Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-45277. August 5, 1985]

AUGUSTO BASA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES, represented by the Solicitor General, and Judge GUILLERMO F. VILLASOR, Branch XV, Court of First Instance of Manila,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY, NOT A CASE OF.**— We hold that the petition is devoid of merit. The trial court acted within its jurisdiction in rendering its decision and dismissing Basa's appeal. He should have appealed to this Court. His failure to do so rendered the decision final and executory. *He has no cause of action for certiorari.* The decision is correct. If he wanted to contest the assessments, he should have appealed to the Tax Court. Not having done so, he could not contest the same in the Court of First Instance.

2. **TAXATION; ASSESSMENT; PRESCRIPTIVE PERIOD.**— The assessments were predicated on the fact that his income tax returns, if not fraudulent, were false because he underdeclared his income. In such a case, the deficiency assessments may be made within ten years after the discovery of the falsity or omission. The court action should be instituted within five years after the assessment but this period is suspended during the time that the Commission is prohibited from instituting a court action. . . . As explained in the Solicitor General's memorandum, Basa's requests for reinvestigation tolled the prescriptive period of five years within which court action may be brought.

APPEARANCES OF COUNSEL

Angel R. Gonzales for petitioner.
The Solicitor General for respondents.

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DECISION

AQUINO, *J.*:

The issue in this case is whether the decision of the Court of First Instance of Manila (not the Tax Court) in an income tax case is reviewable by the Appellate Court or by this Court.

In a demand letter dated August 31, 1967, the Commissioner of Internal Revenue assessed against Augusto Basa deficiency income taxes for 1957 to 1960 totalling ₱16,353.12.*

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* *90-AR-6805-67/57*

Net income per return			₱ 6,982.03
Add:	Underdeclaration of Capital Gain on Sale of Land:		
	Per investigation	₱18,628.24	
	Per return	5,127.88	₱ 13,500.36
Net income per investigation			₱ 20,482.39
Less: personal and additional exemptions			6,000.00
Amount subject to tax			₱ 14,482.39
Tax due thereon			₱ 1,642.00
Less: Amount already assessed			₱ 29.00
Balance			₱ 1,613.00
Add:	50% surcharge		806.50
	1/2% mo. int. from 6-20-59 to 6-20-62		₱ 290.34
TOTAL AMOUNT DUE AND COLLECTIBLE			₱ 2,709.84

90-AR-8520-67 58

Net income per return			₱ 9,195.59
Add: Underdeclaration of capital gain on Sale of Land:			
	Per investigation	₱ 27,925.61	
	Per return	6,225.00	₱ 21,700.61
Net income per investigation			₱ 30,896.20
Less: Personal and Additional Exemptions			₱ 6,000.00

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As may be noted, the deficiencies were based on the taxpayer's failure to report in full his capital gains on the sales of land. This omission or underdeclaration of income justified the imposition of 50% surcharge.

Amount subject to tax	₱ 24,896.20
Tax due thereon	3,697.00
Less: Amount already assessed	132.00
B a l a n c e	₱ 3,525.00
Add: 50% surcharge	₱ 1,762.50
1/2% mo. int. from 6-20-59 to 6-20-62	₱ 634.50
TOTAL AMOUNT DUE AND COLLECTIBLE	₱ 5,922.00

90-AR-313480-67/59

Net income per return		₱ 9,608.53
Add: Underdeclaration of capital gain on Sale of Land:		
Per investigation	₱ 22,878.32	
Per return	8,200.00	14,678.32
Net income per investigation		₱ 24,286.85
Less: personal and additional exemptions		₱ 8,000.00
Amount subject to tax		₱16,286.85
Tax due thereon		₱ 2,589.00
Less: Amount already assessed		₱ 48.00
B a l a n c e		₱ 2,541.00
Add: 50% surcharge		1,270.50
1/2% mo. int. from 4-19-60 to 4-19-63		₱ 457.38
TOTAL AMOUNT DUE AND COLLECTIBLE		₱ 4,268.88

90-AR-32250-67/60

Net income per return		₱ 9,694.48
Add: Underdeclaration of capital gain on sale of land:		
Per investigation	₱18,281.03	
Per return	5,700.00	₱ 12,581.03
Net income per investigation		₱ 22,275.51

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The taxpayer did not contest the assessments in the Tax Court. The Commissioner's letter-decision on the case was dated *December 6, 1974*. On the assumption that the assessments had become final and incontestable, the Commissioner on *September 3, 1975* sued the taxpayer in the Manila Court of First Instance for the collection of said amount.

The trial court in a decision dated April 20, 1976 affirmed the assessments and ordered Basa to pay ₱16,353.12 plus 5% surcharge and one percent monthly interest from August 31, 1967 to August 31,1970.

Instead of appealing to this Court directly under Republic Act No. 5440, in relation to Rules 41 and 45 of the Rules of Court, since no factual issues are involved, Basa tried to appeal to the Court of Appeals. He did not perfect his appeal within the reglementary period. The trial court dismissed it in its order dated October 1, 1976.

On December 23,1976 Basa filed the instant special civil action of *certiorari* wherein he assailed the trial court's decision.

We hold that the petition is devoid of merit. The trial court acted within its jurisdiction in rendering its decision and dismissing Basa's appeal. He should have appealed to this Court. His failure to do so rendered the decision final and executory. *He has no cause of action for certiorari.*

Less: Personal and additional exemptions	₱ 8,000.00	
Amount subject to tax	₱ 14,275.51	
Tax due thereon	₱ 2,106.00	
Less: Amount already assessed	₱ 51.00	
Balance	₱ 2,055.00	
Add: 50% surcharge	₱ 1,027.50	
1/2% mo. int. from 4-18-61 to 4-18-64	₱ 369.90	
TOTAL AMOUNT DUE AND COLLECTIBLE		₱ 3,452.40
GRAND TOTAL		₱16,353.12

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The decision is correct. If he wanted to contest the assessments, he should have appealed to the Tax Court. Not having done so, he could not contest the same in the Court of First Instance.

The issue of prescription raised by him is baseless. The assessments were predicated on the fact that his income tax returns, if not fraudulent, were false because he underdeclared his income. In such a case, the deficiency assessments may be made within ten years after the discovery of the falsity or omission. The court action should be instituted within five years after the assessment but this period is suspended during the time that the Commission is prohibited from instituting a court action.**

As explained in the Solicitor General's memorandum, Basa's requests for reinvestigation tolled the prescriptive period of five years within which court action may be brought

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** "SEC. 332. *Exceptions as to period of limitation of assessment and collection of taxes.* — (a) In the 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 omission.

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"(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.

"SEC. 333. *Suspension of running of statute.* — The running of the Statute of Limitations provided in Section three hundred thirty-one or three hundred thirty-two on the making of assessments and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner of Internal Revenue is prohibited from making the assessment or beginning distraint or levy a proceeding in court, and for sixty days thereafter."

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(*Commissioner of Internal Revenue vs. Capitol Subdivision, Inc.*, 119 Phil. 1051; *Collector of Internal Revenue vs. Suyoc Consolidated Mining Company*, 104 Phil. 819). Moreover, the issue of prescription should have been raised in the Tax Court.

WHEREFORE, the trial court's judgment is affirmed. No costs.

SO ORDERED.

Makasiar, C.J., Concepcion Jr., Escolin, and *Cuevas, JJ.*, concur.

Abad Santos, J., did not take part.

FIRST DIVISION

[G.R. No. L-45967. August 5, 1985]

CESARIO DIONG-AN and SANTIAGO LAPUJE, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

CRIMINAL LAW; THEFT; INTENT TO GAIN; ABSENT WHEN THE ACCUSED ARE LABORERS WHO WERE ACTING UNDER INSTRUCTIONS FROM A PERSON WHO CLAIMS TO BE THE OWNER; IN CASE AT BAR.— It is clear from the records that they were only acting for Baldero and not in their own personal capacities. They were not claiming the coconuts for themselves and the proceeds from any sales would not accrue to them. They would be paid by Baldero with his own money and not necessarily from the sale of the harvested nuts. It is