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was not based on solid grounds, but in retaliation for his union activities. Respondent company has failed to give sufficient justification for the peremptory dismissal of an efficient employee with a long record of service behind him.

FOR ALL THE FOREGOING, the resolution of the Court of Industrial Relations *en banc* dated April 5, 1968, is set aside. The decision of the trial judge dated May 9, 1967, is affirmed with the modification that since reinstatement is no longer possible as petitioner is now dead, his back wages which are hereby fixed at the equivalent of five (5) years pay based on his last salary rate without deduction or qualification, following the precedent of Davao Free Workers Front *vs.* Court of Industrial Relations (60 SCRA 408) shall be paid immediately to his legal heirs.

Costs against the respondents.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and *Martin, JJ.,* concur.

Resolution set aside.

[No. L-29485. March 31, 1976]

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* AYALA SECURITIES CORPORATION and THE HONORABLE COURT OF TAX APPEALS, respondents.

PETITION FOR REVIEW of a decision of the Court of Tax Appeals.

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SYNOPSIS

On November 29, 1955, respondent corporation filed its income tax returns for the fiscal year which ended September 30, 1955, attaching therewith its audited financial statements showing a surplus of ₱2,758,442.37. The tax due thereon was paid within the time prescribed by law. Subsequently however, it was advised of an assessment of ₱758,687.04 on its accumulated surplus after which, in a letter dated April 19, 1961, it protested against the same and sought reconsideration thereof claiming that the accumulation was for a bona fide business purpose and not to avoid the imposition of income tax on the individual shareholders, and that the said assessment was issued beyond the five-year prescriptive period. In a letter dated February 18, 1963, received by respondent corporation three days later, the Chief, Manila Examiners, of the Office of petitioner Commissioner of Internal Revenue called attention to its outstanding and unpaid tax and requested payment of the amount within five days from receipt of the letter. Believing that the same constituted a denial of its protest the respondent corporation filed with the Court of Tax Appeals a petition for review of the assessment. The Court of Tax Appeals rendered a decision cancelling and declaring of no force and effect the assessment of petitioner.

The Supreme Court held that the tax court did not err in taking cognizance of the case; that the assessment is not binding on respondent corporation as it was made after the prescriptive period therefor had expired; and that consequently, a ruling on the reasonableness or unreasonableness of respondent corporation's accumulated profits or surplus was unnecessary.

Judgment affirmed.

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SYLLABUS
of the Ruling of the Court

1. COURT OF TAX APPEALS; JURISDICTION.– The Court of Tax Appeals is a court of special appellate jurisdiction created under R.A. No. 1125. Under Section 7(1) thereof, it exercises exclusive appellate jurisdiction to review by appeal "decisions of the Collector of Internal Revenue 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."
2. ID.; ID.; REVIEW OF DECISIONS ON DISPUTED ASSESSMENTS; INSTANT CASE WITHIN JURISDICTION OF RESPONDENT COURT.– The letter of February 18, 1963 was tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the said letter was in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment of the sum of ₱758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This was a clear indication of the firm stand of petitioner against the reconsideration of the disputed assessment, in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question. This being so, the letter amounted to a decision on a disputed or protested assessment and, therefore, the respondent court did not err in taking cognizance of the case.
3. TAXATION; INCOME TAX; ASSESSMENT AND COLLECTION; SECTION 331 OF THE NATIONAL INTERNAL REVENUE CODE APPLICABLE TO INSTANT CASE.– Under Section 46(d) of the Tax Code, the respondent corporation designated September 30, 1955 as the last day of the closing of its fiscal

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year, and under Section 46(b) the income tax returns for the said corporation shall be filed on or before the fifteenth day of the fourth month following the close of its fiscal year. Respondent corporation could, therefore, file its income tax returns on or before January 15, 1956. The assessment by the Commissioner of Internal Revenue shall be made within five years from January 15, 1956, or not later than January 15, 1961, in accordance with Section 331 of the Tax Code. As the assessment issued on February 21, 1961 which was received by the respondent corporation on March 22, 1961, was made beyond the five-year period prescribed under Section 331 of said Code, the same was made after the prescriptive period had expired and, therefore was no longer binding on the respondent corporation.

4. ID.; ID.; ID.; NO RULING ON THE REASONABLENESS OR UNREASONABLENESS OF ACCUMULATED PROFITS OR SURPLUS NECESSARY WHERE RIGHT TO ASSESS SURTAX HAS ALREADY PRESCRIBED. Where the right of the Commissioner of Internal Revenue to assess the 25% surtax has already prescribed under Section 331 of the National Internal Revenue Code, to delve further into the reasonableness or unreasonableness of the accumulated profits or suplus of the respondent corporation for the fiscal year ending September 30, 1955, will only be an exercise in futility.

APPEARANCES OF COUNSEL

Acting Solicitor General Hugo E. Gutierrez, Jr., Assistant Solicitor General Reynato S. Puno and *Solicitor Lolita O. Gal-lang* and *Special Attorney Salvador D. David* for petitioner.

B. V. Abela, M.C. Gutierrez, J. U. Ong and *F. J. Malate, Jr.* for respondents.

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DECISION

ESGUERRA, *J.:*

Appeal from the decision of the Court of Tax Appeals dated June 20, 1968, in its CTA No. 1346, cancelling and declaring of no force and effect the assessment made by the petitioner, Commissioner of Internal Revenue, against the accumulated surplus of the respondent, Ayala Securities Corporation.

The factual background of the case is as follows:

On November 29, 1955, respondent Ayala Securities Corporation, a domestic corporation organized and existing under the laws of the Philippines, filed its income tax returns with the office of the petitioner for its fiscal year which ended on September 30, 1955. Attached to its income tax return was the audited financial statements of the respondent corporation as of September 30, 1955, showing a surplus of ₱2,758,442.37. The income tax due on the return of the respondent corporation was duly paid for within the time prescribed by law.

In a letter dated February 21, 1961, petitioner advised the respondent corporation of the assessment of ₱758,687.04 on its accumulated surplus reflected on its income tax return for the fiscal year which ended September 30, 1955 (Exh. D). The respondent corporation, on the other hand, in a letter dated April 19, 1961, protested against the assessment on its retained and accumulated surplus pertaining to the taxable year 1955 and sought reconsideration thereof for the reasons (1) that the accumulation of the surplus was for a bona fide business purpose and not to avoid the imposition of income tax on the individual shareholders, and (2) that the said

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assessment was issued beyond the five-year prescriptive period (Exh. E).

On May 30, 1961, petitioner wrote respondent corporation's auditing and accounting firm with the "advise that your request for reconsideration will be the subject matter of further reinvestigation and a thorough analysis of the issues involved conditioned, however, upon the execution of your client of the enclosed form for waiver of the defense of prescription". (Exh. F) However, respondent corporation did not execute the requested waiver of the statute of limitations, considering its claim that the assessment in question had already prescribed.

On February 21, 1963, respondent corporation received a letter dated February 18, 1963, from the Chief, Manila Examiners, of the Office of the herein petitioner, calling the attention of the respondent corporation to its outstanding and unpaid tax in the amount of ₱758,687.04 and thereby requesting for the payment of the said amount within five (5) days from receipt of the said letter (Exh. G). Believing the aforesaid letter to be a denial of its protest, the herein respondent corporation filed with the Court of Tax Appeals a Petition for Review of the assessment, docketed as CTA Case No. 1346.

Respondent corporation in its Petition for Review alleges that the assessment made by petitioner Commissioner of Internal Revenue is illegal and invalid considering that (1) the assessment in question, having been issued only on February 21, 1961, and received by the respondent corporation on March 22, 1961, the same was issued beyond the five-year period from the date of the filing of respondent corporation's income tax return on November 29, 1955, and, therefore, petitioner's right to make the assessment has already prescribed, pursuant to the

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provision of Section 331 of the National Internal Revenue Code; and (2) the respondent corporation's accumulation of surplus for the taxable year 1955 was not improper, considering that the retention of such surplus was intended for legitimate business purposes and was not availed of by the corporation to prevent the imposition of the income tax upon its shareholders.

Petitioner in his answer alleged that the assessment made by his office on the accumulated surplus of the corporation as reflected on its income tax return for the taxable year 1955 has not as yet prescribed and, further, that the respondent corporation's accumulation of surplus for the taxable year 1955 was improper as the retention of such surplus was availed of by the corporation to prevent the imposition of the income tax upon the individual shareholders or members of the said corporation.

After trial the Court of Tax Appeals rendered its decision of June 20, 1968, the dispositive portion of which is as follows:

> "WHEREFORE, the decision of the respondent Commissioner of Internal Revenue assessing petitioner the amount of ₱758,687.04 as 25% surtax and interest is reversed. Accordingly, said assessment of respondent for 1955 is hereby cancelled and declared of no force and effect. Without pronouncement as to costs."

From this decision, the Commissioner of Internal Revenue interposed this appeal.

Petitioner maintains that respondent Court of Tax Appeals erred in holding that the letter dated February 18, 1963, (Exh. G) is a denial of the private respondent corporation's protest against the assessment, and as such, is a decision contemplated under the provisions of Sections 7 and 11 of Republic Act No. 1125. Petitioner contends that

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the letter dated February 18, 1963, is merely an ordinary office letter designed to remind delinquent taxpayers of their obligations to pay their taxes to the Government and, certainly not a decision on a disputed or protested assessment contemplated under Section 7(1) of R.A. 1125.

Petitioner likewise maintains that the respondent Court of Tax Appeals erred in holding that the assessment of ₱758,687.04 as surtax on private respondent corporation's unreasonably accumulated profits or surplus had already prescribed. Petitioner further contends that the applicable provision of law to this case is Section 332(a) of the National Internal Revenue Code which provides for a ten (10) year prescriptive period of assessment, and not Section 331 thereof as held by the Tax Court which provides a period of limitation of assessment for five (5) years only after the filing of the return. Petitioner's theory, therefore, is to the effect that since the corporate income tax return in question was filed on November 29, 1955, and the assessment thereto was issued on February 21, 1961, said assessment is not barred by prescription as the same was made very well within the ten (10) year period allowed by law.

Petitioner also maintains that the respondent Court of Tax Appeals erred in not deciding the issue as to whether or not the accumulated profits or surplus is indispensable to the business operations of the private respondent corporation. It is the contention of the petitioner that the accumulation of profits or surplus was resorted to by the respondent corporation in order to avoid the payment of taxes by its stockholders or members, and was not availed of in order to meet the reasonable needs of its business operations.

The legal issues for resolution by this Court in this case are: (1) Whether or not the instant case falls within

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the jurisdiction of the respondent Court of Tax Appeals; (2) Whether or not the applicable provision of law to this case is Section 331 of the National Internal Revenue Code, which provides for a five-year period of prescription of assessment from the filing of the return, or Section 332(a) of the same Code which provides for a ten-year period of limitation for the same purpose; and (3) Whether or not the respondent Court of Tax Appeals committed a reversible error in not making any ruling on the reasonableness or unreasonableness of the accumulated profits or surplus in question of the private respondent corporation.

I

It is to be noted that the respondent Court of Tax Appeals is a court of special appellate jurisdiction created under R.A. No. 1125. Thus under Section 7(1), R.A. 1125, the Court of Tax Appeals exercises exclusive appellate jurisdiction to review by appeal "decisions of the Collector of Internal Revenue 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".

The letter of February 18, 1963 (Exh. G), in the view of the Court, is tantamount to a denial of the reconsideration or protest of the respondent corporation on the assessment made by the petitioner, considering that the said letter is in itself a reiteration of the demand by the Bureau of Internal Revenue for the settlement of the assessment already made, and for the immediate payment

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of the sum of ₱758,687.04 in spite of the vehement protest of the respondent corporation on April 21, 1961. This certainly is a clear indication of the firm stand of petitioner against the reconsideration of the *disputed assessment*, in view of the continued refusal of the respondent corporation to execute the waiver of the period of limitation upon the assessment in question.

This being so, the said letter amounts to a decision on a disputed or protested assessment and, therefore, the court *a quo* did not err in taking cognizance of this case.

II

On the issue of whether Sec. 331 or Sec. 332(a) of the National Internal Revenue Code should apply to this case, there is no iota of evidence presented by the petitioner as to any fraud or falsity on the return with intent to evade payment of tax, not even in the income tax assessment (Exh. 5) nor in the letter-decision of February 18, 1963 (Exh. G), nor in his answer to the petition for review. Petitioner merely relies on the provisions of Section 25 of the National Internal Revenue Code, violation of which, according to petitioner, presupposes the existence of fraud. But this is begging the question and We do not subscribe to the view of the petitioner.

Fraud is a question of fact and the circumstances constituting fraud must be alleged and proved in the court below. The finding of the trial court as to its existence and non-existence is final and cannot be reviewed here unless clearly shown to be erroneous (Republic of the Philippines *vs.* Ker & Company, Ltd., L-21609, Sept. 29, 1966, 18 SCRA 207; Commissioner of Internal Revenue *vs.* Lilia Yusay Gonzales and the Court of Tax Appeals, L-19495,

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Nov. 24, 1966, 18 SCRA 757). Fraud is never lightly to be presumed because it is a serious charge (Yutivo Sons Hardware Company *vs.* Court of Tax Appeals and Collector of Internal Revenue, L-13203, January 28, 1961, 1 SCRA 160).

The applicable provision of law in this case is Section 331 of the National Internal Revenue Code, to wit:

> "SEC. 331. *Period of limitation upon assessment and collection.*— Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code."

Under Section 46(d) of the National Internal Revenue Code, the Ayala Securities Corporation designated September 30, 1955, as the last day of the closing of its fiscal year, and under Section 46(b) the income tax returns for the said corporation shall be filed on or before the fifteenth (15th) day of the fourth (4th) month following the close of its fiscal year. The Ayala Securities Corporation could, therefore, file its income tax returns on or before January 15, 1956. The assessment by the Commissioner of Internal Revenue shall be made within five (5) years from January 15, 1956, or not later than January 15, 1961, in accordance with Section 331 of the National Internal Revenue Code herein above-quoted. As the assessment issued on February 21, 1961, which was

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received by the Ayala Securities Corporation on March 22, 1961, was made beyond the five-year period prescribed under Section 331 of said Code, the same was made after the prescriptive period had expired and, therefore, was no longer binding on the Ayala Securities Corporation.

III

This Court is of the opinion that the respondent court committed no reversible error in not making any ruling on the reasonableness or unreasonableness of the accumulated profits or surplus of the respondent corporation. For this reason, We are of the view that, after reaching the conclusion that the right of the Commissioner of Internal Revenue to assess the 25% surtax had already prescribed under Section 331 of the National Internal Revenue Code, to delve further into the reasonableness or unreasonableness of the accumulated profits or surplus of the respondent corporation for the fiscal year ending September 30, 1955, will only be an exercise in futility.

WHEREFORE, the decision appealed from is hereby affirmed *in toto*.

Without special pronouncement as to costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and *Martin, JJ.*, concur.

Decision affirmed.