

## FIRST DIVISION

[ G.R. No. 127777, October 01, 1999 ]

**PETRONILA C. TUPAZ, PETITIONER, VS. HONORABLE BENEDICTO B. ULEP PRESIDING JUDGE OF RTC QUEZON CITY, BRANCH 105, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

The case before us is a special civil action for *certiorari* with application for temporary restraining order seeking to enjoin respondent Judge Benedicto B. Ulep of the Regional Trial Court, Quezon City, Branch 105, from trying Criminal Case No. Q-91-17321, and to nullify respondent judge's order reviving the information therein against petitioner, for violation of the Tax Code, as the offense charged has prescribed or would expose petitioner to double jeopardy.

The facts are as follows:

On June 8, 1990, State Prosecutor (SP) Esteban A. Molon, Jr. filed with the Metropolitan Trial Court (MeTC), Quezon City, Branch 33, an information against accused Petronila C. Tupaz and her late husband Jose J. Tupaz, Jr., as corporate officers of El Oro Engravers Corporation, for nonpayment of deficiency corporate income tax for the year 1979, amounting to P2,369,085.46, in violation of Section 51 (b) in relation to Section 73 of the Tax Code of 1977.<sup>[1]</sup> On September 11, 1990, the MeTC dismissed the information for lack of jurisdiction. On November 16, 1990, the trial court denied the prosecution's motion for reconsideration.

On January 10, 1991, SP Molon filed with the Regional Trial Court, Quezon City, two (2) informations, docketed as Criminal Case Nos. Q-91-17321<sup>[2]</sup> and Q-91-17322,<sup>[3]</sup> against accused and her late husband, for the same alleged nonpayment of deficiency corporate income tax for the year 1979. Criminal Case No. Q-91-17321 was raffled to Branch 105,<sup>[4]</sup> presided over by respondent Judge Benedicto B. Ulep; Q-91-17322 was raffled to Branch 86, then presided over by Judge Antonio P. Solano. The identical informations read as follows:

"That in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court and upon verification and audit conducted by the Bureau of Internal Revenue on the 1979 corporate annual income tax return and financial statements of El Oro Engravers Corp., with office address at 809 Epifanio delos Santos Avenue, Quezon City, Metro Manila, it was ascertained that said corporation was found liable to pay the amount of P2,369,085.46, as deficiency corporate income tax for the year 1979 and that, despite demand of the payment of the aforesaid deficiency tax by the Bureau of Internal Revenue and received by said corporation, which

demand has already become final, said El Oro Engravers Corp., through above-named accused, the responsible corporate-officers of said corporation, failed and refused, despite repeated demands, and still fail and refuse to pay said tax liability.

“CONTRARY TO LAW.”<sup>[5]</sup>

On September 25, 1991, both accused posted bail bond in the sum of P1,000.00 each, for their provisional liberty.

On November 6, 1991, accused filed with the Regional Trial Court, Quezon City, Branch 86, a motion to dismiss/quash<sup>[6]</sup> information (Q-91-17322) for the reason that it was exactly the same as the information against the accused pending before RTC, Quezon City, Branch 105 (Q-91-17321). However, on November 11, 1991, Judge Solano denied the motion.<sup>[7]</sup>

In the meantime, on July 25, 1993, Jose J. Tupaz, Jr. died in Quezon City.

Subsequently, accused Petronila C. Tupaz filed with the Regional Trial Court, Quezon City, Branch 105, a petition for reinvestigation, which Judge Ulep granted in an order dated August 30, 1994.<sup>[8]</sup>

On September 5, 1994, Senior State Prosecutor Bernelito R. Fernandez stated that no new issues were raised in the request for reinvestigation, and no cogent reasons existed to alter, modify or reverse the findings of the investigating prosecutor. He considered the reinvestigation as terminated, and recommended the prompt arraignment and trial of the accused.<sup>[9]</sup>

On September 20, 1994, the trial court (Branch No. 105) arraigned accused Petronila C. Tupaz in Criminal Case No. Q-91-17321, and she pleaded not guilty to the information therein.

On October 17, 1994, the prosecution filed with the Regional Trial Court, Quezon City, Branch 105, a motion for leave to file amended information in Criminal Case No. Q91-17321 to allege expressly the date of the commission of the offense, to wit: on or about August 1984 or subsequently thereafter. Despite opposition of the accused, on March 2, 1995, the trial court granted the motion and admitted the amended information.<sup>[10]</sup> Petitioner was not re-arraigned on the amended information. However, the amendment was only on a matter of form.<sup>[11]</sup> Hence, there was no need to re-arraign the accused.<sup>[12]</sup>

On December 5, 1995, accused filed with the Regional Trial Court, Quezon City, Branch 105, a motion for leave to file and admit motion for reinvestigation. The trial court granted the motion in its order dated December 13, 1995.

Prior to this, on October 18, 1995, Judge Ulep issued an order directing the prosecution to withdraw the information in Criminal Case No. Q-91-17322, pending before Regional Trial Court, Quezon City, Branch 86, after discovering that said information was identical to the one filed with Regional Trial Court, Quezon City, Branch 105. On April 16, 1996, State Prosecutor Alfredo P. Agcaoili filed with the trial court a motion to withdraw information in Criminal Case No. Q-91-17321. Prosecutor Agcaoili thought that accused was charged in Criminal Case No. Q-91-

17321, for nonpayment of deficiency contractor's tax, but found that accused was exempted from paying said tax.

On May 15, 1996, Prosecutor Agcaoili filed with the Regional Trial Court, Quezon City, Branch 86, a motion for consolidation of Criminal Case No. Q-91-17322 with Criminal Case No. Q-91-17321 pending before the Regional Trial Court, Quezon City, Branch 105. On the same date, the court<sup>[13]</sup> granted the motion for consolidation.

On May 20, 1996, Judge Ulep of Regional Trial Court, Quezon City, Branch 105, granted the motion for withdrawal of the information in Criminal Case No. Q-91-17321 and dismissed the case, as prayed for by the prosecution.

On May 28, 1996, Prosecutor Agcaoili filed with the Regional Trial Court, Quezon City, Branch 105, a motion to reinstate information in Criminal Case Q-91-17321, <sup>[14]</sup> stating that the motion to withdraw information was made through palpable mistake, and was the result of excusable neglect. He thought that Criminal Case No. Q-91-17321 was identical to Criminal Case No Q-90-12896, wherein accused was charged with nonpayment of deficiency contractor's tax, amounting to P346,879.29.

Over the objections of accused, on August 6, 1996, the Regional Trial Court, Quezon City, Branch 105, granted the motion and ordered the information in Criminal Case No. Q-91-17321 reinstated.<sup>[15]</sup> On September 24, 1996, accused filed with the trial court a motion for reconsideration. On December 4, 1996, the trial court denied the motion.

Hence, this petition.

On July 9, 1997, we required respondents to comment on the petition within ten (10) days from notice. On October 10, 1997, the Solicitor General filed his comment.<sup>[16]</sup>

On October 26, 1998, the Court resolved to give due course to the petition and required the parties to file their respective memoranda within twenty (20) days from notice. The parties have complied.

Petitioner submits that respondent judge committed a grave abuse of discretion in reinstating the information in Criminal Case No. Q-91-17321 because (a) the offense has prescribed; or (b) it exposes her to double jeopardy.

As regards the issue of prescription, petitioner contends that: (a) the period of assessment has prescribed, applying the three (3) year period provided under Batas Pambansa No. 700; (b) the offense has prescribed since the complaint for preliminary investigation was filed with the Department of Justice only on June 8, 1989, and the offense was committed in April 1980 when she filed the income tax return covering taxable year 1979.

Petitioner was charged with nonpayment of deficiency corporate income tax for the year 1979, which tax return was filed in April 1980. On July 16, 1984, the Bureau of Internal Revenue (BIR) issued a notice of assessment. Petitioner contends that the July 16, 1984 assessment was made out of time.

Petitioner avers that while Sections 318 and 319 of the NIRC of 1977 provide a five (5) year period of limitation for the assessment and collection of internal revenue taxes, Batas Pambansa Blg. 700, enacted on February 22, 1984, amended the two

sections and reduced the period to three (3) years. As provided under B.P. Blg. 700, the BIR has three (3) years to assess the tax liability, counted from the last day of filing the return, or from the date the return is filed, whichever comes later. Since the tax return was filed in April 1980, the assessment made on July 16, 1984 was beyond the three (3) year prescriptive period.

Petitioner submits that B.P. Blg. 700 must be given retroactive effect since it is favorable to the accused. Petitioner argues that Article 22 of the Revised Penal Code, regarding the allowance of retroactive application of penal laws when favorable to the accused shall apply in this case.

The Solicitor General, in his comment, maintains that the prescriptive period for assessment and collection of petitioner's deficiency corporate income tax was five (5) years. The Solicitor General asserts that the shortened period of three (3) years provided under B.P. Blg. 700 applies to assessments and collections of internal revenue taxes beginning taxable year 1984. Since the deficiency corporate income tax was for taxable year 1979, then petitioner was still covered by the five (5) year period. Thus, the July 16, 1984 tax assessment was made within the prescribed period.

At the outset, it must be stressed that "internal revenue taxes are self-assessing and no further assessment by the government is required to create the tax liability. An assessment, however, is not altogether inconsequential; it is relevant in the proper pursuit of judicial and extra judicial remedies to enforce taxpayer liabilities and certain matters that relate to it, such as the imposition of surcharges and interest, and in the application of statutes of limitations and in the establishment of tax liens."<sup>[17]</sup>

An assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The ultimate purpose of assessment is to ascertain the amount that each taxpayer is to pay.<sup>[18]</sup> An assessment is a notice to the effect that the amount therein stated is due as tax and a demand for payment thereof.<sup>[19]</sup> Assessments made beyond the prescribed period would not be binding on the taxpayer.<sup>[20]</sup>

We agree with the Solicitor General that the shortened period of three (3) years prescribed under B.P. Blg. 700 is not applicable to petitioner. B.P. Blg. 700, effective April 5, 1984, specifically states that the shortened period of three years shall apply to assessments and collections of internal revenue taxes beginning taxable year 1984. Assessments made on or after April 5, 1984 are governed by the five-year period if the taxes assessed cover taxable years prior to January 1, 1984.<sup>[21]</sup> The deficiency income tax under consideration is for taxable year 1979. Thus, the period of assessment is still five (5) years, under the old law. The income tax return was filed in April 1980. Hence, the July 16, 1984 tax assessment was issued within the prescribed period of five (5) years, from the last day of filing the return, or from the date the return is filed, whichever comes later.

Article 22 of the Revised Penal Code finds no application in this case for the simple reason that the provisions on the period of assessment can not be considered as penal in nature.

Petitioner also asserts that the offense has prescribed. Petitioner invokes Section 340 (now 281 of 1997 NIRC) of the Tax Code which provides that violations of any