102 Phil. 912

[G. R. No. L-10446. January 28, 1958]

COLLEGE OF ORAL & DENTAL SURGERY, PETITIONER, VS. COURT OF TAX APPEALS AND THE COLLECTOR OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

FELIX, J.:

The College of Oral and Dental Surgery is an educational institution, duly organized and existing under the laws of the Philippines and located at 1858 Oroquieta, Manila.

In a letter sent to the Collector of Internal Revenue dated November 14, 1952, said institution, through counsel, protested against the collection and claimed for the refund of the sums of P4,333.39 and P500 paid under official receipt Nos. A-89348 and A-350887 for income tax corresponding to *1950* and the amount of P2,434.50 paid under official receipt No. A-34431 for income tax corresponding to *1951*. It was claimed that the school was exempted from the payment of said tax in virtue of section 27, paragraph (*f*) of the National Internal Revenue Code. This petition for refund was denied by the Collector of Internal Revenue on January 12, 1953, pointing out the existence of Republic Act No. 82 amending section 27 (*e*) of the Tax Code and the interpretation thereof given by the Secretary of Justice in Opinion No.78, series of 1950, making taxable any income derived from activities conducted for profit, irrespective of the disposition made of such income. Thereafter, the taxpayer sent another letter requesting for the reconsideration of said decision but the Collector deferred action on the same pending the outcome of the case of Jesus Sacred Heart College *vs*. Collector of Internal Revenue then awaiting decision of the Supreme Court, for the reason that the issue involved therein was similar to the instant case. (The decision in the case of Jesus Sacred Heart College *vs*. Collector, 95 Phil., 6).

On April 20, 1955, the Collector of Internal Revenue denied the request for reconsideration on the ground that while it was true that the profits realized by the College of Oral and Dental Surgery were used for the expansion and improvement of the school and that no part

thereof apparently inured to the benefit of any individual stockholder, yet considering that the records proved that Dr. Aldecoa, as president of the institution, received a salary of P1,000 a month and his wife a monthly compensation of P200 as treasurer thereof; and that as the corporation could be dissolved any time because the period of its existence was not fixed and upon its dissolution the properties could be divided among the stockholders, the Aldecoa family in effect actually derived some benefits in the operation of the same.

On *April 29, 1955*, the College of Oral and Dental Surgery filed a petition with the Court of Tax Appeals (CTA Case No. 121) seeking to review the decision of the Collector and praying for the refund of the aforementioned amount alleged to have been erroneously collected. Respondent timely filed an answer denying the material averments of the petition and set up the special defense that petitioner did not come within the exemption of section 27(e) of the Tax Code nor was the decision of the Supreme Court in the case of Jesus Sacred Heart College applicable to it. And on November 12, 1955, with leave of court, respondent filed a motion to dismiss for the reason that the Tax Court had no jurisdiction over the subject matter of the action as *said case was instituted beyond the 2-year prescriptive period provided for by Section 306 of the Tax Code.*

This motion was accordingly opposed by petitioner and on December 19, 1955, the Court of Tax Appeals, with one Judge concurring in a separate opinion, issued a resolution dismissing the petition on the ground that the court acquired no jurisdiction to entertain the same, it appearing that the case was filed 2 years after the taxes sought to be refunded had been paid. As the motion filed by the taxpayer for the reconsideration of the same was denied for lack of merit, the matter was brought to this Court on appeal, petitioner ascribing to the lower Court the commission of several errors. But reducing the interrelated issues to bare essentials, the only question presented by the instant case could be boiled down into whether or not in 1955, petitioner could still invoke court action for the recovery of taxes paid in 1951 and 1952 or after the lapse of 2 years from the date said payment were made; and, consequently, whether the Court of Tax Appeals erred in dismissing the petition filed therein for lack of jurisdiction.

There is no controversy that the taxes sought to be recovered where paid on May 15, 1951, September 15, 1951 and May 15, 1952, and that although the claim for the refund of the same was filed with the Collector of Internal Revenue on November 14, 1952, the request for the reconsideration of the latter’s decision was denied only on April 20, 1955. Meanwhile, no proceeding in court was instituted for that purpose in the intervening period. In dismissing the petition filed with the Court of Tax Appeals, said tribunal relied on the

provisions of section 306 of the Internal Revenue Code, which reads as follows:

> Sec. 306.RECOVERY OF TAX ERRONEOUSLY OR ILLEGALLY COLLECTED.—No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue *tax hereafter alleged to have been erroneously or illegally assessed or collected*, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, *until a claim for refund or credit has been duly filed with the Collector of Internal Revenue*; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sun has been paid under protest or duress. IN ANY CASE *no such suit or proceeding shall be begun after the expiration of* TWO YEARS from the date of *payment of the tax or penalty*.

This Court, construing the aforequoted provision of law in an identical case, made the pronouncement that although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to court (P. J. Kiener Co., Ltd. *vs*. David, 92 Phil., 945, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter.

Petitioner, however, argues that this statutory period is abrogated by the enactment of Republic Act No. 1125, section 11 of which reads in part:

> Sec. 11. WHO MAY APPEAL; EFFECT OF APPEAL.-Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, * * * may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling.

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Petitioner asserts that under this provision of law, for a case to be cognizable by the Court of Tax Appeals which took over the functions of the Courts of First Instance as regard cases involving taxes, the decision of the Collector of Internal Revenue is an essential requisite and must first be secured, upon receipt of which, the aggrieved party has 30 days within which to bring the same on appeal to said court. Thus, as the denial of the request for reconsideration was received by petitioner only on April 20, 1955, the petition for the review of the same filed with the Court of Tax Appeals on April 29 of the same year was made on time.

But even adopting for a moment petitioner's line of argument, still We find reason to uphold the ruling of the court *a quo*. We must bear in mind that Republic Act No. 1125 creating the Court of Tax Appeals took effect only on June 16, 1954. Considering that the taxes involved herein were paid on May 15, 1951, September 15, 1951 and May 15, 1952, said legislative enactment (Rep. Act No. 1125) cannot be invoked as the action for recovery of the taxes paid in this case must be governed by the pertinent law then enforced. And pursuant to the existing law on the matter, which undoubtedly is Section 306 of the Tax Code and the jurisprudence obtaining in connection therewith, as petitioner failed to institute the corresponding judicial proceeding within the 2-year prescriptive period, his right to recover the taxes claimed to have been erroneously paid had prescribed even before the enactment of Republic Act No. 1125, and there is no reason to construe R. A. 1125 as reviving actions that have already prescribed on the date of its enactment.

While We cannot feign innocence of the existence of visible inconsistency in the provision of Section 306 of the National Internal Revenue Code, as construed by this Court—requiring the institution of court proceeding for the recovery of taxes erroneously or illegally collected within years from payment thereof, *irrespective of the action* taken by the Collector of Internal Revenue on the claim for refund of the same, which the taxpayer must first undertake—and Section 11 of Republic Act No. 1125 specifically providing that actions should be brought to the Court of Tax Appeals within 30 days from receipt of the *decision* of the Collector of Internal Revenue, considering *firstly* that both mandatory provisions must be construed strictly, and *secondly* that for purposes of the case at bar no further discussion would be necessary, We leave the proper dissertation on the same to some other opportune time. We feel free, however, to state that although to courts belong the prerogative and power of construction and interpretation and while We do not shirk from that duty bestowed on Us by law, the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation. (See also Rufino Lopez & Sons, Inc. *vs*. Court of Tax Appeals, 100 Phil., 850, 53

Off. Gaz. No. 10, p. 3065 and Sampaguita Shoe and Slipper Factory *vs*. Commissioner of Customs et al., *supra*, p. 850).

Wherefore, the resolution of the Court of Tax Appeals dated December 19, 1955, dismissing the petition involved in this case on the ground that the Court acquired no jurisdiction to entertain the same, it appearing that the case was filed two years after the taxes sought to be refunded had been paid, is hereby affirmed, with costs against petitioner. It is so ordered.

Paras, C. J. Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., and *Endencia, JJ.*, concur.

Date created: October 14, 2014