

THIRD DIVISION

COMMISSIONER OF  
INTERNAL REVENUE,  
Petitioner,

G.R. No. 139858

Present:

PANGANIBAN, J., Chairman,  
SANDOVAL-GUTIERREZ,  
CORONA,  
CARPIO MORALES, and  
GARCIA, JJ.

- versus -

ARTURO TULIO,  
Respondent.

Promulgated:

October 25, 2005

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DECISION

SANDOVAL-GUTIERREZ, J.:

Before us is a petition for review on *certiorari*<sup>[1]</sup> assailing the Orders dated June 15, 1999 and August 25, 1999 of the Regional Trial Court (RTC), Branch 60, Baguio City, in Civil Case No. 3853-R, entitled “REPUBLIC OF THE PHILIPPINES, *plaintiff*, *versus*, ARTURO TULIO, *defendant*.”

The legal issue being raised here is whether the complaint in the said civil case

may be dismissed on the ground of prescription.

Arturo Tulio, respondent, is engaged in the construction business. On February 28, 1991, the Commissioner of Internal Revenue, petitioner, sent him a demand letter with two final assessment notices <sup>[2]</sup> requesting payment of his deficiency percentage taxes of ₱188,585.76 and ₱245,669.53 for the taxable years 1986 and 1987. However, despite receipt, respondent failed to act on the assessment notices. Hence, the same became final and executory pursuant to Section 229 <sup>[3]</sup> of the 1996 National Internal Revenue Code.

On October 15, 1991, in order to enforce the collection of the taxes through administrative summary remedy, petitioner issued a warrant of distraint and/or levy against respondent. However, he has no properties which can be placed under distraint and/or levy.

On different dates, specifically on April 3, 1991, October 5, 1993 and May 14, 1997, petitioner sent letters to respondent giving him the last opportunity to settle his deficiency tax liabilities. But respondent was obstinate. Thus, on October 29, 1997, petitioner filed with the RTC, Branch 60, Baguio City a civil action for the collection of the deficiency percentage taxes, docketed as Civil Case No. 3853-R. Incidentally, it bears emphasis that it is the RTC which has jurisdiction over this case, not the Court of Tax Appeals. It is the ordinary courts, not the tax court, which can entertain BIR money claims based on assessments that have become final and executory. <sup>[4]</sup>

On March 22, 1999, the RTC issued an Order directing respondent to file his answer to the complaint. Three days thereafter, respondent filed a motion to dismiss alleging that the complaint was filed beyond the three-year prescriptive period provided by Section 203 of the National Internal Revenue Code. [\[5\]](#)

On June 15, 1999, the RTC issued its first challenged Order dismissing Civil Case No. 3853-R by reason of prescription, thus:

“Since there was admittedly a return filed by the Bureau of Internal Revenue in the name of the taxpayer, defendant Arturo Tulio on August 15, 1990 or beyond the period prescribed by law for the filing thereof, the three (3) year period shall be counted from the day the return was filed. Ergo, the plaintiff had until August 15, 1993 within which to file for collection of the alleged deficiency percentage taxes in court. Considering that this instant case was filed only on October 19, 1997, the government’s right to file this case has already prescribed as correctly pointed out by the defendant.”

“The court is not convinced that the case falls under Section 223 of the NIRC as alleged by the plaintiff for the simple reason that the complaint never alleged fraud. Why should it be when it was the government entity charged with the collection of taxes which filed the return. It would be impossible for them to charge themselves with filing a fraudulent return. The 10-year prescriptive period provided for under the cited section of the tax code therefore, should not apply in this case.”

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“WHEREFORE, in the light of the foregoing premises, the motion to dismiss is hereby GRANTED. Let this case be as it is hereby DISMISSED with prejudice.”

Petitioner filed a motion for reconsideration but was denied on August 25, 1999.

Hence, this petition for review on *certiorari*.

As mentioned earlier, the main issue for our resolution is whether petitioner’s cause of action for the collection of deficiency percentage taxes against respondent has prescribed.

The lower court erroneously applied Section 203 of the same Code providing for the three-year prescriptive period from the filing of the tax return within which internal revenue taxes shall be assessed. It held that such period should be counted from the day the return was filed, or from August 15, 1990 up to August 15, 1993. However, as shown by the records, respondent **failed to file a tax return**, forcing petitioner to invoke the powers of his office in tax administration and enforcement. Respondent's failure to file his tax returns is thus covered by Section 223 providing for a ten-year prescriptive period within which a proceeding in court may be filed.

Section 223 (now Section 222) of the National Internal Revenue Code provides:

***“Section 223. Exceptions as to 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 **failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed 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 had 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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(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof **may be collected by distraint or levy or by a proceeding in court within three (3) years following the assessment of the tax.**”

Section 223 specifies three (3) instances when the running of the three-year prescriptive period does not apply. These are: (1) filing a false return, (2) filing a fraudulent return with intent to evade tax or (3) failure to file a return. The period within which to assess tax is ten years from discovery of the fraud, falsification or omission.

Here, respondent failed to file his tax returns for 1986 and 1987. On September

14, 1989, petitioner found respondent's omission. Hence, the running of the ten-year prescriptive period within which to assess and collect the taxes due from respondent commenced on that date until September 14, 1999. The two final assessment notices were issued on February 28, 1991, well within the prescriptive period of three (3) years. When respondent failed to question or protest the deficiency assessments thirty (30) days therefrom, or until March 30, 1991, the same became final and executory.

As we held in *Marcos II vs. Court of Appeals*,<sup>[6]</sup> the omission to file an estate tax return, and the subsequent failure to contest or appeal the assessment made by the BIR is fatal, considering that under Section 223 of the NIRC, 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 (as was done here). Since the estate tax assessment had become final and unappealable, there is now no reason why petitioner should not enforce its authority to collect respondent's deficiency percentage taxes for 1986 and 1987.

**WHEREFORE**, the petition is **GRANTED**. The assailed Orders of the Regional Trial Court, Branch 60, Baguio City dismissing Civil Case No. 3853-R are hereby **REVERSED**. Let the case be remanded to said court for further proceedings with dispatch.

**SO ORDERED.**

ANGELINA SANDOVAL-GUTIERREZ  
Associate Justice

WE CONCUR:

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ARTEMIO V. PANGANIBAN  
Associate Justice  
Chairman

RENATO C. CORONA  
Associate Justice

CONCHITA CARPIO MORALES  
Associate Justice

CANCIO C. GARCIA  
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ARTEMIO V. PANGANIBAN  
Associate Justice  
Chairman, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HILARIO G. DAVIDE, JR.  
Chief Justice

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[1] Under Section 1, Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended.

[2] Denominated as FAN No. 4-86-91-000853 and FAN No. 4-8-7-91-000854.

[3] “Section 229. *Protesting of Assesment.* - x x x Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment x x x.”

Here, respondent failed to file a request for reconsideration or reinvestigation within thirty (30) days from notice of the assessment.

[4] Tax Law and Jurisprudence by Justice Jose C. Vitug and Judge Ernesto D. Acosta, Second Edition, 2000.

[5] Section 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 223, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period x x x”

[6] G.R. No. 120880, June 5, 1997, 273 SCRA 47.