

## 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.**

***DECISION***

**YNARES-SATIAGO, 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,<sup>[1]</sup> 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,<sup>[2]</sup> after finding that there was no notice of its tax assessment on the proper party.<sup>[3]</sup>

On July 2, 1986, respondent filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 09107,<sup>[4]</sup> 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."<sup>[5]</sup> Citing *Basilan Estate Inc. v. Commissioner of Internal Revenue*,<sup>[6]</sup> respondent argued that the legal requirement of notice with respect to tax assessments<sup>[7]</sup> 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.<sup>[8]</sup> 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.<sup>[9]</sup>

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.<sup>[10]</sup> 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.<sup>[11]</sup>

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.<sup>[12]</sup> Consequently, when the Assessment Notice and demand letter dated November 18, 1982 were sent to Philtrust, there was proper service on the Estate.<sup>[13]</sup> 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.<sup>[14]</sup> Since Philtrust did not, respondent contends that petitioner Estate should not be allowed to profit from this omission.<sup>[15]</sup> 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.<sup>[16]</sup>

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