339 Phil. 253

SECOND DIVISION

[G.R. No. 120880, June 05, 1997]

FERDINAND R. MARCOS II, PETITIONER, VS. COURT OF APPEALS, THE COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE AND HERMINIA D. DE GUZMAN, RESPONDENTS.

D E C I S I O N

TORRES, JR., J.:

In this Petition for Review on *Certiorari*, Government action is once again assailed as precipitate and unfair, suffering the basic and oftly implored requisites of due process of law. Specifically, the petition assails the Decision[1] of the Court of Appeals dated November 29, 1994 in CA-G.R. SP No. 31363, where the said court held:

> "In view of all the foregoing, we rule that the deficiency income tax assessments and estate tax assessment, are already final and (u)nappealable -and- the subsequent levy of real properties is a tax remedy resorted to by the government, sanctioned by Section 213 and 218 of the National Internal Revenue Code. This summary tax remedy is distinct and separate from the other tax remedies (such as Judicial Civil actions and Criminal actions), and is not affected or precluded by the pendency of any other tax remedies instituted by the government.
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> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the petition for certiorari with prayer for Restraining Order and Injunction.
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> No pronouncements as to costs.
>
> SO ORDERED."

More than seven years since the demise of the late Ferdinand E. Marcos, the former President of the Republic of the Philippines, the matter of the settlement of his estate, and its dues to the government in estate taxes, are still unresolved, the latter issue being now before this Court for resolution. Specifically, petitioner Ferdinand R. Marcos II, the eldest son of the decedent, questions the actuations of the respondent Commissioner of Internal Revenue in assessing, and collecting through the summary remedy of Levy on Real Properties, estate and income tax delinquencies upon the

estate and properties of his father, despite the pendency of the proceedings on probate of the will of the late president, which is docketed as Sp. Proc. No. 10279 in the Regional Trial Court of Pasig, Branch 156.

Petitioner had filed with the respondent Court of Appeals a Petition for Certiorari and Prohibition with an application for writ of preliminary injunction and/or temporary restraining order on June 28, 1993, seeking to -

> I. Annul and set aside the Notices of Levy on real property dated February 22, 1993 and May 20, 1993, issued by respondent Commissioner of Internal Revenue;
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> II. Annul and set aside the Notices of Sale dated May 26, 1993;
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> III. Enjoin the Head Revenue Executive Assistant Director II (Collection Service), from proceeding with the Auction of the real properties covered by Notices of Sale.

After the parties had pleaded their case, the Court of Appeals rendered its Decision[2] on November 29, 1994, ruling that the deficiency assessments for estate and income tax made upon the petitioner and the estate of the deceased President Marcos have already become final and unappealable, and may thus be enforced by the summary remedy of levying upon the properties of the late President, as was done by the respondent Commissioner of Internal Revenue.

> "WHEREFORE, premises considered judgment is hereby rendered DISMISSING the petition for Certiorari with prayer for Restraining Order and Injunction.
>
> No pronouncements as to cost.
>
> SO ORDERED."

Unperturbed, petitioner is now before us assailing the validity of the appellate court's decision, assigning the following as errors:

A. RESPONDENT COURT MANIFESTLY ERRED IN RULING THAT THE SUMMARY TAX REMEDIES RESORTED TO BY THE GOVERNMENT ARE NOT AFFECTED AND PRECLUDED BY THE PENDENCY OF THE SPECIAL PROCEEDING FOR THE ALLOWANCE OF THE LATE PRESIDENT'S ALLEGED WILL. TO THE CONTRARY, THIS PROBATE PROCEEDING PRECISELY PLACED ALL PROPERTIES WHICH FORM PART OF THE LATE PRESIDENT'S ESTATE IN CUSTODIA LEGIS OF THE PROBATE COURT TO THE EXCLUSION OF ALL

OTHER COURTS AND ADMINISTRATIVE AGENCIES.

B. RESPONDENT COURT ARBITRARILY ERRED IN SWEEPINGLY DECIDING THAT SINCE THE TAX ASSESSMENTS OF PETITIONER AND HIS PARENTS HAD ALREADY BECOME FINAL AND UNAPPEALABLE, THERE WAS NO NEED TO GO INTO THE MERITS OF THE GROUNDS CITED IN THE PETITION. INDEPENDENT OF WHETHER THE TAX ASSESSMENTS HAD ALREADY BECOME FINAL, HOWEVER, PETITIONER HAS THE RIGHT TO QUESTION THE UNLAWFUL MANNER AND METHOD IN WHICH TAX COLLECTION IS SOUGHT TO BE ENFORCED BY RESPONDENTS COMMISSIONER AND DE GUZMAN. THUS, RESPONDENT COURT SHOULD HAVE FAVORABLY CONSIDERED THE MERITS OF THE FOLLOWING GROUNDS IN THE PETITION:

> (1) The Notices of Levy on Real Property were issued beyond the period provided in the Revenue Memorandum Circular No. 38-68.
>
> (2) [a] The numerous pending court cases questioning the late President's ownership or interests in several properties (both personal and real) make the total value of his estate, and the consequent estate tax due, incapable of exact pecuniary determination at this time. Thus, respondents' assessment of the estate tax and their issuance of the Notices of Levy and Sale are premature, confiscatory and oppressive.
>
> [b] Petitioner, as one of the late President's compulsory heirs, was never notified, much less served with copies of the Notices of Levy, contrary to the mandate of Section 213 of the NIRC. As such, petitioner was never given an opportunity to contest the Notices in violation of his right to due process of law.

C. ON ACCOUNT OF THE CLEAR MERIT OF THE PETITION, RESPONDENT COURT MANIFESTLY ERRED IN RULING THAT IT HAD NO POWER TO GRANT INJUNCTIVE RELIEF TO PETITIONER. SECTION 219 OF THE NIRC NOTWITHSTANDING, COURTS POSSESS THE POWER TO ISSUE A WRIT OF PRELIMINARY INJUNCTION TO RESTRAIN RESPONDENTS COMMISSIONER'S AND DE GUZMAN'S ARBITRARY METHOD OF COLLECTING THE ALLEGED DEFICIENCY ESTATE AND INCOME TAXES BY MEANS OF LEVY.

The facts as found by the appellate court are undisputed, and are hereby adopted:

> "On September 29, 1989, former President Ferdinand Marcos died in Honolulu, Hawaii, USA.
>
> On June 27, 1990, a Special Tax Audit Team was created to conduct investigations and examinations of the tax liabilities and obligations of the late president, as well as that of his family, associates and "cronies". Said audit team concluded its investigation with a Memorandum dated July 26,

1991. The investigation disclosed that the Marcoses failed to file a written notice of the death of the decedent, an estate tax returns [sic], as well as several income tax returns covering the years 1982 to 1986, -all in violation of the National Internal Revenue Code (NIRC).

Subsequently, criminal charges were filed against Mrs. Imelda R. Marcos before the Regional Trial of Quezon City for violations of Sections 82, 83 and 84 (has penalized under Sections 253 and 254 in relation to Section 252- a & b) of the National Internal Revenue Code (NIRC).

The Commissioner of Internal Revenue thereby caused the preparation and filing of the Estate Tax Return for the estate of the late president, the Income Tax Returns of the Spouses Marcos for the years 1985 to 1986, and the Income Tax Returns of petitioner Ferdinand 'Bongbong' Marcos II for the years 1982 to 1985.

On July 26, 1991, the BIR issued the following: (1) Deficiency estate tax assessment no. FAC-2-89-91-002464 (against the estate of the late president Ferdinand Marcos in the amount of P23,293,607,638.00 Pesos); (2) Deficiency income tax assessment no. FAC-1-85-91-002452 and Deficiency income tax assessment no. FAC-1-86-91-002451 (against the Spouses Ferdinand and Imelda Marcos in the amounts of P149,551.70 and P184,009,737.40 representing deficiency income tax for the years 1985 and 1986); (3) Deficiency income tax assessment nos. FAC-1-82-91-002460 to FAC-1-85-91-002463 (against petitioner Ferdinand 'Bongbong' Marcos II in the amounts of P258.70 pesos; P9,386.40 Pesos; P4,388.30 Pesos; and P6,376.60 Pesos representing his deficiency income taxes for the years 1982 to 1985).

The Commissioner of Internal Revenue avers that copies of the deficiency estate and income tax assessments were all personally and constructively served on August 26, 1991 and September 12, 1991 upon Mrs. Imelda Marcos (through her caretaker Mr. Martinez) at her last known address at No. 204 Ortega St., San Juan, M.M. (Annexes 'D' and 'E' of the Petition). Likewise, copies of the deficiency tax assessments issued against petitioner Ferdinand 'Bongbong' Marcos II were also personally and constructively served upon him (through his caretaker) on September 12, 1991, at his last known address at Don Mariano Marcos St. corner P. Guevarra St., San Juan, M.M. (Annexes 'J' and 'J-1' of the Petition). Thereafter, Formal Assessment notices were served on October 20, 1992, upon Mrs. Marcos c/o petitioner, at his office, House of Representatives, Batasan Pambansa, Quezon City. Moreover, a notice to Taxpayer inviting Mrs. Marcos (or her duly authorized representative or counsel), to a conference, was furnished the counsel of Mrs. Marcos, Dean Antonio Coronel - but to no avail.

The deficiency tax assessments were not protested administratively, by Mrs. Marcos and the other heirs of the late president, within 30 days from service of said assessments.

On February 22, 1993, the BIR Commissioner issued twenty-two notices of levy on real property against certain parcels of land owned by the Marcoses - to satisfy the alleged estate tax and deficiency income taxes of Spouses Marcos.

On May 20, 1993, four more Notices of Levy on real property were issued for the purpose of satisfying the deficiency income taxes.

On May 26, 1993, additional four (4) notices of Levy on real property were again issued. The foregoing tax remedies were resorted to pursuant to Sections 205 and 213 of the National Internal Revenue Code (NIRC).

In response to a letter dated March 12, 1993 sent by Atty. Loreto Ata (counsel of herein petitioner) calling the attention of the BIR and requesting that they be duly notified of any action taken by the BIR affecting the interest of their client Ferdinand 'Bongbong' Marcos II, as well as the interest of the late president - copies of the aforesaid notices were served on April 7, 1993 and on June 10, 1993, upon Mrs. Imelda Marcos, the petitioner, and their counsel of record, 'De Borja, Medialdea, Ata, Bello, Guevarra and Serapio Law Office'.

Notices of sale at public auction were posted on May 26, 1993, at the lobby of the City Hall of Tacloban City. The public auction for the sale of the eleven (11) parcels of land took place on July 5, 1993. There being no bidder, the lots were declared forfeited in favor of the government.

On June 25, 1993, petitioner Ferdinand 'Bongbong' Marcos II filed the instant petition for certiorari and prohibition under Rule 65 of the Rules of Court, with prayer for temporary restraining order and/or writ of preliminary injunction."

It has been repeatedly observed, and not without merit, that the enforcement of tax laws and the collection of taxes, is of paramount importance for the sustenance of government. Taxes are the lifeblood of the government and should be collected without unnecessary hindrance. However, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved."[3]

Whether or not the proper avenues of assessment and collection of the said tax obligations were taken by the respondent Bureau is now the subject of the Court's inquiry.

Petitioner posits that notices of levy, notices of sale, and subsequent sale of properties of the late President Marcos effected by the BIR are null and void for disregarding the established procedure for the enforcement of taxes due upon the estate of the deceased. The case of Domingo vs. Garlitos[4] is specifically cited to bolster the argument that "the ordinary procedure by which to settle claims of indebtedness against the estate of a deceased, person, as in an inheritance (estate) tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount therefor." This remedy is allegedly, exclusive, and cannot be effected through any other means.

Petitioner goes further, submitting that the probate court is not precluded from denying a request by the government for the immediate payment of taxes, and should order the payment of the same only within the period fixed by the probate court for the payment of all the debts of the decedent. In this regard, petitioner cites the case of Collector of Internal Revenue vs. The Administratrix of the Estate of Echarri (67 Phil 502), where it was held that:

> "The case of Pineda vs. Court of First Instance of Tayabas and Collector of Internal Revenue (52 Phil 803), relied upon by the petitioner-appellant is good authority on the proposition that the court having control over the administration proceedings has jurisdiction to entertain the claim presented by the government for taxes due and to order the administrator to pay the tax should it find that the assessment was proper, and that the tax was legal, due and collectible. And the rule laid down in that case must be understood in relation to the case of Collector of Customs vs. Haygood, supra., as to the procedure to be followed in a given case by the government to effectuate the collection of the tax. Categorically stated, where during the pendency of judicial administration over the estate of a deceased person a claim for taxes is presented by the government, the court has the authority to order payment by the administrator; but, in the same way that it has authority to order payment or satisfaction, it also has the negative authority to deny the same. While there are cases where courts are required to perform certain duties mandatory and ministerial in character, the function of the court in a case of the present character is not one of them; and here, the court cannot be an organism endowed with latitude of judgment in one direction, and converted into a mere mechanical contrivance in another direction."

On the other hand, it is argued by the BIR, that the state's authority to collect internal revenue taxes is paramount. Thus, the pendency of probate proceedings over the

estate of the deceased does not preclude the assessment and collection, through summary remedies, of estate taxes over the same. According to the respondent, claims for payment of estate and income taxes due and assessed after the death of the decedent need not be presented in the form of a claim against the estate. These can and should be paid immediately. The probate court is not the government agency to decide whether an estate is liable for payment of estate of income taxes. Well-settled is the rule that the probate court is a court with special and limited jurisdiction.

Concededly, the authority of the Regional Trial Court, sitting, albeit with limited jurisdiction, as a probate court over estate of deceased individual, is not a trifling thing. The court's jurisdiction, once invoked, and made effective, cannot be treated with indifference nor should it be ignored with impunity by the very parties invoking its authority.

In testament to this, it has been held that it is within the jurisdiction of the probate court to approve the sale of properties of a deceased person by his prospective heirs before final adjudication;[5] to determine who are the heirs of the decedent;[6] the recognition of a natural child;[7] the status of a woman claiming to be the legal wife of the decedent;[8] the legality of disinheritance of an heir by the testator;[9] and to pass upon the validity of a waiver of hereditary rights.[10]

The pivotal question the court is tasked to resolve refers to the authority of the Bureau of Internal Revenue to collect by the summary remedy of levying upon, and sale of real properties of the decedent, estate tax deficiencies, without the cognition and authority of the court sitting in probate over the supposed will of the deceased.

The nature of the process of estate tax collection has been described as follows:

> "Strictly speaking, the assessment of an inheritance tax does not directly involve the administration of a decedent's estate, although it may be viewed as an incident to the complete settlement of an estate, and, under some statutes, it is made the duty of the probate court to make the amount of the inheritance tax a part of the final decree of distribution of the estate. It is not against the property of decedent, nor is it a claim against the estate as such, but it is against the interest or property right which the heir, legatee, devisee, etc., has in the property formerly held by decedent. Further, under some statutes, it has been held that it is not a suit or controversy between the parties, nor is it an adversary proceeding between the state and the person who owes the tax on the inheritance. However, under other statutes it has been held that the hearing and determination of the cash value of the assets and the determination of the tax are adversary proceedings. The proceeding has been held to be necessarily a proceeding in rem.[11]

In the Philippine experience, the enforcement and collection of estate tax, is executive

in character, as the legislature has seen it fit to ascribe this task to the Bureau of Internal Revenue. Section 3 of the National Internal Revenue Code attests to this:

> "Sec. 3. *Powers and duties of the Bureau.*-The powers and duties of the Bureau of Internal Revenue shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. Said Bureau shall also give effect to and administer the supervisory and police power conferred to it by this Code or other laws."

Thus, it was in Vera vs. Fernandez[12] that the court recognized the liberal treatment of claims for taxes charged against the estate of the decedent. Such taxes, we said, were exempted from the application of the statute of non-claims, and this is justified by the necessity of government funding, immortalized in the maxim that taxes are the lifeblood of the government. Vectigalia nervi sunt rei publicae - taxes are the sinews of the state.

> "Taxes assessed against the estate of a deceased person, after administration is opened, need not be submitted to the committee on claims in the ordinary course of administration. In the exercise of its control over the administrator, the court may direct the payment of such taxes upon motion showing that the taxes have been assessed against the estate."

Such liberal treatment of internal revenue taxes in the probate proceedings extends so far, even to allowing the enforcement of tax obligations against the heirs of the decedent, even after distribution of the estate's properties.

> "Claims for taxes, whether assessed before or after the death of the deceased, can be collected from the heirs even after the distribution of the properties of the decedent. They are exempted from the application of the statute of non-claims. The heirs shall be liable therefor, in proportion to their share in the inheritance."[13]

> "Thus, the Government has two ways of collecting the taxes in question. One, by going after all the heirs and collecting from each one of them the amount of the tax proportionate to the inheritance received. Another remedy, pursuant to the lien created by Section 315 of the Tax Code upon all property and rights to property belong to the taxpayer for unpaid income tax, is by subjecting said property of the estate which is in the hands of an heir or transferee to the payment of the tax due the estate. (Commissioner

of Internal Revenue vs. Pineda, 21 SCRA 105, September 15, 1967.)

From the foregoing, it is discernible that the approval of the court, sitting in probate, or as a settlement tribunal over the deceased is not a mandatory requirement in the collection of estate taxes. It cannot therefore be argued that the Tax Bureau erred in proceeding with the levying and sale of the properties allegedly owned by the late President, on the ground that it was required to seek first the probate court's sanction. There is nothing in the Tax Code, and in the pertinent remedial laws that implies the necessity of the probate or estate settlement court's approval of the state's claim for estate taxes, before the same can be enforced and collected.

On the contrary, under Section 87 of the NIRC, it is the probate or settlement court which is bidden not to authorize the executor or judicial administrator of the decedent's estate to deliver any distributive share to any party interested in the estate, unless it is shown a Certification by the Commissioner of Internal Revenue that the estate taxes have been paid. This provision disproves the petitioner's contention that it is the probate court which approves the assessment and collection of the estate tax.

If there is any issue as to the validity of the BIR's decision to assess the estate taxes, this should have been pursued through the proper administrative and judicial avenues provided for by law.

Section 229 of the NIRC tells us how:

> "Sec. 229. *Protesting of assessment*.-When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of said decision; otherwise, the decision shall become final, executory and demandable. (As inserted by P.D. 1773)"

Apart from failing to file the required estate tax return within the time required for the filing of the same, petitioner, and the other heirs never questioned the assessments

served upon them, allowing the same to lapse into finality, and prompting the BIR to collect the said taxes by levying upon the properties left by President Marcos.

Petitioner submits, however, that "while the assessment of taxes may have been validly undertaken by the Government, collection thereof may have been done in violation of the law. Thus, the manner and method in which the latter is enforced may be questioned separately, and irrespective of the finality of the former, because the Government does not have the unbridled discretion to enforce collection without regard to the clear provision of law."[14]

Petitioner specifically points out that applying Memorandum Circular No. 38-68, implementing Sections 318 and 324 of the old tax code (Republic Act 5203), the BIR's Notices of Levy on the Marcos properties, were issued beyond the allowed period, and are therefore null and void:

> "...the Notices of Levy on Real Property (Annexes 0 to NN of Annex C of this Petition) in satisfaction of said assessments were still issued by respondents well beyond the period mandated in Revenue Memorandum Circular No. 38-68. These Notices of Levy were issued only on 22 February 1993 and 20 May 1993 when at least seventeen (17) months had already lapsed from the last service of tax assessment on 12 September 1991. As no notices of distraint of personal property were first issued by respondents, the latter should have complied with Revenue Memorandum Circular No. 38-68 and issued these Notices of Levy not earlier than three (3) months nor later than six (6) months from 12 September 1991. In accordance with the Circular, respondents only had until 12 March 1992 (the last day of the sixth month) within which to issue these Notices of Levy. The Notices of Levy, having been issued beyond the period allowed by law, are thus void and of no effect."[15]

We hold otherwise. The Notices of Levy upon real property were issued within the prescriptive period and in accordance with the provisions of the present Tax Code. The deficiency tax assessment, having already become final, executory, and demandable, the same can now be collected through the summary remedy of distraint or levy pursuant to Section 205 of the NIRC.

The applicable provision in regard to the prescriptive period for the assessment and collection of tax deficiency in this instance is Article 223 of the NIRC, which pertinently provides:

> "Sec. 223. *Exceptions as to a 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 (10) years after the discovery of the

> falsity, fraud, or omission: Provided, That, in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> xxx
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> (c) Any internal revenue tax which has been assessed within the period of limitation above prescribed, may be collected by distraint or levy or by a proceeding in court within three years following the assessment of the tax.

The omission to file an estate tax return, and the subsequent failure to contest or appeal the assessment made by the BIR is fatal to the petitioner's cause, as under the above-cited provision, in case of failure to file a return, the tax may be assessed at any time within ten years after the omission, and any tax so assessed may be collected by levy upon real property within three years following the assessment of the tax. Since the estate tax assessment had become final and unappealable by the petitioner's default as regards protesting the validity of the said assessment, there is now no reason why the BIR cannot continue with the collection of the said tax. Any objection against the assessment should have been pursued following the avenue paved in Section 229 of the NIRC on protests on assessments of internal revenue taxes.

Petitioner further argues that "the numerous pending court cases questioning the late president's ownership or interests in several properties (both real and personal) make the total value of his estate, and the consequent estate tax due, incapable of exact pecuniary determination at this time. Thus, respondents' assessment of the estate tax and their issuance of the Notices of Levy and sale are premature and oppressive." He points out the pendency of Sandiganbayan Civil Case Nos. 0001-0034 and 0141, which were filed by the government to question the ownership and interests of the late President in real and personal properties located within and outside the Philippines. Petitioner, however, omits to allege whether the properties levied upon by the BIR in the collection of estate taxes upon the decedent's estate were among those involved in the said cases pending in the Sandiganbayan. Indeed, the court is at a loss as to how these cases are relevant to the matter at issue. The mere fact that the decedent has pending cases involving ill-gotten wealth does not affect the enforcement of tax assessments over the properties indubitably included in his estate.

Petitioner also expresses his reservation as to the propriety of the BIR's total assessment of P23,292,607,638.00, stating that this amount deviates from the findings of the Department of Justice's Panel of Prosecutors as per its resolution of 20 September 1991. Allegedly, this is clear evidence of the uncertainty on the part of the Government as to the total value of the estate of the late President.

This is, to our mind, the petitioner's last ditch effort to assail the assessment of estate tax which had already become final and unappealable.

It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue[16] whose determinations and assessments are presumed correct and made in good faith.[17] The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment.[18] In this instance, petitioner has not pointed out one single provision in the Memorandum of the Special Audit Team which gave rise to the questioned assessment, which bears a trace of falsity. Indeed, the petitioner's attack on the assessment bears mainly on the alleged improbable and unconscionable amount of the taxes charged. But mere rhetoric cannot supply the basis for the charge of impropriety of the assessments made.

Moreover, these objections to the assessments should have been raised, considering the ample remedies afforded the taxpayer by the Tax Code, with the Bureau of Internal Revenue and the Court of Tax Appeals, as described earlier, and cannot be raised now via Petition for Certiorari, under the pretext of grave abuse of discretion. The course of action taken by the petitioner reflects his disregard or even repugnance of the established institutions for governance in the scheme of a well-ordered society. The subject tax assessments having become final, executory and enforceable, the same can no longer be contested by means of a disguised protest. In the main, Certiorari may not be used as a substitute for a lost appeal or remedy.[19] This judicial policy becomes more pronounced in view of the absence of sufficient attack against the actuations of government.

On the matter of sufficiency of service of Notices of Assessment to the petitioner, we find the respondent appellate court's pronouncements sound and resilient to petitioner's attacks.

> "Anent grounds 3(b) and (B) - both alleging/claiming lack of notice - We find, after considering the facts and circumstances, as well as evidences, that there was sufficient, constructive and/or actual notice of assessments, levy and sale, sent to herein petitioner Ferdinand "Bongbong" Marcos as well as to his mother Mrs. Imelda Marcos.
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> Even if we are to rule out the notices of assessments personally given to the caretaker of Mrs. Marcos at the latter's last known address, on August 26, 1991 and September 12, 1991, as well as the notices of assessment personally given to the caretaker of petitioner also at his last known address on September 12, 1991 - the subsequent notices given thereafter could no longer be ignored as they were sent at a time when petitioner was

already here in the Philippines, and at a place where said notices would surely be called to petitioner's attention, and received by responsible persons of sufficient age and discretion.

Thus, on October 20, 1992, formal assessment notices were served upon Mrs. Marcos c/o the petitioner, at his office, House of Representatives, Batasan Pambansa, Q.C. (Annexes "A", "A-1", "A-2", "A-3"; pp. 207-210, Comment/Memorandum of OSG). Moreover, a notice to taxpayer dated October 8, 1992 inviting Mrs. Marcos to a conference relative to her tax liabilities, was furnished the counsel of Mrs. Marcos - Dean Antonio Coronel (Annex "B", p. 211, ibid). Thereafter, copies of Notices were also served upon Mrs. Imelda Marcos, the petitioner and their counsel "De Borja, Medialdea, Ata, Bello, Guevarra and Serapio Law Office", on April 7, 1993 and June 10, 1993. Despite all of these Notices, petitioner never lifted a finger to protest the assessments, (upon which the Levy and sale of properties were based), nor appealed the same to the Court of Tax Appeals.

There being sufficient service of Notices to herein petitioner (and his mother) and it appearing that petitioner continuously ignored said Notices despite several opportunities given him to file a protest and to thereafter appeal to the Court of Tax Appeals, - the tax assessments subject of this case, upon which the levy and sale of properties were based, could no longer be contested (directly or indirectly) via this instant petition for certiorari."[20]

Petitioner argues that all the questioned Notices of Levy, however, must be nullified for having been issued without validly serving copies thereof to the petitioner. As a mandatory heir of the decedent, petitioner avers that he has an interest in the subject estate, and notices of levy upon its properties should have been served upon him.

We do not agree. In the case of notices of levy issued to satisfy the delinquent estate tax, the delinquent taxpayer is the Estate of the decedent, and not necessarily, and exclusively, the petitioner as heir of the deceased. In the same vein, in the matter of income tax delinquency of the late president and his spouse, petitioner is not the taxpayer liable. Thus, it follows that service of notices of levy in satisfaction of these tax delinquencies upon the petitioner is not required by law, as under Section 213 of the NIRC, which pertinently states:

"xxx

...Levy shall be effected by writing upon said certificate a description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the Register of Deeds of the province or city where the property is located and upon the delinquent taxpayer, or if he be absent from the Philippines, to his agent or the manager of the

business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

xxx"

The foregoing notwithstanding, the record shows that notices of warrants of distraint and levy of sale were furnished the counsel of petitioner on April 7, 1993, and June 10, 1993, and the petitioner himself on April 12, 1993 at his office at the Batasang Pambansa.[21] We cannot therefore, countenance petitioner's insistence that he was denied due process. Where there was an opportunity to raise objections to government action, and such opportunity was disregarded, for no justifiable reason, the party claiming oppression then becomes the oppressor of the orderly functions of government. He who comes to court must come with clean hands. Otherwise, he not only taints his name, but ridicules the very structure of established authority.

IN VIEW WHEREOF, the Court RESOLVED to DENY the present petition. The Decision of the Court of Appeals dated November 29, 1994 is hereby AFFIRMED in all respects.
SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

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[1] Penned by Associate Justice Asaali S. Isnani, Chairman; Justices Corona Ibay Somera and Celia Lipana Reyes, concurring.

[2] Annex "A", Petition, p. 80, Rollo.

[3] Commissioner of Internal Revenue vs. Algue, Inc., et. al., G.R. No. L-28896, February 17, 1988, 158 SCRA 9.

[4] G.R. No. L-18994, June 29, 8 SCRA 443.

[5] Acebedo vs Abesamis, G.R. No. 102380, 18 January 1993, 217 SCRA 186.

[6] Reyes vs. Ysip, G.R. No. 7516, May 12, 1955, 97 Phil 11.

[7] Gaas vs. Fortich, G.R. No. 3154, Dec. 28, 1929, 54 Phil. 196.,

[8] Torres vs. Javier, May 24, 1916 34 Phil 382.

[9] Pecson vs. Mediavillo, G.R. No. 7890, September 29, 1914, 28 Phil 81

[10] Borromeo-Herrera vs. Borromeo, et. al., L-41171, July 23, 1982.

[11] 85 C.J.S. # 1191, pp. 1056-1057.

[12] No. L-31364, March 30, 1979, 89 SCRA 199.

[13] Pineda vs. Court of First Instance of Tayabas, G.R. No. 30921, February 16, 1929, 52 Phil 805; Government vs. Pamintuan, G.R. No. 33139, October 11, 1930, 55 Phil 13.

[14] Petition, p. 50, Rollo.

[15] Ibid., pp. 57-58.

[16] Section 16, National Internal Revenue Code.

[17] Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, G.R. No. 6741, January 31, 1956, 98 Phil 290; CIR vs. Construction Resources Asia, Inc., G.R. No. 98230, November 25, 1986, 145 SCRA 671; Sy Po vs. Court of Tax Appeals, et. al., G.R. No. L-81446, August 18, 1988, 164 SCRA 524; CIR vs. Bohol Land Transportation Co., 58 O.G. 2407 (1960).

[18] Gutierrez vs. Villegas, G.R. No. L-17117, July 31, 1963, 8 SCRA 527.

[19] De la Paz vs. Panis, G.R. No. 57023, June 22, 1995, 245 SCRA 242.

[20] Court of Appeals Decision, pp. 12-13, Rollo.

[21] Affidavit of Service by the Revenue Officer of the Collection and Enforcement Division of the BIR, Annex "D", Comment/Memorandum of the Commissioner of Internal Revenue in the Court of Appeals.