Supreme Court E-Library

These contentions have already been resolved in the preceding discussion. We find no sanction or justification for NPC's claim that it is entitled to the full payment of the liquidated damages computed by its official.

Ruling on the amount of damages.— A painstaking evaluation of the equities of the case in the light of the arguments of the parties as expounded in their five briefs leads to the conclusion that the damages due from the defendants should be further reduced to ₱45,100 which is equivalent to their bidder's bond or to about ten percent of the selling price of the sulfur.

WHEREFORE, the lower court's judgment is modified and defendants National Merchandising Corporation and Domestic Insurance Company of the Philippines are ordered to pay solidarily to the National Power Corporation the sum of ₱45,100.00 as liquidated damages. No costs.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro and *Escolin, JJ.,* concur.

Makasiar (Chairman), J., reserves his vote.

FIRST DIVISION

[G.R. No. L-36181. October 23, 1982]

MERALCO SECURITIES CORPORATION (now FIRST PHILIPPINE HOLDINGS CORPORATION), petitioner, *vs.* HON. VICTORINO SAVELLANO and ASUNCION BARON VDA. DE MANIAGO, et al., as heirs of the late Juan G. Maniago, respondents.

[G.R. No. L-36748. October 23, 1982]

COMMISSIONER OF INTERNAL REVENUE, petitioner, *vs.* HON. VICTORINO SAVELLANO and ASUNCION BARON VDA. DE MANIAGO, et al., as heirs of the late Juan G. Maniago, respondents.

Supreme Court E-Library

SYNOPSIS

Juan Maniago, who after his death was substituted in these proceedings by his wife and children, submitted to the Commissioner of Internal Revenue confidential information against the Meralco Securities Corporation for tax evasion for having paid income tax only on 25 percent of the dividends it received from the Manila Electric Company for the years 1962-1966, thereby allegedly shortchanging the government of income tax due from 75 percent of said dividends. The Commissioner of Internal Revenue caused the investigation of the denunciation after which he found and held that no deficiency corporate income tax was due from the Meralco Securities Corporation on the dividends it received from the Manila Electric Company. Consequently, the Commissioner denied the claim for informer's reward. This action of the Commissioner was sustained by the Secretary of Finance. On mandamus, respondent judge, however, rendered judgment granting the writ prayed for and ordered the Commissioner of Internal Revenue to assess and collect from the Meralco Securities Corporation the sum of ₱51,840,612.00 as deficiency corporate income tax for the period 1962 to 1969 plus interest and surcharges due thereon and to pay 25 percent thereof to Maniago as informer's reward. Hence these petitions.

The Supreme Court granted the petitions and reversed and set aside the questioned decision and order of respondent judge, holding that (a) the decision or ruling of the Commissioner of Internal Revenue that no tax is due or collectible is a valid exercise of discretion in the performance of official duty and cannot be controlled much less reversed by mandamus; (b) considering that respondent judge may not order by mandamus the Commissioner to issue the assessment against Meralco Securities Corporation when no such assessment has been found to be due, no deficiency taxes may therefore be assessed and collected against the said corporation; and (c) since no taxes are to be collected, no informer's reward is due to private respondents as the informer's heirs.

SYLLABUS

1. ADMINISTRATIVE LAW; COMMISSIONER OF INTERNAL REVENUE; EXCLUSIVE APPELLATE JURISDICTION OF COURT OF TAX APPEALS OVER DECISIONS THEREOF.— Section 7 of Republic Act No. 1125, enacted on June 16, 1954, granted to the Court of Tax Appeals *exclusive appellate jurisdiction* to review by appeal, among others, decisions of the Commissioner 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

Supreme Court E-Library

Code or other law or part of law administered by the Bureau of Internal Revenue. The law transferred to the Court of Appeals jurisdiction over all cases involving said assessments previously cognizable by courts of first instance, and even those already pending in said courts. (Ledesma *vs.* Court of Tax Appeals, 102 Phil. 931.)

2. ID.; ID.; ID.; CASE AT BAR.— The question of whether or not to impose a deficiency tax assessment on Meralco Securities Corporation undoubtedly comes within the purview of the words "disputed assessments" or "other matters arising under the National Internal Revenue Code . . ." Hence, the Court of First Instance has no jurisdiction to take cognizance of the case because the subject matter thereof clearly falls within the scope of cases now *exclusively* within the jurisdiction of the Court of Tax Appeals.

3. ID.; ID.; ID.; FAILURE TO TAKE AN APPEAL THEREIN BARS REVIEW BY THE COURTS; CASE AT BAR.— Even assuming that the right granted the taxpayers affected to question and appeal disputed assessments, under Section 7 of Republic Act No. 1125, may be availed of by strangers or informers like the late Maniago, the most that he could have done was to appeal to the Court of Tax Appeals the ruling of petitioner Commissioner of Internal Revenue within thirty (30) days from receipt thereof pursuant to Section 11 of Republic Act No. 1125. He failed to take such an appeal to the tax court. The ruling is clearly final and no longer subject to review by the courts. (Republic of the Philippines *vs.* Juana Vda. del Rosario, et al., 105 Phil. 277; Republic of the Philippines *vs.* Benito M. Lopez, 117 Phil. 575; Republic of the Philippines *vs.* Manila Port Service, 12 Phil. 384; Republic of the Philippines *vs.* Lim Tian Teng Sons & Co., Inc., 16 SCRA 584.)

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; MANDAMUS; DOES NOT LIE TO CONTROL THE PERFORMANCE OF A DISCRETIONARY ACT.— It is a well-recognized rule that mandamus only lies to enforce the performance of a ministerial act or duty (Province of Pangasinan *vs.* Reparations Commission, 80 SCRA 376) and not to control the performance of a discretionary power. (Caltex Filipino Managers & Supervisors Association *vs.* CIR, 23 SCRA 492). Purely administrative and discretionary functions may not be interfered with by the court. (Coloso *vs.* Board of Accountancy, 92 Phil. 938.) Discretion, as thus intended, means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his own judgment and

Supreme Court E-Library

conscience and not controlled by the judgment or conscience or others. (34 Am. Jur. 855). Mandamus may not be resorted to as to interfere *with the manner* in which the discretion shall be exercised or to influence or coerce a particular determination. (34 Am. Jur. 856-858; see also Diokno *vs.* Rehabilitation Finance Corporation, 91 Phil. 608; Caltex Filipino Managers & Supervisors Association *vs.* CIR, 23 SCRA 492; Sy Ha *vs.* Galang, 7 SCRA 797; Astudillo *vs.* Board of Directors of PHHC, 73 SCRA 15; Aprueba *vs.* Ganzon, 18 SCRA 8.)

5. ID.; ID.; ID.; ID.; CASE AT BAR.— Since the office of the Commissioner of Internal Revenue is charged with the administration of revenue laws, which is the primary responsibility of the executive branch of the government, mandamus may not lie against the Commissioner to compel him to impose a tax assessment not found by him to be due or proper for that would be tantamount to a usurpation of executive functions. (See Commissioner of Immigration *vs.* Arca, 22 SCRA 805.) Such discretionary power vested in the proper executive official, in the absence of arbitrariness or grave abuse so as to go beyond the statutory authority, is not subject to the contrary judgment or control of others.

6. WORDS AND PHRASES; DISCRETION; MEANING OF.— "Discretion," when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, uncontrolled by the judgment or conscience of others. (Samson *vs.* Barrios, 63 Phil. 198; Lemi *vs.* Valencia, 26 SCRA 203.)

7. ID.; DISCRETIONARY ACT DISTINGUISHED FROM MINISTERIAL ACT.— A purely ministerial act or duty in contradiction to a discretional act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. (Samson *vs.* Barrios, 63 Phil. 198; Lemi *vs.* Valencia, 26 SCRA 203.)

8. ADMINISTRATIVE LAW; INFORMER'S REWARD LAW; INFORMER'S REWARD; GRANT THEREOF NOT JUSTIFIED IN CASE AT BAR.— Considering that respondent judge may not

Supreme Court E-Library

order by mandamus the Commissioner of Internal Revenue to issue the assessment against Meralco Securities Corporation when no such assessment has been found to be due, no deficiency taxes may therefore be assessed and collected against the said corporation. Since no taxes are to be collected, no informer's reward is due to private respondents as the informer's heirs. Informer's reward is contingent upon the payment and collection of unpaid or deficiency taxes. An informer is entitled by way of reward only to a percentage of the taxes actually assessed and collected. Since no assessment, much less any collection, has been made in the instant case, respondent judge's writ for the Commissioner to pay respondents 25 percent informer's reward is gross error and without factual nor legal basis.

APPEARANCES OF COUNSEL

Messrs. San Juan, Africa, Gonzales & San Agustin for petitioner.

Ramon A. Gonzales for respondents.

DECISION

TEEHANKEE, *J.*:

These are original actions for certiorari to set aside and annul the writ of mandamus issued by Judge Victorino A. Savellano of the Court of First Instance of Manila in Civil Case No. 80830 ordering petitioner Meralco Securities Corporation (now First Philippine Holdings Corporation) to pay, and petitioner Commissioner of Internal Revenue to collect from the former, the amount of ₱51,840,612.00, by way of alleged deficiency corporate income tax, plus interests and surcharges due thereon and to pay private respondents 25% of the total amount collectible as informer's reward.

On May 22, 1967, the late Juan G. Maniago (substituted in these proceedings by his wife and children) submitted to petitioner Commissioner of Internal Revenue confidential denunciation against the Meralco Securities Corporation for tax evasion for having paid income tax only on 25% of the dividends it received from the Manila Electric Co. for the years 1962-1966, thereby allegedly shortchanging the government of income tax due from 75% of the said dividends.

Supreme Court E-Library

Petitioner Commissioner of Internal Revenue caused the investigation of the denunciation after which he found and held that no deficiency corporate income tax was due from the Meralco Securities Corporation on the dividends it received from the Manila Electric Co., since under the law then prevailing (Section 24[a] of the National Internal Revenue Code) "in the case of dividends received by a domestic or foreign resident corporation liable to (corporate income) tax under this Chapter . . . . only twenty-five per centum thereof shall be returnable for the purposes of the tax imposed under this section." The Commissioner accordingly rejected Maniago's contention that the Meralco from whom the dividends were received is "not a domestic corporation liable to tax under this Chapter." In a letter dated April 5, 1968, the Commissioner informed Maniago of his findings and ruling and therefore denied Maniago's claim for informer's reward on a non-existent deficiency. This action of the Commissioner was sustained by the Secretary of Finance in a 4th Indorsement dated May 11, 1971.

On August 28, 1970, Maniago filed a petition for mandamus, and subsequently an amended petition for mandamus, in the Court of First Instance of Manila, docketed therein as Civil Case No. 80830, against the Commissioner of Internal Revenue and the Meralco Securities Corporation to compel the Commissioner to impose the alleged deficiency tax assessment on the Meralco Securities Corporation and to award to him the corresponding informer's reward under the provisions of R.A. 2338.

On October 28, 1978, the Commissioner filed a motion to dismiss, arguing that since in matters of issuance and non-issuance of assessments, he is clothed under the National Internal Revenue Code and existing rules and regulations with discretionary power in evaluating the facts of a case and since mandamus will not lie to compel the performance of a discretionary power, he cannot be compelled to impose the alleged tax deficiency assessment against the Meralco Securities Corporation. He further argued that mandamus may not lie against him for that would be tantamount to a usurpation of executive powers, since the Office

Supreme Court E-Library

of the Commissioner of Internal Revenue is undeniably under the control of the executive department.

On the other hand, the Meralco Securities Corporation filed its answer, dated January 15, 1971, interposing as special and/or affirmative defenses that the petition states no cause of action, that the action is premature, that mandamus will not lie to compel the Commissioner of Internal Revenue to make an assessment and/or effect the collection of taxes upon a taxpayer, that since no taxes have actually been recovered and/or collected, Maniago has no right to recover the reward prayed for, that the action of petitioner had already prescribed and that respondent court has no jurisdiction over the subject matter as set forth in the petition, the same being cognizable only by the Court of Tax Appeals.

On January 10, 1973, the respondent judge rendered a decision granting the writ prayed for and ordering the Commissioner of Internal Revenue to assess and collect from the Meralco Securities Corporation the sum of ₱51,840,612.00 as deficiency corporate income tax for the period 1962 to 1969 plus interests and surcharges due thereon and to pay 25% thereof to Maniago as informer's reward.

All parties filed motions for reconsideration of the decision but the same were denied by respondent judge in his order dated April 6, 1973, with respondent judge denying respondent's claim for attorneys fees and for execution of the decision pending appeal.

Hence, the Commissioner filed a separate petition with this Court, docketed as G.R. No. L-36748 praying that the decision of respondent judge dated January 10, 1973 and his order dated April 6, 1973 be reconsidered for respondent judge has no jurisdiction over the subject matter of the case and that the issuance or non-issuance of a deficiency assessment is a prerogative of the Commissioner of Internal Revenue not reviewable by mandamus.

Supreme Court E-Library

The Meralco Securities Corporation (now First Philippine Holdings Corporation) likewise appealed the same decision of respondent judge in G.R. No. L-36181 and in the Court's resolution dated June 13, 1973, the two cases were ordered consolidated.

We grant the petitions.

Respondent judge has no jurisdiction to take cognizance of the case because the subject matter thereof clearly falls within the scope of cases now *exclusively* within the jurisdiction of the Court of Tax Appeals. Section 7 of Republic Act No. 1125, enacted June 16, 1954, granted to the Court of Tax Appeals *exclusive appellate jurisdiction* to review by appeal, among others, decisions of the Commissioner 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 law transferred to the Court of Tax Appeals jurisdiction over all cases involving said assessments previously cognizable by courts of first instance, and even those already pending in said courts.[1] The question of whether or not to impose a deficiency tax assessment on Meralco Securities Corporation undoubtedly comes within the purview of the words "disputed assessments" or of "other matters arising under the National Internal Revenue Code . . ." In the case of *Blaquera vs. Rodriguez, et al.*,[2] this Court ruled that "the determination of the correctness or incorrectness of a tax assessment to which *the taxpayer* is not agreeable, falls within the jurisdiction of the Court of Tax Appeals and not of the Court of First Instance, for under the provisions of Section 7 of Republic Act No. 1125, the Court of Tax Appeals has *exclusive* appellate jurisdiction to review, on appeal, any decision of the Collector of Internal

[1] Ledesma *vs.* Court of Tax Appeals, 102 Phil. 931.

[2] 103 Phil. 511.

Supreme Court E-Library

Revenue in cases involving disputed assessments and other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue."

Thus, even assuming arguendo that the right granted the taxpayers affected to question and appeal disputed assessments, under Section 7 of Republic Act No. 1125, may be availed of by strangers or informers like the late Maniago, the most that he could have done was to appeal to the Court of Tax Appeals the ruling of petitioner Commissioner of Internal Revenue within thirty (30) days from receipt thereof pursuant to Section 11 of Republic Act No. 1125.[3] He failed to take such an appeal to the tax court. The ruling is clearly final and no longer subject to review by the courts.[4]

It is furthermore a well-recognized rule that mandamus only lies to enforce the performance of a ministerial act or duty[5] and not to control the performance of a discretionary power.[6] Purely administrative and discretionary functions may not be interfered with by the courts.[7] Discretion, as thus intended, means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his own judgment and conscience and not controlled by the judgment or conscience of others.[8] Mandamus may not be resorted to so as

---

[3] Sec. 11. Who may appeal: effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Commissioner of Internal Revenue, the Collector of Customs or among provincial or city Board of Assessment appeals may file an appeal in the Court of Tax Appeals within thirty (30) days after the receipt of such decision or ruling.

[4] Republic of the Philippines *vs.* Juana vda. del Rosario, et al., 105 Phil. 277; Republic of the Philippines *vs.* Benito M. Lopez, 117 Phil. 575; Republic of the Philippines *vs.* Manila Port Service, 12 Phil. 384; Republic of the Philippines *vs.* Lim Tian Teng Sons & Co., Inc., 16 SCRA 584.

[5] Province of Pangasinan *vs.* Reparations Commission, 80 SCRA 376.

[6] Caltex Filipino Managers & Supervisors Association *vs.* CIR, 23 SCRA 492.

[7] Coloso *vs.* Board of Accountancy, 92 Phil. 938.

[8] 34 Am. Jur. 855.

Supreme Court E-Library

to interfere *with the manner* in which the discretion shall be exercised or to influence or coerce a particular determination.[9]

In an analogous case, where a petitioner sought to compel the Rehabilitation Finance Corporation to accept payment of the balance of his indebtedness with his backpay certificates, the Court ruled that "mandamus does not compel the Rehabilitation Finance Corporation to accept backpay certificates in payment of outstanding loans. Although there is no provision expressly authorizing such acceptance, nor is there one prohibiting it, yet the duty imposed by the Backpay Law upon said corporation as to the acceptance or discount of backpay certificates is neither clear nor ministerial, but discretionary merely, and such special civil action does not issue to control the exercise of discretion of a public officer."[10] Likewise, we have held that courts have no power to order the Commissioner of Customs to confiscate goods imported in violation of the Import Control Law, R.A. 426, as said forfeiture is subject to the discretion of the said official,[11] nor may courts control the determination of whether or not an applicant for a visa has a non-immigrant status or whether his entry into this country would be contrary to public safety for it is not a simple ministerial function but an exercise of discretion.[12]

Moreover, since the office of the Commissioner of Internal Revenue is charged with the administration of revenue laws, which is the primary responsibility of the executive branch of the government, mandamus may not lie against the Commissioner to compel him to impose a tax assessment not found by him to be due or proper for that would be tantamount to a usurpation

---

[9] 34 Am. Jur. 856-858; see also Diokno *vs.* Rehabilitation Finance Corporation, 91 Phil. 608; Caltex Filipino Managers & Supervisors Association *vs.* CIR, 23 SCRA 492; Sy Ha *vs.* Galang, 7 SCRA 797; Astudillo *vs.* Board of Directors of PHHC, 73 SCRA 15; Aprueba *vs.* Ganzon, 18 SCRA 8.

[10] Diokno *vs.* RFC, 91 SCRA 608.

[11] Marcelo Steel Corp. *vs.* Import Control Board, 87 Phil. 374.

[12] Sy Ha *vs.* Galang, 7 SCRA 797.

[13] Commissioner of Immigration *vs.* Arca, 22 SCRA 805.

Supreme Court E-Library

of executive functions. As we held in the case of *Commissioner of Immigration vs. Arca*[13] anent this principle, "the administration of immigration laws is the primary responsibility of the executive branch of the government. Extensions of stay of aliens are discretionary on the part of immigration authorities, and neither a petition for mandamus nor one for certiorari can compel the Commissioner of Immigration to extend the stay of an alien whose period to stay has expired.

Such discretionary power vested in the proper executive official, in the absence of arbitrariness or grave abuse so as to go beyond the statutory authority, is not subject to the contrary judgment or control of others. " 'Discretion', when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, uncontrolled by the judgment or consciences of others. A purely ministerial act or duty in contradiction to a discretional act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment."[14]

Thus, after the Commissioner who is specifically charged by law with the task of enforcing and implementing the tax laws and the collection of taxes has after a mature and thorough study rendered his decision or ruling that no tax is due or collectible, and his decision is sustained by the Secretary, now Minister of Finance (whose act is that of the President unless reprobated), such decision or ruling is a valid exercise of discretion in the performance of official duty and cannot be controlled much less

---

[14] Samson *vs.* Barrios, 63 Phil. 198; Lemi *vs.* Valencia, 26 SCRA 203.

Supreme Court E-Library

reversed by mandamus. A contrary view, whereby any stranger or informer would be allowed to usurp and control the official functions of the Commissioner of Internal Revenue would create disorder and confusion, if not chaos and total disruption of the operations of the government.

Considering then that respondent judge may not order by mandamus the Commissioner to issue the assessment against Meralco Securities Corporation when no such assessment has been found to be due, no deficiency taxes may therefore be assessed and collected against the said corporation. Since no taxes are to be collected, no informer's reward is due to private respondents as the informer's heirs. Informer's reward is contingent upon the payment and collection of unpaid or deficiency taxes. An informer is entitled by way of reward only to a percentage of the taxes actually assessed and collected. Since no assessment, much less any collection, has been made in the instant case, respondent judge's writ for the Commissioner to pay respondents 25% informer's reward is gross error and without factual nor legal basis.

WHEREFORE, the petitions are hereby granted and the questioned decision of respondent judge dated January 10, 1973 and order dated April 6, 1973 are hereby reversed and set aside. With costs against private respondents.

Melencio-Herrera, Plana, Vasquez, and *Relova, JJ.,* concur.

Gutierrez, Jr., J., took no part.

SECOND DIVISION

[G.R. Nos. L-36481-2. October 23, 1982]

AMPARO C. SERVANDO, CLARA UY BICO, plaintiffs-appellees, *vs.* PHILIPPINE STEAM NAVIGATION, CO., defendant-appellant.