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is of timely at this point to recall the language of this Court in the 1918 case of *United States vs. Sotto,* 38 Phil. 677: "We hold that the rule announced in the case of Dee See Choon *vs.* Stanley (p. 208, *ante)* is applicable to criminal as well as to civil cases, and that, after a case has been heard and is submitted to the court for decision, the appellant cannot, at his election, withdraw the appeal."

For the reasons given, the petition herein for certiorari is granted; and the resolution of the respondent Court of Industrial Relations *en banc* dated April 6, 1967 issued in Case 3985-ULP is hereby set aside and declared null and void.

Costs against private respondents.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Fernando and *Capistrano, JJ.,* concur.

Teehankee and *Barredo, JJ.,* did not take part.

Concepcion, C.J., and *Ruiz Castro, J.,* are on official leave.

[G.R. No. L-25483. May 23, 1969]

REPUBLIC OF THE PHILIPPINES, plaintiff-appellant, *vs.* LUCIA TAN, defendant-appellee.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; INCOME TAX RETURNS; FAILURE OR OMISSION TO FILE RETURNS; PRESCRIPTIVE PERIOD FOR FILING ACTION FOR COLLECTION OF TAXES DUE THEREON.— It is now settled that the three-year period provided in Section 51(d) of the Tax Code refers to the summary remedy of distraint and levy in cases of refusal or neglect to make a return and that judicial action may be instituted for collection of the taxes due even after the lapse of the three-year period at any time within ten (10) years after the discovery of the falsity, fraud or omission of income tax returns, pursuant to Section 332(a) of the Tax Code.

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2. ID.; ID.; ID.; ID.; ID.; ACTION IN INSTANT CASE HAS NOT PRESCRIBED.— Where defendant-appellee's failure to file the returns was discovered in August, 1954, and the action for the collection of the taxes due thereon was commenced in May, 1958, or four years after the discovery of the omission, the lower court erred in dismissing the complaint on the ground of prescription under Section 51(d) of the Tax Code.

APPEARANCES OF COUNSEL

Solicitor General Antonio P. Barredo, Assistant Solicitor General Felicisimo R. Rosete and *Special Attorney Sonia S. Soriano* for plaintiff-appellant.

Rubin J.B. Neri for defendant-appellee.

DECISION

CAPISTRANO, *J.*:

Appeal on questions of law from the orders of the Court of First Instance of Misamis Occidental in its Civil Case No. 2108 dismissing the complaint filed by the Republic for collection of deficiency income taxes, surcharges and interests, and denying the plaintiff's motion for reconsideration.

In August, 1954, after discovery that Lucia Tan had not filed income tax returns for the years 1949, 1950, 1951 and 1952, although she was liable for income taxes for the said years, the Commissioner of Internal Revenue, thru his authorized representative, filed the corresponding returns on her behalf. On the basis of the said returns, the Bureau of Internal Revenue, hereinafter referred to as the BIR, issued assessment notices to Lucia Tan requiring her to pay on or before June 30, 1955, the amounts of ₱248.00, ₱129.50 and ₱450.50 as income taxes for the years 1949, 1950 and 1951, respectively. Another assessment notice was issued to Lucia Tan on May 6, 1955, requiring her to pay on or before August 15, 1955, the sum of ₱1,482.50 as income tax for 1952. Lucia Tan refused to pay any of the aforesaid assessments.

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The Republic filed a complaint dated May 8, 1958, seeking to collect from Lucia Tan deficiency income taxes, surcharges and interests in the total amount of ₱2,310.50 for the years 1949, 1950, 1951 and 1952. In her answer the defendant admitted not having filed income tax returns for the above-mentioned years and alleged that the assessments were arbitrary, capricious and oppressive, and that she was not given an opportunity to present her side. The defendant also set up the affirmative defense of prescription. Defendant averred that the assessments for 1949, 1950 and 1951 had already prescribed because they were made beyond the three-year period provided in Section 51(d) of the National Internal Revenue Code; and that by virtue of said Section 51(d), in relation to Section 331, the action was already barred by prescription.

At the hearing on February 15, 1960, the court ordered the BIR to conduct a reinvestigation of the case in accordance with the defendant's request. A reinvestigation was conducted, and it was found out that the defendant's income tax liability for the years 1949 to 1952 was ₱6,123.60 instead of ₱2,310.50. The BIR then sent to the Provincial Fiscal, for filing, a motion for leave of court to amend the complaint, attaching thereto an amended complaint. The defendant's counsel was furnished copies of said motion and amended complaint. However, for unknown reasons the said motion and amended complaint were not filed in court. In an order dated November 23, 1964, the court gave the Provincial Fiscal thirty (30) days within which to locate them. Apparently, the motion and the amended complaint could not be found; so the plaintiff prepared another amended complaint and filed it on December 23,1964. On February 20, 1965, the court issued an order denying admission of the amended complaint for the reasons that it was not accompanied by a motion for leave to file an amended complaint and the defendant was not even served a copy of the amended complaint. In a separate order issued on the same date, the court, acting on the defendant's affirmative defense of prescription, the plaintiff having already rested its case, dismissed the original complaint on the ground that the action

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had already prescribed. The plaintiff filed a motion for reconsideration, but the same was denied by the order of March 20, 1965. The plaintiff appealed from the orders.

The principal question before us for resolution in this appeal is whether, as contended by the defendant-appellee, the applicable law is Section 51(d) of the National Internal Revenue Code before its amendment by Republic Act No. 2343 on June 20, 1959, which reads:

"In cases of refusal or neglect to make a return and in cases of erroneous, false or fraudulent returns the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this case or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment."

or, as contended by the plaintiff-appellant, Section 332(a) of the same Code, which provides:

"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 said tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission." (Italics supplied.)

It is now settled that the three-year period provided in Section 51(d) refers to the summary remedy of distraint and levy (Republic *vs.* Ledesma, G.R. No. L-18759, February 28, 1967, citing Collector *vs.* Avelino, 100 Phil. 327; Collector *vs.* Reyes, 100 Phil. 822; Collector *vs.* Zulueta, et al., 100 Phil. 872; Sambrano *vs.* CTA, 101 Phil. 1; Collector *vs.* Azner, G.R. No. L-8652, January 31, 1958; Gancayco *vs.* Collector, G.R. No. L-13325, April 20, 1961); that said Section 51(d) did not bar an assessment as a step preliminary to collection by *judicial action* (Republic *vs.* Ledesma, *supra,* citing Republic *vs.* Gamboa, G.R. No. L-16504, October 27, 1961); that even after the lapse of the three-year period, the Government could still proceed to recover the

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taxes due by the institution of the corresponding civil action (Collector *vs.* Zulueta, et al., *supra*); and that the judicial action may be instituted at any time within ten (10) years after the discovery of the falsity, fraud or omission (Cf. Republic *vs.* Gamboa, *supra*), pursuant to Section 332(a) of the Tax Code.

This being a judicial action for the collection of income taxes where the taxpayer had failed to file income tax returns, the same could be brought at any time within ten (10) years after the discovery of the omission. Here, the defendant-appellee's failure to file the returns was discovered in August, 1954. Hence, the Republic had ten (10) years from that date, or until August, 1964, within which to institute an action for collection. The action in the instant case having been commenced in May, 1958, or four (4) years after the discovery of the omission, it is clear that the lower court erred in dismissing the complaint on the ground of prescription under Section 51(d).

PREMISES CONSIDERED, the orders appealed from are set aside and the case is hereby remanded to the court below for further proceedings.

Costs against the defendant-appellee in this instance.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez and *Fernando, JJ.,* concur.

Teehankee and *Barredo, JJ.,* did not take part.
Concepcion, C.J., and *Ruiz Castro, J.,* are on leave.

[G.R. No. L-26808. May 23, 1969]

REV. FATHER LUCIO V. GARCIA, petitioner, *vs.* HONORABLE CONRADO M. VASQUEZ, respondent.

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; PROBATE OF WILL; NO PAYMENT OF DOCKET FEES WHERE PROBATE OF