

THE COLLECTOR OF INTERNAL REVENUE, PETITIONER VS. THE COURT OF TAX APPEALS AND HUME PIPE & ASBESTOS CO., INC., RESPONDENTS.

G.R. No. L-11494. January 28, 1961

Ponente: DIZON, J.

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DIZON, J.:

It appears that the respondent Hume Pipe & Asbestos Co., Inc., a domestic corporation with principal office and place of business in the City of Manila—hereinafter referred to as the Company—filed with the Bureau of Internal Revenue, for the fiscal year ending March 31, 1954, an income tax return showing a net taxable income of P227,771.83, itemized as follows:

Gross Income—

From operations

P277,405.26

From interest

57.10

From dividends received

64,151.50

From other sources

1,729.84

Total gross income.....

P343,343.70

Less: Total deductions

115,571.87

NET INCOME.....

P227,771.83"

On the basis of said return the petitioner, Collector of Internal Revenue, assessed the Company the amount of P55,776.00 as income tax due for the fiscal year ending March 31, 1954. On August 14, 1954 the company paid the sum of P27,888.00 as first installment on account of the assessment, and on November 11 of the same year paid a similar amount in full payment of the second and last installment.

Almost two years thereafter, or on June 12, 1956, the company filed a petition for the refund of the sum of P6,445.00, alleged overpayment on its income tax for the fiscal year ending March 31, 1954. Its contention was that pursuant to Section 24 of the National Internal Revenue Code, as amended by Republic Act No. 1148, only 25% of the sum of P50,692.50 it received as dividends from Eternit Corporation on January 30, 1954—which amount was included in toto in its income tax return mentioned heretofore—should have been declared for purposes of income tax. On August 14, 1956 before petitioner could make a ruling on the petition for refund, the Company filed a petition for review with the Court of Tax Appeals praying, inter alia, that, after due hearing, herein petitioner be ordered to refund to it the sum of P6,445.00. On September 5 of the same year the Collector of Internal Revenue filed his answer to said petition, alleging therein that the income tax assessment made and already paid by the Company was in accordance with law. He likewise alleged the affirmative defense that the Court of Tax Appeals had no jurisdiction to entertain the petition for review, for the reason that no decision or ruling had been, as yet, rendered by him upon the petition for refund filed by the Company. After a preliminary hearing in connection with said affirmative defense was had on petition of the Collector of Internal Revenue, the Court of Tax Appeals promulgated a resolution holding that it had jurisdiction over the case, and ordered that the same be set for hearing on the merits. The present petition for certiorari and prohibition with preliminary injunction is, according to petitioner himself, an appeal from said resolution.

While, according to Republic Act No. 1125, any party adversely affected by any ruling, order or decision of the Court of Tax Appeals may appeal therefrom to the Supreme Court, it must be understood that such appeal must be taken only against final rulings, orders and decisions of said Court. Interlocutory rulings, orders and decisions may be appealed from only after the final decision in the case has been rendered, for otherwise, a single case could give rise to multiple appeals, to the detriment of the administration of justice. Therefore, as an appeal from the resolution of the Court of Tax Appeals dated October 22, 1956, the petition under consideration must be dismissed, it being obvious that said resolution was merely interlocutory. As a matter of fact, it did not put an end to the case before it, because it provided that the same be set for hearing on the merits.

Even if we were to consider the present as an independent action for certiorari and/or prohibition the same must be denied for lack of merits.

Upon the facts stated heretofore, the Company's petition for refund was filed on June 12, 1956; the payment of the first installment due on the assessment made by the petitioner was effected on August 14, 1954, while that of the second and last installment was made on November 11 of the same year. Upon the other hand, the Company filed the petition for review in the Court of Tax Appeals on August 14, 1956. At that time the herein petitioner had had under consideration for more than two months the petition for refund filed by the Company but, for unknown reasons, the same had remained undecided. If the two-year period for the filing of an appropriate action under the provisions of Section 306 of the National Internal Revenue Code to recover from the Collector of Internal Revenue any amount paid upon an erroneous or illegal assessment is to be computed from the date when the first installment was paid, it is clear that the Company filed the petition for review with the Court of Tax Appeals exactly on the last day of said period of two years, viz., August 14, 1956. The Company, therefore, had no alternative but to file suit, for otherwise any action it had for refund would have prescribed. We find completely applicable to the present situation what the Court of Tax Appeals itself said in *Manila Electric Co. vs. Collector*

of, Internal Revenue (C.T.A. Case No. 83, Resolution of March 30, 1955) as follows:

"Before the passage of Republic Act No. 1125, the remedy provided by section 306 that the taxpayer should pay the tax first before he can sue the Collector of Internal Revenue was exclusive, and no other remedy could be substituted for it (*Sarasola vs. Trinidad*, 40 Phil., 257). With the approval of said Republic Act No. 1125, a new remedy was given to the taxpayer, in addition to that already provided for by section 306, in the sense that he can question the assessment of the Collector of Internal Revenue before paying the tax by appealing to the Court of Tax Appeals within thirty days from receipt thereof. However, in case he should pay the tax first and later on bring an action for its refund, section 306 still applies and the taxpayer must comply with the requirements therein provided. Having filed his request for refund and the Collector of Internal Revenue having had ample time to study it, the taxpayer should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. However, should the Collector, within the statutory period of two years, deny the claim, the taxpayer is given thirty days from receipt of the decision within which to file his appeal under section 11 of Republic Act No. 1125. In order to confer jurisdiction upon the court, it is necessary, however, that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in section 306 must have been duly complied with."

Similar pronouncements were made by the same Court in *Paracale-Gamaus Co. vs. Blaquera* (C. T. A. No. 211, Resolution of August 22, 1956) as follows:

"* * * The latter (Collector of Internal Revenue), for one reason or another, as had happened in the present case as in the *Kiener* case, failed to reply to the claim for refund within two (2) years from the date of payment. Under the circumstances, as was held in the *Kiener* case, the taxpayer 'having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should within the statutory period of two years proceed with his suit without waiting for the Collector's decision.' In other words, in fairness to the taxpayer so as not to deprive him of his day in court and the prompt adjudication of his case, he is left by necessity to presume and conclude before the expiration of the two-year prescriptive period, that his claim for refund has been denied by the Collector of Internal Revenue if no action was taken thereon by the latter during the said period. The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. As the Supreme Court said in the *Kiener* case, 'Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer should not go to court before he is notified of the Collector's action'. The taxpayer may, indeed should, proceed without waiting for the decision of the Collector of Internal Revenue, to file his petition for review before this Court on or within a reasonable time before the expiry date of the statutory period of two years prescribed in section 306 of the National Internal Revenue Code."

"It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense. However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts."

"It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector of Internal Revenue on his claim for refund. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector of Internal Revenue would have, at his personal convenience, given the go signal. In effect, that could be the ultimate result, if we were to interpret sections 7 and 11 of Republic Act No. 1125 strictly and literally by requiring the taxpayer in all instances to produce in black and white the ruling, decision or order of the Collector of Internal Revenue denying his claim for refund before assuming jurisdiction over his petition for review filed with this Court."

Wherefore, the present petition is deemed without merits and the same is hereby dismissed without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Gutierrez David, and Paredes, JJ., concur.

Reyes, J. B. L., J., concurring;

I fully concur on the strength of the rulings of this Court in Gibbs vs. Collector of Internal Revenue, 107 Phil., 232; 60 Off. Gaz., 185, and Johnston Lumber Co. vs. Court of Tax Appeals, 101 Phil., 151; 53 Off. Gaz. [16] 5225.

Barrera, J., concurs.

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