

FIRST DIVISION

[G.R. No. 155541. January 27, 2004]

ESTATE OF THE LATE JULIANA DIEZ VDA. DE GABRIEL, *petitioner*, vs. COMMISSIONER OF INTERNAL REVENUE, *respondent*.

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on *certiorari* assails the decision of the Court of Appeals in CA-G.R. CV No. 09107, dated September 30, 2002,^[1] which reversed the November 19, 1995 Order of Regional Trial Court of Manila, Branch XXXVIII, in Sp. Proc. No. R-82-6994, entitled “Testate Estate of Juliana Diez Vda. De Gabriel”. The petition was filed by the Estate of the Late Juliana Diez Vda. De Gabriel, represented by Prudential Bank as its duly appointed and qualified Administrator.

As correctly summarized by the Court of Appeals, the relevant facts are as follows:

During the lifetime of the decedent, Juliana Vda. De Gabriel, her business affairs were managed by the Philippine Trust Company (Philtrust). The decedent died on April 3, 1979. Two days after her death, Philtrust, through its Trust Officer, Atty. Antonio M. Nuyles, filed her Income Tax Return for 1978. The return did not indicate that the decedent had died.

On May 22, 1979, Philtrust also filed a verified petition for appointment as Special Administrator with the Regional Trial Court of Manila, Branch XXXVIII, docketed as Sp. Proc. No. R-82-6994. The court *a quo* appointed one of the heirs as Special Administrator. Philtrust’s motion for reconsideration was denied by the probate court.

On January 26, 1981, the court *a quo* issued an Order relieving Mr. Diez of his appointment, and appointed Antonio Lantin to take over as Special Administrator. Subsequently, on July 30, 1981, Mr. Lantin was also relieved of his appointment, and Atty. Vicente Onosa was appointed in his stead.

In the meantime, the Bureau of Internal Revenue conducted an administrative investigation on the decedent’s tax liability and found a deficiency income tax for the year 1977 in the amount of P318,233.93. Thus, on November 18, 1982, the BIR sent by registered mail a demand letter and Assessment Notice No. NARD-78-82-00501 addressed to the decedent “c/o Philippine Trust Company, Sta. Cruz, Manila” which was the address stated in her 1978 Income Tax Return. No response was made by Philtrust. The BIR was not informed that the decedent had actually passed away.

In an Order dated September 5, 1983, the court *a quo* appointed Antonio Ambrosio as the Commissioner and Auditor Tax Consultant of the Estate of the decedent.

On June 18, 1984, respondent Commissioner of Internal Revenue issued warrants of distraint and levy to enforce collection of the decedent’s deficiency income tax liability, which were served upon her heir, Francisco Gabriel. On November 22, 1984, respondent filed a “Motion for Allowance of Claim and for an Order of Payment of Taxes” with the court *a quo*. On January 7, 1985, Mr. Ambrosio filed a letter of protest with the Litigation Division of the BIR, which was not acted upon

because the assessment notice had allegedly become final, executory and incontestable.

On May 16, 1985, petitioner, the Estate of the decedent, through Mr. Ambrosio, filed a formal opposition to the BIR's Motion for Allowance of Claim based on the ground that there was no proper service of the assessment and that the filing of the aforesaid claim had already prescribed. The BIR filed its Reply, contending that service to Philippine Trust Company was sufficient service, and that the filing of the claim against the Estate on November 22, 1984 was within the five-year prescriptive period for assessment and collection of taxes under Section 318 of the 1977 National Internal Revenue Code (NIRC).

On November 19, 1985, the court *a quo* issued an Order denying respondent's claim against the Estate,^[2] after finding that there was no notice of its tax assessment on the proper party.^[3]

On July 2, 1986, respondent filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 09107,^[4] assailing the Order of the probate court dated November 19, 1985. It was claimed that Philtrust, in filing the decedent's 1978 income tax return on April 5, 1979, two days after the taxpayer's death, had "constituted itself as the administrator of the estate of the deceased at least insofar as said return is concerned."^[5] Citing *Basilan Estate Inc. v. Commissioner of Internal Revenue*,^[6] respondent argued that the legal requirement of notice with respect to tax assessments^[7] requires merely that the Commissioner of Internal Revenue release, mail and send the notice of the assessment to the taxpayer at the address stated in the return filed, but not that the taxpayer actually receive said assessment within the five-year prescriptive period.^[8] Claiming that Philtrust had been remiss in not notifying respondent of the decedent's death, respondent therefore argued that the deficiency tax assessment had already become final, executory and incontestable, and that petitioner Estate was liable therefor.

On September 30, 2002, the Court of Appeals rendered a decision in favor of the respondent. Although acknowledging that the bond of agency between Philtrust and the decedent was severed upon the latter's death, it was ruled that the administrator of the Estate had failed in its legal duty to inform respondent of the decedent's death, pursuant to Section 104 of the National Internal Revenue Code of 1977. Consequently, the BIR's service to Philtrust of the demand letter and Notice of Assessment was binding upon the Estate, and, upon the lapse of the statutory thirty-day period to question this claim, the assessment became final, executory and incontestable. The dispositive portion of said decision reads:

WHEREFORE, finding merit in the appeal, the appealed decision is **REVERSED AND SET ASIDE**.

Another one is entered ordering the Administrator of the Estate to pay the Commissioner of Internal Revenue the following:

- a. The amount of P318,223.93, representing the deficiency income tax liability for the year 1978, plus 20% interest per annum from November 2, 1982 up to November 2, 1985 and in addition thereto 10% surcharge on the basic tax of P169,155.34 pursuant to Section 51(e)(2) and (3) of the Tax Code as amended by PD 69 and 1705; and
- b. The costs of the suit.

SO ORDERED.^[9]

Hence, the instant petition, raising the following issues:

1. Whether or not the Court of Appeals erred in holding that the service of deficiency tax assessment against Juliana Diez Vda. de Gabriel through the Philippine Trust Company was a

valid service in order to bind the Estate;

2. Whether or not the Court of Appeals erred in holding that the deficiency tax assessment and final demand was already final, executory and incontestable.

Petitioner Estate denies that Philtrust had any legal personality to represent the decedent after her death. As such, petitioner argues that there was no proper notice of the assessment which, therefore, never became final, executory and incontestable.^[10] Petitioner further contends that respondent's failure to file its claim against the Estate within the proper period prescribed by the Rules of Court is a fatal error, which forever bars its claim against the Estate.^[11]

Respondent, on the other hand, claims that because Philtrust filed the decedent's income tax return subsequent to her death, Philtrust was the *de facto* administrator of her Estate.^[12] Consequently, when the Assessment Notice and demand letter dated November 18, 1982 were sent to Philtrust, there was proper service on the Estate.^[13] Respondent further asserts that Philtrust had the legal obligation to inform petitioner of the decedent's death, which requirement is found in Section 104 of the NIRC of 1977.^[14] Since Philtrust did not, respondent contends that petitioner Estate should not be allowed to profit from this omission.^[15] Respondent further argues that Philtrust's failure to protest the aforementioned assessment within the 30-day period provided in Section 319-A of the NIRC of 1977 meant that the assessment had already become final, executory and incontestable.^[16]

The resolution of this case hinges on the legal relationship between Philtrust and the decedent, and, by extension, between Philtrust and petitioner Estate. Subsumed under this primary issue is the sub-issue of whether or not service on Philtrust of the demand letter and Assessment Notice No. NARD-78-82-00501 was valid service on petitioner, and the issue of whether Philtrust's inaction thereon could bind petitioner. If both sub-issues are answered in the affirmative, respondent's contention as to the finality of Assessment Notice No. NARD-78-82-00501 must be answered in the affirmative. This is because Section 319-A of the NIRC of 1977 provides a clear 30-day period within which to protest an assessment. Failure to file such a protest within said period means that the assessment *ipso jure* becomes final and unappealable, as a consequence of which legal proceedings may then be initiated for collection thereof.

We find in favor of the petitioner.

The first point to be considered is that the relationship between the decedent and Philtrust was one of agency, which is a personal relationship between agent and principal. Under Article 1919 (3) of the Civil Code, death of the agent or principal automatically terminates the agency. In this instance, the death of the decedent on April 3, 1979 automatically severed the legal relationship between her and Philtrust, and such could not be revived by the mere fact that Philtrust continued to act as her agent when, on April 5, 1979, it filed her Income Tax Return for the year 1978.

Since the relationship between Philtrust and the decedent was automatically severed at the moment of the Taxpayer's death, none of Philtrust's acts or omissions could bind the estate of the Taxpayer. Service on Philtrust of the demand letter and Assessment Notice No. NARD-78-82-00501 was improperly done.

It must be noted that Philtrust was never appointed as the administrator of the Estate of the decedent, and, indeed, that the court *a quo* twice rejected Philtrust's motion to be thus appointed. As of November 18, 1982, the date of the demand letter and Assessment Notice, the legal relationship between the decedent and Philtrust had already been non-existent for three years.

Respondent claims that Section 104 of the National Internal Revenue Code of 1977 imposed

the legal obligation on Philtrust to inform respondent of the decedent's death. The said Section reads:

SEC. 104. *Notice of death to be filed.* – In all cases of transfers subject to tax or where, though exempt from tax, the gross value of the estate exceeds three thousand pesos, the executor, administrator, or any of the legal heirs, as the case may be, within two months after the decedent's death, or within a like period after qualifying as such executor or administrator, shall give written notice thereof to the Commissioner of Internal Revenue.

The foregoing provision falls in Title III, Chapter I of the National Internal Revenue Code of 1977, or the chapter on Estate Tax, and pertains to "all cases of transfers subject to tax" or where the "gross value of the estate exceeds three thousand pesos". It has absolutely no applicability to a case for deficiency income tax, such as the case at bar. It further lacks applicability since Philtrust was never the executor, administrator of the decedent's estate, and, as such, never had the legal obligation, based on the above provision, to inform respondent of her death.

Although the administrator of the estate may have been remiss in his legal obligation to inform respondent of the decedent's death, the consequences thereof, as provided in Section 119 of the National Internal Revenue Code of 1977, merely refer to the imposition of certain penal sanctions on the administrator. These do not include the indefinite tolling of the prescriptive period for making deficiency tax assessments, or the waiver of the notice requirement for such assessments.

Thus, as of November 18, 1982, the date of the demand letter and Assessment Notice No. NARD-78-82-00501, there was absolutely no legal obligation on the part of Philtrust to either (1) respond to the demand letter and assessment notice, (2) inform respondent of the decedent's death, or (3) inform petitioner that it had received said demand letter and assessment notice. This lack of legal obligation was implicitly recognized by the Court of Appeals, which, in fact, rendered its assailed decision on grounds of "equity".^[17]

Since there was never any valid notice of this assessment, it could not have become final, executory and incontestable, and, for failure to make the assessment within the five-year period provided in Section 318 of the National Internal Revenue Code of 1977, respondent's claim against the petitioner Estate is barred. Said Section 18 reads:

SEC. 318. *Period of limitation upon assessment and collection.* – Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purpose of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: *Provided*, That this limitation shall not apply to cases already investigated prior to the approval of this Code.

Respondent argues that an assessment is deemed made for the purpose of giving effect to such assessment when the notice is released, mailed or sent to the taxpayer to effectuate the assessment, and there is no legal requirement that the taxpayer actually receive said notice within the five-year period.^[18] It must be noted, however, that the foregoing rule requires that the notice be sent to the taxpayer, and not merely to a disinterested party. Although there is no specific requirement that the taxpayer should receive the notice within the said period, due process requires at the very least that such notice actually be received. In *Commissioner of Internal Revenue v. Pascor Realty and Development Corporation*,^[19] we had occasion to say:

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. It also signals the time when penalties and interests begin to accrue against the taxpayer.

To enable the taxpayer to determine his remedies thereon, due process requires that it must be served on and received by the taxpayer.

In *Republic v. De le Rama*,^[20] we clarified that, when an estate is under administration, notice must be sent to the administrator of the estate, since it is the said administrator, as representative of the estate, who has the legal obligation to pay and discharge all debts of the estate and to perform all orders of the court. In that case, legal notice of the assessment was sent to two heirs, neither one of whom had any authority to represent the estate. We said:

The notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. In the case of *Bautista and Corrales Tan v. Collector of Internal Revenue ...* this Court had occasion to state that “the assessment is deemed made when the notice to this effect is released, mailed or sent to the taxpayer for the purpose of giving effect to said assessment.” It appearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory. (Citations omitted, emphasis supplied.)

In this case, the assessment was served not even on an heir of the Estate, but on a completely disinterested third party. This improper service was clearly not binding on the petitioner.

By arguing that (1) the demand letter and assessment notice were served on Philtrust, (2) Philtrust was remiss in its obligation to respond to the demand letter and assessment notice, (3) Philtrust was remiss in its obligation to inform respondent of the decedent’s death, and (4) the assessment notice is therefore binding on the Estate, respondent is arguing in circles. The most crucial point to be remembered is that Philtrust had absolutely no legal relationship to the deceased, or to her Estate. There was therefore no assessment served on the Estate as to the alleged underpayment of tax. Absent this assessment, no proceedings could be initiated in court for the collection of said tax,^[21] and respondent’s claim for collection, filed with the probate court only on November 22, 1984, was barred for having been made beyond the five-year prescriptive period set by law.

WHEREFORE, the petition is GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 09107, dated September 30, 2002, is REVERSED and SET ASIDE. The Order of the Regional Trial Court of Manila, Branch XXXVIII, in Sp. Proc. No. R-82-6994, dated November 19, 1985, which denied the claim of the Bureau of Internal Revenue against the Estate of Juliana Diez Vda. De Gabriel for the deficiency income tax of the decedent for the year 1977 in the amount of P318,223.93, is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, and Carpio, JJ., concur.
Azcuna, J., on official leave.

^[1] *Rollo*, pp. 111-117; penned by Associate Justice Portia Aliño-Hormachuelos; concurred in by Associate Justices Elvi John S. Asuncion and Juan Q. Enriquez, Jr.

^[2] *Id.*, pp. 27-29.

^[3] *Id.*, p. 29.

^[4] *Id.*, pp. 49-65.

^[5] *Id.*, p. 57.

[6] G.R. No. L-22492, 5 September 1967, 21 SCRA 17.

[7] National Internal Revenue Code of 1977, sec. 104.

[8] *Rollo*, p. 57.

[9] *Id.*, pp. 116-117.

[10] *Id.*, p. 19.

[11] *Id.*, p. 21.

[12] *Id.*, p. 146.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*, pp. 149-150.

[17] *Id.*, p. 115.

[18] *Collector of Internal Revenue v. Bautista*, G.R. Nos. L-12250 & L-12259, 27 May 1959, cited in *Basilan Estate Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals*, 128 Phil. 19 (1967).

[19] 368 Phil. 714 (1999).

[20] 124 Phil. 1493 (1966).

[21] National Internal Revenue Code of 1977, sec. 318.