

**KOPPEL (PHILIPPINES) INC., PETITIONER AND APPELLANT, VS.  
COLLECTOR OF INTERNAL REVENUE, RESPONDENT AND APPELLEE.***G.R. No. L-10550. September 19, 1961*

Ponente: PAREDES, J.

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This is an appeal taken by the Koppel (Philippines) Inc., petitioner-appellant, from the decision dated March 5, 1956, rendered by the Court of Tax Appeals, declaring that it had no jurisdiction over the dispute, on the ground that petitioner's cause of action to seek the refund of P30,726.53, had already prescribed under section 306 of the National Internal Revenue Code; and in sustaining the order of the respondent Collector of Internal Revenue, denying the refund of P30,726.53, under section 30 par. (d), sub-par. (2) and sec. 30 par. (e) sub-par. (1), of the said revenue Code.

The case was submitted on a stipulation of facts:

The petitioner, it appears, is a domestic corporation of American capital duly organized and existing by virtue of the Philippine laws. During the year 1942 to the early part of 1945, the petitioner sustained losses arising from the occupation of the Philippines by the Japanese Military forces from 1941 to the battle of liberation in 1945. On March 27, 1942, the U.S. Congress passed Public Law 506, (War Damage Insurance Act) to cover insurance of all properties in the Philippines which might be damaged, destroyed or lost due to the operations of war. The petitioner, relying on the provisions of this legislation, entered in its books as "accounts receivable" from the U.S. Government the entire value of its properties damaged, destroyed and lost during World War II. On April 30, 1946, the U.S. Congress enacted Public Law 370 (Philippine Rehabilitation Act of 1946), which provided that the Philippine War Damage Commission supersedes the War Damage Commission. Section 102 of Public Law 370 states:

"\* \* \*. Provided further, that in case the aggregate amount of the claims which would be payable to anyone claimant under the foregoing provisions exceeds \$500, the aggregate amount of the claims approved in favor of such claimant shall be reduced by 25 per centum of the excess over \$500."

On January 15, 1947, the U.S.-Philippine War Damage Commission, the agency entrusted with the enforcement of said public law 370, issued a notice to the effect that February 25, 1947, was the date agreed upon as the initial date for the issuance of forms for the claimants of war damages and the claims could not be filed until after March 1, 1947. In 1947, the petitioner came to know that its losses equivalent to 25% or P256,054.88 could not be recovered, for which reason petitioner could not claim deduction for said losses in its 1945 and 1946 income tax returns. Petitioner, therefore, in its books of account for the year 1947, wrote off as "bad debts", the said amount of P256,054.88. On June 6, 1949, the respondent Collector of Internal Revenue, assessed against the petitioner's income tax for 1947, the sum of P34,636.21, corresponding to the amount of P256,054.88 as war losses sustained and ascertained to be unrecoverable in 1946. On June 29, 1949, the petitioner paid under protest with the Bureau of Internal Revenue the amount of P34,636.21 (O. R. No. 58094) as alleged deficiency income tax due, based on

the disallowed deduction of P256,054.88. Petitioner repeatedly sought from respondent a reconsideration of the assessment and the refund of the amount of P34,636.21 later reduced to P30,726.21, on the ground that said assessment was illegal. The then Secretary of Finance, Pio Pedrosa, on September 11, 1951, sustained petitioner's stand and that of other taxpayers similarly situated, setting rules to be followed. The respondent issued general Circular No. V-123 addressed to all internal revenue officers and income tax examiners to apply the rules in the investigation of income tax returns involving war damage losses. On September 21, 1951, petitioner reiterated its demand for the refund of the amount of P30,726.53. Petitioner, on July 28, 1953, received a communication denying the refund of the amount, on the ground that the ruling of Finance Secretary Pedrosa had already been revoked by his successor, Secretary of Finance Aurelio Montinola.

On August 27, 1953, petitioner filed a petition for review with the then Board of Tax Appeals (B. T. A. Case No. 157), praying that the respondent be ordered to refund to the petitioner the sum of P30,726.53, to which on September 5, 1953 respondent answered, praying for the dismissal of the petition. The case was submitted for decision after the parties had filed their respective memoranda. Notwithstanding the lapse of 60 days from the filing of the petition for review, the Board of Tax Appeals, had not rendered any decision. On November 4, 1953, petitioner gave notice of intention to file an appeal, pursuant to section 21 of Executive Order No. 401-A. On November 13, 1953, petitioner received a copy of the decision of the Board of Tax Appeals dated October 26, 1953, confirming the order of the respondent Collector of Internal Revenue, in denying the refund requested by the petitioner. A petition for review was presented before this Court, being case No. L-5701.

In this Court, respondent did not file his brief, instead on April 21, 1954, he presented a motion to dismiss the appeal. On April 29, 1954, this Court dismissed the petitioner's appeal in said case "without prejudice, following the decision in *University of Sto. Tomas vs. Board of Tax Appeals*, 93 Phil., 376; 49 Off. Gaz., 2245." On May 18, 1954, petitioner filed a complaint with the Manila Court of First Instance, Civil Case No. 22893, entitled "*Koppel (Philippines) Inc. plaintiff vs. Collector of Internal Revenue, defendant*," praying that the latter be ordered to refund to the former the sum of P30,726.53. Upon motion of the Solicitor General, the Manila Court of First Instance remanded the case to the Court of Tax Appeals, pursuant to section 22 of Rep. Act No. 1125, in which Court, on December 14, 1955, the parties submitted a stipulation of facts. On March 5, 1956, the Court of Tax Appeals rendered a decision, recited at the threshold of this opinion.

The petitioner alleges in its brief (first assignment of error) that the Court of Tax Appeals erred in holding that it had no jurisdiction over the dispute on the ground that petitioner's cause of action, seeking the refund of P30,726.53 had already prescribed under section 306 of the National Internal Revenue Code. In this connection, petitioner submits that the Court of Tax Appeals in dismissing the case (1) Disregarded the fact that this is not a new case and that there are "peculiar circumstances involved herein"; (2) That in the previous case (Case No. 157 of the Board of Tax Appeals), the respondent did not raise the issue that petitioner's action has prescribed and respondent is thereby estopped from invoking it now for the first time and (3) That the present action was filed by petitioner in accordance with the observations made by the Supreme Court in said G.R. No. L-5701.

Petitioner argues that the "without prejudice" resolution in said case is now final and the "law of the case." The "peculiar circumstances" mentioned were the fact that on September 18, 1951, the then Secretary of Finance "issued a ruling in connection with the deductions for war losses, similar to plaintiffs' (petitioner) claim" which in substance held that war losses should "be allowed as deduction in the year the said notice of approval was received"; that the ruling was subsequently implemented by respondent himself in his General Circular No. V-123; that prior to July 28, 1953, when plaintiff (petitioner), received a communication from respondent, denying the refund of the said P30,726.53 on the ground that the ruling of the former Secretary of Finance (Pio Pedrosa) was already revoked by the succeeding Secretary of Finance (Aurelio Montinola) pursuant to an opinion

of the Secretary of Justice, there was no justification for plaintiff to go to Court; and it would have been ridiculous for petitioner to file a suit in court, when respondent himself had issued a circular favorable to its claim for refund.

Section 306 of the National Internal Revenue Code provides as follows:

"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 sum 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."

In the case of *Kiener Co. Ltd. vs. David*, 92 Phil., 945; (49 Off. Gaz., No. 5, 1852), this Court declared:

"\* \* \*. To this end, and bearing in mind that the Legislature is presumed to have understood the language it used to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say, without doing violence to the context of either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued but not, as the appellant contends, that pending consideration of the claim, the period of the two years provided in the last clause shall be deemed interrupted. Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, without the statutory period of two years proceed with his suit without waiting for the Collector's decision. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that, unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings without imposing on the party to whom the notice was sent any obligation to make any move. \* \* \*

\*"

The record reveals that on June 29, 1949, the petitioner paid to the respondent the deficiency tax in question. From the said date, the two years within which to file an action in court for the recovery of the tax expired on June 29, 1951. Within the said period, the petitioner failed to file an action for refund either in the Court of First Instance or the Board of Tax Appeals, immediately after the creation of the Board under Executive Order No. 401-A promulgated on Jan. 5, 1951. Petitioner just waited for the decision of the respondent Collector of Internal Revenue in its claim for refund, which was handed down on July 28, 1953, after more than four (4) years from payment. It is clearly ruled in the *Kiener* case that the petitioner should not have folded his arms and wait for the decision, knowing, that the "time for bringing an action for a refund of income tax, fixed by statute, is not extended by the delay of the Collector of Internal Revenue in giving notice of the rejection of such claim (*U. S. vs. Michel*, 282 U. S. 656, 51 S. Ct. 284)" (*II Aranas*, N. I. R. Code, p. 719). There was an assessment; the petitioner paid; the petitioner asked for refund; it was denied; a motion for reconsideration was presented and no resolution was forthcoming from the respondent Collector. Aware of the provisions of the law, it was the duty of the petitioner to have urged the respondent for his decision and wake him up from his lethargy or file his action within the time prescribed by law. While it is true that there was a ruling couched in general terms, by the Secretary of Finance on the matter, which was really controversial, because the same was later revoked by another Secretary of Finance, said pronouncement, however, was not a decision by the respondent Collector on the specific controversy relative to the refund of the deficiency tax in question. The court should not give a premium to a litigant who sleeps on his rights. The lawyers of the petitioner may not come now and invoke estoppel when they have been in laches themselves. The government is never estopped by error or mistake on the part of its

agents (Pineda, et al. vs. CFI and Coll. of Int. Rev., 52 Phil., 803). The reservation made by the Supreme Court in the case No. L-5701 should not be interpreted as permitting the petitioner to file another case under all circumstances, but as the facts and circumstances might warrant under the law. The ruling in the Kiener case is still a sound one, and should be, as it is applied, as a matter of public policy, in the enforcement of tax laws.

Having reached this conclusion, it would seem unnecessary to pass upon the second assignment of error.

The appeal is, therefore, dismissed, with costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Dizon, De Leon, and Natividad, JJ., concur.

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