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adjudicated against Manila Bay Lighterage Corporation by the trial court.

WHEREFORE, the decision appealed from is AFFIRMED with the modification that the amount of ₱8,000.00 representing the value of the salvaged logs which was ordered to be deposited in the Manila Banking Corporation in the name of Civil Case No. 86599 is hereby awarded and ordered paid to the petitioners. The liability adjudged against Manila Bay Lighterage Corporation in the decision of the trial court is accordingly reduced by the same amount.

SO ORDERED.

Teehankee (*Chairman*), *Melencio-Herrera, Plana, De la Fuente,* and *Patajo, JJ.*, concur.

Relova J., on leave.

SECOND DIVISION

(G. R. No. L-46893. November 12, 1985)

REPUBLIC OF THE PHILIPPINES, *plaintiff-appellant, vs.* **FRANCISCO RICARTE,** *defendant-appellee.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE (C.A. 466); INCOME TAXATION; ASSESSMENT OF TAX DUE MADE BY COLLECTOR OF INTERNAL REVENUE WAS BASED ON THE OLD LAW.**— Clearly, before the amendment of the Tax Code (CA 466), the taxpayer files his income tax return and the Collector (now Commissioner) of Internal Revenue assesses the tax due and notifies the taxpayer thereof. On the other hand, under the amendatory act, (RA 2343), the

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taxpayer assesses himself, files his return and is required to pay the tax as shown in his return upon filing thereof. This procedure is commonly known as the "pay-as-you-file" system. In other words, under the old law, the Collector of Internal Revenue was required to assess the tax due, while under R.A. No. 2343 the taxpayer himself computes the tax on the basis of the figures appearing in his income tax return. We do not agree with the former Court of First Instance of Cebu that subsequent assessment made on January 19, 1961 was based on the amendatory act. Appellee filed his income tax return for the year 1958 on March 2, 1959 and the same was assessed by the Bureau of Internal Revenue on April 6, 1959. The tax was paid in two installments. The Bureau of Internal Revenue reviewed the said return and found out a deficiency in the assessment *it* previously made and the income tax paid by the appellee. A notice of assessment was sent to the appellee on January 19, 1961. Such subsequent assessment undertaken by the Bureau of Internal Revenue was based merely on the income tax return filed by the appellee where no assessment has been made by him. As has been said, the amount of tax due was previously computed by the Bureau of Internal Revenue. Finding that it made an error, the Bureau reassessed the income tax return of the appellee; but such reassessment was made pursuant to the old law and not under the amendatory act.

2. **ID.; ID.; ID.; DEFICIENCY INCOME TAX LIABILITY; ACTION FILED BEYOND FIVE-YEAR PRESCRIPTIVE PERIOD; FINDINGS OF FACT OF TRIAL COURT NOT SUBJECT TO REVIEW BY THE SUPREME COURT; CASE AT BAR.**— We agree with the lower court that the present action was filed after the prescriptive period of five (5) years provided for in Section 332(c) of the National Internal Revenue Code. Appellant asseverates that the present action was filed within the five-year prescriptive period provided for under the above-quoted provision of the tax code; that the subsequent notice of assessment was made and appellee notified thereof on January 19, 1961; that from January 19, 1961 up to the date this case was filed in court on January 14, 1966, only four years, eleven months and twenty-five days had elapsed. Although a subsequent notice of assessment was allegedly made and sent to appellee on January 19, 1961, it was the finding both the former City Court of Cebu and the defunct Court of

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First Instance of Cebu that no evidence has been presented by the appellant that the appellee actually received a copy of that assessment notice regarding the alleged deficiency tax. Such findings being one of fact, can no longer be reviewed by this Court. Even in the stipulation of facts entered into between the parties, there is no stipulation showing that the appellant actually received the subsequent notice of assessment. Thus, the prescriptive period provided for in Section 332 (c) of the tax code should be counted from April 6, 1959, the date when the Bureau of Internal Revenue assessed the income tax return of the appellant. From said date until the filing of this case on January 14, 1966, six years and nine months had elapsed. Verily, the action had already prescribed.

DECISION

MAKASIAR, *C.J.*:

The former Court of Appeals, in its resolution dated August 4, 1977, certified this case to this Court on the ground that the issues involved therein are purely questions of law.

On March 2, 1959 defendant-appellee Francisco Ricarte filed his income tax return for the year 1958. On April 6, 1959, the Office of the Collector of Internal Revenue made the corresponding assessment and fixed at ₱222.00 the defendant's income tax liability pursuant to the express provision of Section 51(a) of the National Internal Revenue Code (Commonwealth Act No. 466), then in effect. Defendant paid his income tax in two equal installments of ₱111.00 each the first on May 15, 1959 and the second on August 17, 1959.

On June 20, 1959, Republic Act No. 2343 took effect amending Commonwealth Act No. 466 including Section 51(a). Under the amendatory act, the taxpayer assesses himself, files his return and pays the tax as shown in his return upon filing thereof.

In the year 1961, the Bureau of Internal Revenue, after investigation, found that the defendant had a deficiency of ₱1,136.87 in his income tax for 1958. On January 19, 1961, assessment notice No. 17-A-708424-58 for the amount aforestated

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was issued and, together with the corresponding audit sheet and letter of demand, was mailed to the defendant on January 25, 1961.

For failure of defendant to pay his deficiency income tax liability, plaintiff, on January 14, 1966, filed a complaint for collection of unpaid taxes before the City Court of Cebu.

After trial and hearing, the court *a quo* rendered a decision dated October 29, 1966 dismissing the case on the ground of prescription of action. The trial court reasoned out that the assessment was made by the Bureau of Internal Revenue on April 6, 1959, but the present case was filed only on January 14, 1966 or more than the prescriptive period of five years as provided for in Section 332(c) of the National Internal Revenue Code.

On appeal to the former Court of First Instance of Cebu, the parties entered into a stipulation of facts:

"1. That the plaintiff is a political entity with capacity to sue and may be served with processes thru the Revenue Regional Director, Bureau of Internal Revenue, Revenue Region No. 13, Cebu City; while defendant Francisco Ricarte is of legal age, with postal address at 278 South Expressway (formerly at 451-C Tres de Abril Street), Cebu City, where he may be served with summons.

"2. That on or about March 2, 1959, defendant, an arrastre contractor, filed his income tax return for the year 1958 showing on the face thereof a net income of ₱12,271.26; copy of which is hereto attached as Annex 'A' and made an integral part hereof.

"3. That the amount of ₱222.00 was assessed on April 6, 1959 per Assessment No. 17-A-708424-58 by the plaintiff as defendant's 1958 income tax liability per return filed by the latter which amount was duly stamped 'Assessed' on defendant's 1958 income tax return.

"4. That the aforesaid amount of ₱222.00 was paid by the defendant in two installments under Official Receipt No. 1671571 dated May 15, 1959 for the amount of ₱111.00 and under Official Receipt No. 2466278 dated August 17, 1959 for ₱111.00.

"5. That in the verification of defendant's 1958 income tax return by the plaintiff thru the Bureau of Internal Revenue on January 19,

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1961, there was found due from him the amount of ₱1,136.87 as deficiency income tax for said year, computed as follows:

"Net income per return	₱12,271.28	
Add: Personal living expenses	7,800.00	
Total amount of income per audit review	20,071.28	
Less: Personal and additional exemption ..	7,800.00	
Amount of income subject to tax	12,271.28	
Amount of tax due	1,265.00	
Less: Amount of tax already assessed and paid	222.00	
Deficiency income tax due	₱1,043.00	
Add: 1/2% monthly interest from 6-20-59 to 12-20-60 (Sec. 51 Tax Code, R.A. 2343 & implemented by Gen. Cir. No. V-318)	93.87	
Total amount of tax due & collectible Def'cy)	₱1,136.87	

"6. That on January 19, 1961, Assessment Notice No. 17-A-708424-58 for the aforesaid amount of ₱1,136.87 together with the letter of demand bearing same date and the audit sheet were issued by the plaintiff thru the Bureau of Internal Revenue and officially mailed and released to the defendant on January 25, 1961, copies of which communications are hereto attached as Annexes 'B', 'C' and 'D', respectively, and made integral parts hereof.

"7. That in plaintiff's letter dated January 19, 1961, Annex 'C' hereof, an explanation was made as to how the aforesaid deficiency assessment was brought about.

"8. That a call-up letter dated September 23, 1964 was sent by the plaintiff to the defendant requesting settlement of his liability under Assessment Notice No. 17-A-708424-58 mentioned in paragraph 6 hereof, copy of which letter is hereto attached as Annex 'E' and made an integral part hereof, which letter was officially mailed

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and released by the plaintiff thru the Bureau of Internal Revenue on October 13, 1964 per Registry Receipt No. 863.

"9. That another letter dated November 15, 1965 calling for payments of the aforesaid amount was again officially mailed and released to the defendant, per Registry Receipt No. 1125, copy of which letter is hereto attached as Annex 'F' and made an integral part hereof.

"10. That the abovementioned assessment has not been contested by the defendant before the Court of Tax Appeals.

"11. That the same assessment has not been paid until date.

"12. That the instant case for collection was filed before the City Court of Cebu City on January 14, 1966" (pp. 46-50, ROA; p. 3, rec.).

On September 29, 1968, the former Court of First Instance, on the basis of the stipulation of facts, rendered its decision dismissing herein appellant's complaint. The said court stated that what the Bureau of Internal Revenue sought to collect from the appellee was based on an assessment which the Bureau made under the provisions of a new law, R.A. No. 2343, which was not yet in effect at the time of the filing of appellee's income tax return for 1958; and that the action against the appellee had already prescribed.

On October 16, 1968, appellant sought reconsideration of the lower court's decision. The motion was denied on December 14, 1968, hence this appeal, appellant alleging that the lower court erred in holding:

"xxx that the deficiency assessment has no legal standing.

"xxx that the plaintiff's action has prescribed.

"xxx that plaintiff failed to prove service upon defendant of the deficiency assessment dated January 19, 1961" (p. 5, Brief for Plaintiff-Appellant; p. 14, rec.).

The issues raised in this case may be synthesized as to whether the appellant can still collect the alleged deficiency income tax liability thru judicial proceeding.

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In holding that the subsequent assessment made by the Bureau of Internal Revenue on January 19, 1961 has no legal basis, the lower court was of the impression that the same was made under the provision of a new law, R.A. No. 2343, which was not yet in effect at the time of the filing of the 1958 income tax return in question. Said court observed that the unamended provision of Section 51(a) of the National Internal Revenue Code which was enforcible when the appellant filed his 1958 income tax return should apply to this case and not that of Section 51(b) of the same Code, as amended by R.A. No. 2343, which went into effect only on June 20, 1959.

It may be pointed out that before the amendment of the tax code, Section 51(a) relating to payment and assessment of income tax, prescribed:

"Sec. 51. Assessment and payment of income tax. — (a) All assessment shall be made by the Collector of Internal Revenue and all persons and corporations subject to tax shall be notified of the amount for which they are respectively liable on or before the first day of May of each successive year."

but as amended by R.A. No. 2343, effective on June 20, 1959, it now reads:

"Sec. 51. Payment and assessment of income tax. — (a) Payment of tax. — (1) In general. — The total amount of tax imposed by this Title shall be paid at the time the return is filed but not later than the fifteenth day of April following the close of the calendar year, xxx

xxx xxx xxx

"(b) Assessment and payment of deficiency tax. — After the return is filed the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency in tax so discovered shall be paid upon notice and demand from the Commissioner of Internal Revenue."

Clearly, before the amendment, the taxpayer files his income tax return and the Collector (now Commissioner) of Internal Revenue assesses the tax due and notifies the taxpayer thereof. On the other hand, under the amendatory act, the taxpayer

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assesses himself, files his return and is required to pay the tax as shown in his return upon filing thereof. This procedure is commonly known as the "pay-as-you-file" system. In other words, under the old law, the Collector of Internal Revenue was required to assess the tax due, while under R.A. No. 2343 the taxpayer himself computes the tax on the basis of the figures appearing in his income tax return.

WE do not agree with the former Court of First Instance of Cebu that the subsequent assessment made on January 19, 1961 was based on the amendatory act.

Appellee filed his income tax return for the year 1958 on March 2, 1959 and the same was assessed by the Bureau of Internal Revenue on April 6, 1959. The tax was paid in two installments. The Bureau of Internal Revenue reviewed the said return and found out a deficiency in the assessment *it* previously made and the income tax paid by the appellee. A notice of assessment was sent to the appellee on January 19, 1961. Such subsequent assessment undertaken by the Bureau of Internal Revenue was based merely on the income tax return filed by the appellee where no assessment has been made by him. As has been said, the amount of tax due was previously computed by the Bureau of Internal Revenue. Finding that it made an error, the Bureau reassessed the income tax return of the appellee; but such reassessment was made pursuant to the old law and not under the amendatory act.

However, We agree with the lower court that the present action was filed after the prescriptive period of five (5) years provided for in Section 332(c) of the National Internal Revenue Code which reads:

"(c) Where the assessment of any internal revenue tax has been made within the period of limitation above described 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, xxx"

Appellant asseverates that the present action was filed within the five-year prescriptive period provided for under the

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abovequoted provision of the tax code; that the subsequent notice of assessment was made and appellee notified thereof on January 19, 1961; that from January 19, 1961 up to the date this case was filed in court on January 14, 1966, only four years, eleven months and twenty-five days had elapsed.

Although a subsequent notice of assessment was allegedly made and sent to appellee on January 19, 1961, it was the finding both of the former City Court of Cebu and the defunct Court of First Instance of Cebu that no evidence has been presented by the appellant that the appellee actually received a copy of that assessment notice regarding the alleged deficiency tax. Such finding, being one of fact, can no longer be reviewed by this Court. Even in the stipulation of facts entered into between the parties, there is no stipulation showing that the appellant actually received the subsequent notice of assessment. Thus, the prescriptive period provided for in Section 332(c) of the tax code should be counted from April 6, 1959, the date when the Bureau of Internal Revenue assessed the income tax return of the appellant. From said date until the filing of this case on January 14, 1966, six years and nine months had elapsed. Verily, the action had already prescribed.

WHEREFORE, THE APPEALED DECISION DATED SEPTEMBER 29, 1968, IS HEREBY AFFIRMED. NO COSTS.

SO ORDERED.

Abad Santos, Escolin, Cuevas and *Alampay, JJ.*, concur.

Aquino, J., no part.

Concepcion Jr.(*Chairman*), on leave.