44 SCRA 418

SECOND DIVISION

[G.R. No. L-18956, April 27, 1972]

REPUBLIC OF THE PHILIPPINES, plaintiff-appellee, vs. MARSMAN DEVELOPMENT COMPANY and/or F. H. BURGESS, in his capacity as Liquidator of the Marsman Development Company, defendants-appellants.

D E C I S I O N

BARREDO, J.:

Appeal from the decision of the Court of First Instance of Manila, the Honorable Conrado M. Vasquez, presiding, sentencing defendants-appellants to pay the amounts of P44,134.35, P6,603.20 and P456.12, plus legal interest from August 26, 1959, on the first item, and, from September 5, 1958, on the later two, representing sales taxes and forest charges, together with surcharges and penalties.

As found by His Honor, the factual setting of the decision is as follows:

> "Defendant corporation was a timber licensee holding Timber Licensee Agreement No. 37-A, with concessions in the Municipality of Basud and Mondazo, Camarines Norte. Sometime before October 15, 1953 an investigation was conducted on the business operation and activities of the corporation leading to the discovery that certain taxes were due (from) it on logs produced from its concession, On October 15, 1953, the Deputy Collector of Internal Revenue demanded the payment of P13,136.00 representing forest charges due from May 18, 1950 to September 30, 1953, and a surcharge of 25% (Exh. M). On September 13, 1954, after further investigation another assessment was sent to the defendant corporation by the Bureau of Internal Revenue demanding from it the total sum of P45,541.66 representing deficiency sales tax, forest charges. surcharges and penalties (Exh. A), On November 8, 1954 another assessment was addressed to the defendant corporation for the payment of P456.12 as 25% surcharge for discharging lumber without permit (Exh. P). The three assessments totalling P59,133.73 are the subject matter of the instant case for collection."
>
> xxx xxx xxx
>
> "The contention of the defendant that the assessment in question have not yet become final and executory is not borne out by the record, The Bureau of Internal Revenue made its first demand for the payment of P13,136.00 as forest charges and surcharges in the letter dated October 15, 1953 (Exh. M). After further investigation, a second assessment in the total amount of P45,541.66 was demanded from the defendant corporation representing sales tax and surcharges, and is contained in the letter dated September 13, 1954 (Exh. A). The third assessment for the payment of P456.12 representing 25% surcharge for discharging lumber without permit was made on November 8, 1954 (Exh. B).

"The first acknowledgment by the defendant corporation of its receipt of the assessment contained in the letter of September 13, 1954, Exh. A, was the letter of the defendant corporation under the signature of its counsel, Atty. Pedro L. Moya dated December 28, 1954, wherein it is requested that said defendant be furnished with an itemized statement of the said taxes and wherein notice is served of its intention to question the validity and the legality of the assessments and to appear before the Conference Staff of the Bureau of Internal Revenue in connection with the said tax (Exhibit B), In reply to the letter, Exhibit B, the Bureau of Internal Revenue wrote Atty. Moya a letter dated February 11, 1955 informing him that before the case may be acted upon by the Conference Staff, it was necessary that the defendant corporation comply within 10 days from date of said letter, with the provisions of Dept. Order No. 213 dated November 2, 1954 which required, among others, that requests for reinvestigation or re-examination of tax assessments shall be made in writing under oath of the taxpayer concerned, specifying the ground or grounds relied upon for the revision of the assessment and accompanied by such documents and other documents relied upon in support of the request; and that, as a general rule, the revision will be granted only upon payment of one-half of the total assessments and upon filing of a bond to guarantee the payment of the balance of the tax (Exhibit C). Acknowledgment of Exhibit C was made by Atty. Moya in the latter's letter of February 23, 1955 wherein, for the reasons therein stated, he requested exemption from the requirements contained in the letter Exhibit C (Exhibit D). In Reply to Exhibit D, the Collector of Internal Revenue wrote Atty. Moya on May 3, 1955 informing him that his request to exempt his client from the requirements contained in the letter dated February 11, 1955, cannot be favorably considered and that in order that the Conference Staff may be directed to hear the case on the merits, the said requirements must be complied with within five days from receipt of said letter; otherwise, the 'assessment will be considered final' (Exhibit E). A follow-up letter dated June 4, 1955 was addressed to Atty. Moya after discovering that the requirements mentioned in the letters dated February 11, 1955 and March 3, 1955 have not been complied with inspite of the considerable length of time that had already elapsed (Exhibit F). In the last paragraph of the said letter, Exhibit F, the defendant corporation was warned that unless the aforementioned requirements are complied with within five (5) days from receipt, the 'case will be considered abandoned and appropriate action will be taken in accordance with law'. Again on November 14, 1955, after discovering that the letters dated February 11, 1955, March 3, 1955 and June 4, 1955 have remained unheeded by the defendant corporation, the latter was given another chance of complying with the requirements mentioned within five days from receipt of said letter otherwise, the Bureau of Internal Revenue 'will be constrained to enforce the immediate collection of the deficiency percentage tax and forest charges due' (Exhibit G).

"On April 27, 1956, the Bureau of Internal Revenue issued 'final tax notices' to the defendant corporation. Although the letters containing the 'final tax notices' were not presented in evidence, the defendants admit having received the same, as shown by the contents of defendant corporation's letters dated May 10, 1956, Exhibit H, and August 7, 1956, Exhibit J. In said Exhibit H defendant corporation again protested the assessment of P45,541.66 and reiterated its request for specification of the items disputing the assessment in question. It further requests for a period of 30 days from the receipt of the specifications within which to consider its tax liability, further reserving its right to contest the legality or validity of the assessment or any particular items thereof within the said period of 30 days. Defendant corporation also protested the sending of final notices and requested that they be countermanded or withheld. Finding no merit in the protests of the defendant corporation, a warrant of distraint and levy was issued against it by the Bureau of Internal Revenue on July 3, 1956 (Exhibit O).

"On August 3, 1956, defendant corporation again wrote the Collector of Internal Revenue acknowledging the receipt of the warrant of distraint and levy served upon it and reiterating its request for a specification of the different items of the assessment, subject to the right to contest the legality and validity of the same within 30 days after receipt of said specifications (Exh. J). The record does not show what action was taken on the request contained in said letter on August 3, 1956. The next communication appearing in the record is that of the Commissioner of Internal Revenue dated July 30, 1959, addressed to the defendant corporation demanding on the letter the payment of the assessment of P45,541.66 which has remained unpaid, and informing the said corporation that if they do not settle said tax obligation within five days from receipt thereof, the Bureau of Internal Revenue will be constrained to file an action in Court for the collection thereof without further notice (Exhibit I). Defendant corporation replied to Exhibit I in a letter dated August 17, 1959 stating that it needed more time to go over the records and vouchers, and requesting for an extension of 10 days (Exhibit E). In another letter of same date, the defendant corporation reiterated its exception to the validity and legality of the assessment against it in the sum of P45,541.66 and its request for a detailed statement of the transactions involved (Exhibit L)." [Record on Appeal pp. 188-189, 190-195.]

According to the Record on Appeal, and as additionally stated also by the trial court, the original complaint filed on September 5, 1958 prayed for the payment of only P13,695.96, and it was only in an amended complaint filed on August 26, 1959 and admitted on September 23, 1959 that, for the first time, the amount of P59,133.78 was judicially demanded to be paid.

Upon these facts, appellants now complain that"

I

"THE LOWER COURT ERRED IN DECLARING THAT THE NOTICES OF THE COMMISSIONER OF INTERNAL REVENUE DATED APRIL 27, 1956 WERE THE 'ASSESSMENTS' THAT BECAME FINAL AND EXECUTORY.

II

"THE LOWER COURT ERRED IN DECLARING THAT THE GOVERNMENT'S RIGHT TO ASSESS AND COLLECT THE TAXES FOR THE YEARS 1947 TO SEPTEMBER 23, 1949 HAS NOT PRESCRIBED.

III

THE LOWER COURT LIKEWISE ERRED IN DECLARING THAT THE GOVERNMENT'S RIGHT TO COLLECT THE SUM OF P45,541.66 HAS NOT PRESCRIBED.

IV

"THE LOWER COURT FURTHER ERRED IN NOT DECLARING THAT SUIT AGAINST F. H. BURGESS IN HIS CAPACITY AS LIQUIDATOR OF MARSMAN DEVELOPMENT COMPANY HAS PRESCRIBED AND IN ORDERING HIM TO PAY THE SUMS CONTAINED IN ITS DECISION."

The Court does not agree.

Anent the first assignment of error, it may be stated that regardless of what might have been alleged in appellee's pleadings and memoranda, the facts proven by evidence, which are not alleged to have been objected to as varying supposed judicial admissions, unmistakably show that when Atty. Pedro L. Moya acknowledged receipt on December 28, 1954, on behalf of appellant corporation, of the Bureau of Internal Revenue's assessments of September 13, 1954 and November 8, 1954, requesting at the same time for a reinvestigation before the Conference Staff, he was informed that his request for investigation would not be given due course unless his client priorly complied within ten (10) days from February 11, 1955, the date of the letter of the Bureau, with the provisions of Department Order No. 213, dated November 2, 1954, which required inter alia, that requests for reinvestigation or re-examination of tax assessments should be made in writing and under oath of the taxpayer concerned, specifying the ground or grounds relied upon for the requested revision and accompanied by the documents relied upon, in support of the request, as well as by the payment of one-half of the total assessments, plus a bond to guarantee payment of the balance, but appellants failed to comply with said conditions: that in reply to Atty. Moya's request for exemption from the Department order, on March 3, 1955 (not May), the attorney was advised that his request was denied and that if the corporation failed to comply therewith within five (5) days from receipt of the letter, "the assessment (would) be considered final"; that on June 4, 1955, said Atty. Moya was reminded in writing that the previous demands had not been properly attended to, with the warning that should appellants further fail to comply with the requirements in the letter of February 11, 1955, within five (5) days from receipt thereof, the "case (would) be considered abandoned and appropriate action (would) be taken in accordance with law"; that even as late as November 14, 1955, the corporation was again advised to comply with the earlier communications of February 11, 1955, March 3, 1955 and June 4, 1955, within five days, otherwise, the Bureau of Internal Revenue would "be constrained to enforce immediate collection of the deficiency percentage tax and forest charges due"; that as nothing was done by it to comply with this last letter, the Bureau of Internal Revenue issued, on April 27, 1956, "final tax notices" to it, and all that the latter did after receipt thereof was to reiterate, by its letters of May 19, 1956 and August 7, 1956, its request for specification of the items involved in the assessment and for another period of 30 days within which to consider its tax liabilities, reserving once more its right to contest the legality or validity of the assessment and to protest the issuance of the "final tax notices"; that evidently tired of awaiting compliance by the said appellant, the Bureau of Internal Revenue issued on July 3, 1956 a warrant of distraint and levy against it, which it acknowledged on August 3, 1956, only to reiterate again its position previously stated of asking for specification and reserving its right to contest the validity of the assessment; that, finally, on July 30, 1959, after three years, the Commissioner of Internal Revenue made extrajudicial demand for payment of the amounts in question within five (5) days, and since no payment came, and instead, defendants asked for more time to go over the records and, under separate cover, questioned for the nth time, the validity of the assessment, the present action was filed.

Under these circumstances, it is plain that His Honor committed no error in holding that the period to question the tax assessments herein involved had already expired when the Commissioner of Internal Revenue initiated this suit against defendants. Defendant

corporation acknowledged receipt of the said assessments way back on December 28, 1954, and, in fact, it requested for a reinvestigation before the Conference Staff, but when the Bureau demanded compliance with the prerequisites aforementioned of such reinvestigation, the corporation failed to comply. The corporation did ask for exemption, but when this request was denied, again there was no compliance. In view of such non-compliance, in its letter of March 3, 1955, the Bureau unequivocally warned the corporation that should it fail further to comply, within five days from receipt thereof, the "assessments (would) be considered final". still no compliance came. Subsequent follow-up letters brought no better results.

As it appears, therefore, appellant corporation, by its own omission, made it impossible for the Bureau of Internal Revenue to act on its motion for reconsideration. Not that it would have otherwise mattered, for it has been held that the mere filing of such a motion does not suspend the running of the period for the collection of the tax, [1] which implies that any assessment made by the Bureau is supposed to be final and executory, insofar as the taxpayer is concerned, unless revised by the Bureau in accordance with law and regulations, but it is to be emphasized that a taxpayer cannot delay the collection of taxes by the simple expedient of barely asking for clarification or reconsideration, very often unnecessary and unwarranted, without doing anything to comply with the statutory and reglementary requirements for the reconsideration of the assessment made against him. In any event, since appellant corporation did nothing from December, 1954 when it acknowledged receipt of the assessment now impugned to appeal the same, if such an appeal was possible, to the Court of Tax Appeals, even after it was warned by the Bureau of Internal Revenue that its failure to comply with the requirements for reconsideration within five (5) days would result in its being "considered" final, We find no merit in appellants' posture that the assessments here in question has not yet become final and executory. Consequently, overruling of appellants' first assignment of error is clearly in order.

In their second assignment of error, appellants raise the issue of prescription. They point out that the Collector of Internal Revenue had only five years within which to assess the percentage and forest charges herein involved. Since it does not appear, however, that appellant corporation had filed any return in relation to the taxes herein involved, and it was incumbent upon appellants to show that such a return had been submitted. [2]We find the following holding of His Honor to be fully in accordance with law:

> "Defendants' contention that the right to assess the percentage and forest charges for the period from 1947 to September 23, 1949 had already prescribed is based on the provision of Section 231 of the Revenue Code which requires the Collector of Internal Revenue to assess the tax within the period of five years. The Court agrees with the plaintiff that said Section 231 is not applicable in this case inasmuch as defendant corporation did not file returns for the taxes in question. The pertinent provision applicable herein is Section 332 (a) which provides that 'in case of a false or fraudulent return or of a failure to file a return, the tax may be assessed .. at anytime within ten years after the discovery of the falsity, fraud or omission.' The assessments made on October 15, 1953, September 13, 1954, and November 3, 1954 were all within the aforecited 10-year period for the assessment of the tax."

---

[1] Republic v. Felix Acebedo, L-20477, March 29, 1968, 22 SCRA 1356.
[2] Taligaman Lumber Co. Inc. v. CIR, G.R. No. L-15716, March 31, 1962, 4 SCRA 842.

Even if the Court were to consider, as appellants suggest, the fact brought out in their brief but not found by the trial court that what are being sought to be collected are deficiency taxes, thereby implying a return must have been filed, nothing can be gained by appellants, for in order that the filing of a return may serve as the starting point of the period for the making of an assessment, the return must be as substantially complete as to include the needed details on which the full assessment may be made, and appellants have not shown that such was the nature of the return they would infer had been filed by the corporation. [3]

Appellants' third assignment of error does not require any extended discussion. The argument thereunder that the judicial action for the recovery of the bigger amount of P45,541.66 was not filed within five (5) years from September 13, 1954, the date of the earliest assessment, has neither factual nor legal basis. As aptly explained by His Honor, such argument proceeds from the erroneous premises that because the amended complaint in which the said amount was first alleged and demanded was formally admitted by the court only on September 23, 1959 and that the filing of said amended complaint on August 26, 1959 is immaterial. While in the procedural sense, especially in relation to the possible necessity of and time for the filing of responsive and other corresponding pleadings, an amended complaint is deemed filed only as of the date of its admission, nothing in Breslin v. Luzon, 84 Phil. 625, relied upon by appellant, was intended to modify the self-evident proposition that for practical reasons and to avoid the complications that may rise from undue delays in the admission thereof, such an amended complaint must be considered as filed, for the purposes of such a substantive matter as prescription, on the date it is actually filed with the court, regardless of when it is ultimately formally admitted by the court. After all, the only purpose of requiring leave of and formal admission by the court of an amended pleading after issues have already been joined as to the original ones is to prevent the injection of other issues which ought either to be considered as barred already or made the subject of another proceeding, if they are not anyway indispensable for the resolution of the original ones and no unnecessary multiplicity of suits would result; so, when the court ultimately admits the amendment, the legal effect, for substantive purposes, of such admission retroacts as a rule to the date of its actual filing.

Appellants' last assignment of error was disposed of by the trial court this wise:

> "The defendants further contend that the present action is already barred under section 77 of the Corporation Law, Act No. 1459, as amended, which allows the corporate existence of a corporation to continue only for three years after its dissolution, for the purpose of presenting or defending suits by or against it, and to settle and close its affairs. They point out that inasmuch as the Marsman Development Co. was extra-judicially dissolved on April 23, 1954, a fact admitted in the amended complaint, the filing of both the original complaint on September 8, 1958 and the amended complaint on August 26, 1956 was beyond the aforesaid three-year period.
>
> "The record shows that the filing of the amended complaint was intended, among others, to include as a party defendant, in an alternative capacity, Mr. F. H. Burgess, who is the liquidator of the Marsman Development Co. Although it is an admitted fact that the defendant corporation was extrajudicially

[3] Commissioner v. Gonzales, G.R. No. L-19495, November 24, 1966, 18 SCRA 757; Bisaya Land Transportation Co., Inc. v. Collector, G. R. No. L-12100 & 11812, May 29, 1959, 105 Phil. 1338.

> dissolved on April 23, 1954, there is no claim that the affairs of said corporation had already been finally liquidated or settled. Evidently, Mr. F. H. Burgess is still continuing in his aforesaid capacity as liquidator of the Marsman Development Co. While section 77 of the Corporation Law provides for a three-year period for the continuation of the corporate existence of the corporation for purposes of liquidation, there is nothing in said provision which bars an action for the recovery of the debts of the corporation against the liquidator thereof, after the lapse of the said three year period."

We agree with His Honor. The stress given by appellants to the extinction of the corporate and juridical personality as such of appellant corporation by virtue of its extrajudicial dissolution which admittedly took place on April 23, 1954 is misdirected. While Section 77 of the Corporation Law does provide that:

> "Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established."

the next provision, Section 78, adds for clarification:

> "At any time during said three years said corporation is authorized and empowered to convey all of its property to trustees for the benefit of members, stockholders, creditors. and others interested. From and after any such conveyance by the corporation of its property in trust for the benefit of its members, stockholders, creditors, and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustee, and the beneficial interest in the members, stockholders, creditors, or other persons in interest.

It is to be recalled that the assessments against appellant corporation for deficiency taxes due for its operations since 1947 were made by the Bureau of Internal Revenue on October 16, 1953, September 13, 1954 and November 8, 1954, such that the first was before its dissolution and the last two not later than six months after such dissolution. Thus, in whatever way the matter may be viewed, the Government became the creditor of the corporation before the completion of its dissolution by the liquidation of its assets. Appellant F. H. Burgess, whom it chose as liquidator, became in law the trustee of all its assets for the benefit of all persons enumerated in Section 78, including its creditors, among whom is the Government, for the taxes herein involved. To assume otherwise would render the extra-judicial dissolution illegal and void, since, according to Section 62 of the Corporation Law, such kind of dissolution is permitted only when it "does not affect the rights of any creditor having a claim against the corporation." It is immaterial that the present action was filed after the expiration of three years after April 23, 1954, for at the very least, and assuming that judicial enforcement of taxes may not be initiated after said three years despite the fact that the actual liquidation has not been terminated and the one in charge thereof is still holding the assets of the corporation, obviously for the benefit of all the creditors thereof, the assessment aforementioned, made within the three years, definitely established the Government as a creditor of the corporation for whom the liquidator is supposed to hold assets of the corporation. And since the suit at bar is only for the collection of taxes finally assessed against the corporation within the three years invoked by appellants, their fourth

assignment of error cannot be sustained. As to the a legation that appellant Burgess has not in fact received any property or asset of the corporation, that is a matter that can well be taken care of in the execution of the judgment which may be rendered herein, albeit it seems some kind of fraud would be perceptible, if the corporation had been dissolved without leaving any assets whatsoever with the liquidator.

ACCORDINGLY, the judgment of the trial court is affirmed with costs against the appellants.

Reyes, J.B.L., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Makasiar and Antonio, JJ., concur.

Concepcion, C.J., is on official leave.