up the defense of prescription is not applicable because in that case there were repeated requests of the taxpayer for extension to pay the tax, for reconsideration and reinvestigation of its tax case, which were granted by the Collector of Internal Revenue. Moreover, there were subsequent negotiations that took place respecting the taxpayer's tax liability, and, finally, appeal was taken to the Conference Staff of the Bureau of Internal Revenue, resulting in the reduction of the tax assessed against it. Significantly, in the said case of Suyoc, there was, by the actuations of the taxpayer, an intention to pay the tax, and on the basis of which the Collector (now Commissioner) of Internal Revenue was "persuaded to postpone collection" of the tax.

The circumstances in the case of Suyoc are dissimilar to the circumstances in the cases at bar. When petitioners Allison J. Gibbs and Esther K. Gibbs protested the 1952 and 1956 deficiency assessments, they did so in the exercise of their legal right to dispute the same believing that they are not liable therefor. Unlike in the case of Suyoc, their protests for reconsideration and reinvestigation were never granted by the Commissioner of Internal Revenue. Neither were there negotiations concerning their deficiency tax liabilities, nor appeal taken to the Conference Staff of respondent, resulting in the reduction of their deficiency tax liabilities. In short, respondent has not acted upon petitioners' requests for reconsideration and reinvestigation until only when he rendered his decision on December 8, 1965 denying the said requests for reconsideration and maintaining his assessments against petitioners. An analysis of the entire actuations of petitioners bears out the fact that they never intended to cause the postponement of the collection of the income taxes assessed against them. In fact, even though a warrant of distraint and levy was served on them, no positive steps were taken to prevent the successful enforcement of the warrant. On the contrary, respondent did not pursue the collection by distraint and levy to its successful conclusion.

It is to be noted that the Commissioner of Internal Revenue, from the time petitioners were assessed deficiency income tax for 1952 and 1956, was not legally prevented to collect the said tax. He could have exercised his right to collect either by distraint and levy, or by judicial action, or both simultaneously (Section 316, Revenue Code) and the only requisite before he could collect was to make an assessment within the time fixed by law. (Republic of the Philippines vs. Lim Tian Teng & Sons & Co., Inc., G.R. No. L-21731, March 31, 1966; see also Republic of the Phil. vs. Felix Acebedo, supra).

But, respondent suggests that petitioners' request for the reinvestigation of the deficiency assessments estopped them from raising the issue of prescription. It is to be noted that the grant of the request was conditioned upon their filing of a waiver of the statute of limitation. The condition was not met by petitioners. Hence, it may be said that the request was not favorably acted upon by respondent. It could not serve as a defense of estoppel. (See Republic vs. Acebedo, supra.)

Neither may the dismissal of the counterclaim filed by respondent in CTA Case No. 549 be set up as a bar against the defense of prescription because as this Court said therein "administrative remedies must first be exhausted" by petitioners.

Having arrived at the conclusion that the right of respondent to collect the 1952 and 1956 deficiency income tax against petitioners has prescribed, the disposition of the third and last issue becomes unnecessary.

WHEREFORE, pursuant to Section 14 of Republic Act No. 1125, it is hereby declared that the collection of the deficiency income tax for 1952 and 1956 against petitioners Allison J. Gibbs and Esther K. Gibbs is barred by the statute of limitations and there is no deficiency in respect of such tax. Accordingly, the decision dated December 8, 1965 is reversed and the Commissioner of Internal Revenue is hereby ordered to desist from collecting the said deficiency income tax. Without pronouncement as to costs.

SO ORDERED.

Quezon City, December 27, 1969.

R M Umali
ROMAN M. UMALI
Presiding Judge

WE CONCUR:

Estanislao R. Alvarez
ESTANISLAO R. ALVAREZ
Associate Judge

Ramon L. Avanceña
RAMON L. AVANCEÑA
Associate Judge