

SECOND DIVISION

[G.R. No. 130430, December 13, 1999]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR),
PETITIONER, VS. SALUD V. HIZON, RESPONDENT.**

DECISION

MENDOZA, J.:

This is a petition for review of the decision^[1] of the Regional Trial Court, Branch 44, San Fernando, Pampanga, dismissing the suit filed by the Bureau of Internal Revenue for collection of tax.

The facts are as follows:

On July 18, 1986, the BIR issued to respondent Salud V. Hizon a deficiency income tax assessment of P1,113,359.68 covering the fiscal year 1981-1982. Respondent not having contested the assessment, petitioner, on January 12, 1989, served warrants of distraint and levy to collect the tax deficiency. However, for reasons not known, it did not proceed to dispose of the attached properties.

More than three years later, or on November 3, 1992, respondent wrote the BIR requesting a reconsideration of her tax deficiency assessment. The BIR, in a letter dated August 11, 1994, denied the request. On January 1, 1997, it filed a case with the Regional Trial Court, Branch 44, San Fernando, Pampanga to collect the tax deficiency. The complaint was signed by Norberto Salud, Chief of the Legal Division, BIR Region 4, and verified by Amancio Saga, the Bureau's Regional Director in Pampanga.

Respondent moved to dismiss the case on two grounds: (1) that the complaint was not filed upon authority of the BIR Commissioner as required by §221^[2] of the National Internal Revenue Code, and (2) that the action had already prescribed. Over petitioner's objection, the trial court, on August 28, 1997, granted the motion and dismissed the complaint. Hence, this petition. Petitioner raises the following issues:^[3]

I. WHETHER OR NOT THE INSTITUTION OF THE CIVIL CASE FOR COLLECTION OF TAXES WAS WITHOUT THE APPROVAL OF THE COMMISSIONER IN VIOLATION OF SECTION 221 OF THE NATIONAL INTERNAL REVENUE CODE.

II. WHETHER OR NOT THE ACTION FOR COLLECTION OF TAXES FILED AGAINST RESPONDENT HAD ALREADY BEEN BARRED BY THE STATUTE OF LIMITATIONS.

First. In sustaining respondent's contention that petitioner's complaint was filed without the authority of the BIR Commissioner, the trial court stated:^[4]

There is no question that the National Internal Revenue Code explicitly provides that in the matter of filing cases in Court, civil or criminal, for the collection of taxes, etc., the approval of the commissioner must first be secured. . . . [A]n action will not prosper in the absence of the commissioner's approval. Thus, in the instant case, the absence of the approval of the commissioner in the institution of the action is fatal to the cause of the plaintiff

The trial court arrived at this conclusion because the complaint filed by the BIR was not signed by then Commissioner Liwayway Chato.

Sec. 221 of the NIRC provides:

Form and mode of proceeding in actions arising under this Code. — Civil and criminal actions and proceedings instituted in behalf of the Government under the authority of this Code or other law enforced by the Bureau of Internal Revenue shall be brought in the name of the Government of the Philippines and shall be conducted by the provincial or city fiscal, or the Solicitor General, or by the legal officers of the Bureau of Internal Revenue deputized by the Secretary of Justice, but no civil and criminal actions for the recovery of taxes or the enforcement of any fine, penalty or forfeiture under this Code shall be begun without the approval of the Commissioner. (Emphasis supplied)

To implement this provision Revenue Administrative Order No. 5-83 of the BIR provides in pertinent portions:

The following civil and criminal cases are to be handled by Special Attorneys and Special Counsels assigned in the Legal Branches of Revenue Regions:

. . . .

II. Civil Cases

1. Complaints for collection on cases falling within the jurisdiction of the Region

In all the abovementioned cases, the Regional Director is authorized to sign all pleadings filed in connection therewith which, otherwise, requires the signature of the Commissioner.

. . . .

Revenue Administrative Order No. 10-95 specifically authorizes the Litigation and Prosecution Section of the Legal Division of regional district offices to institute the necessary civil and criminal actions for tax collection. As the complaint filed in this case was signed by the BIR's Chief of Legal Division for Region 4 and verified by the Regional Director, there was, therefore, compliance with the law.

However, the lower court refused to recognize RAO No. 10-95 and, by implication, RAO No. 5-83. It held:

[M]emorand[a], circulars and orders emanating from bureaus and agencies whether in the purely public or quasi-public corporations are mere guidelines for the internal functioning of the said offices. They are not laws which courts can take judicial notice of. As such, they have no binding effect upon the courts for such memorand[a] and circulars are not the official acts of the legislative, executive and judicial departments of the Philippines^[5]

This is erroneous. The rule is that as long as administrative issuances relate solely to carrying into effect the provisions of the law, they are valid and have the force of law.^[6] The governing statutory provision in this case is §4(d) of the NIRC which provides:

Specific provisions to be contained in regulations. - The regulations of the Bureau of Internal Revenue shall, among other things, contain provisions specifying, prescribing, or defining:

. . . .

(d) The conditions to be observed by revenue officers, provincial fiscals and other officials respecting the institution and conduct of legal actions and proceedings.

RAO Nos. 5-83 and 10-95 are in harmony with this statutory mandate.

As amended by R.A. No. 8424, the NIRC is now even more categorical. Sec. 7 of the present Code authorizes the BIR Commissioner to delegate the powers vested in him under the pertinent provisions of the Code to any subordinate official with the rank equivalent to a division chief or higher, except the following:

(a) The power to recommend the promulgation of rules and regulations by the Secretary of Finance;

(b) The power to issue rulings of first impression or to reverse, revoke or modify any existing ruling of the Bureau;

(c) The power to compromise or abate under §204(A) and (B) of this Code, any tax deficiency: *Provided, however,* that assessments issued by the Regional Offices involving basic deficiency taxes of five hundred thousand pesos (P500,000.00) or less, and minor criminal violations as may be determined by rules and regulations to be promulgated by the Secretary of Finance, upon the recommendation of the Commissioner, discovered by regional and district officials, may be compromised by a regional evaluation board which shall be composed of the Regional Director as Chairman, the Assistant Regional Director, heads of the Legal, Assessment and Collection Divisions and the Revenue District Officer having jurisdiction over the taxpayer, as members; and

(d) The power to assign or reassign internal revenue officers to establishments where articles subject to excise tax are produced or kept.