

FINLEY J. GIBBS AND DIANE P. GIBBS, PETITIONERS, VS. COMMISSIONER OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. L-17406. November 29, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is a petition for review of two resolutions of the Court of Tax Appeals dated June 18, 1960 and August 23, 1960 in CTA Case No. 584, dismissing for lack of jurisdiction the petitioners' claims for refund and tax credit against the respondent Commissioner of Internal Revenue.

The facts upon which the respondent court entered the aforementioned resolutions are:

On February 6, 1956, the respondent Commissioner of internal Revenue issued against the petitioners, Finley J. Gibbs and Diane P. Gibbs, c/o Francisco Collantes, Rm. 301, Cepoc Bldg., Dasmariñas, Manila Deficiency Income Tax Assessment Notice No. AR-5416-55/50 for P16,873.00 for the tax year 1960 with the demand that the said amount should be paid on or before March 15, 1956. On March 14, 1956, Allison J. Gibbs, signing as attorney-in-fact for Finley J. Gibbs, his brother, acknowledged receipt of the above assessment notice and notified respondent Commissioner that Finley J. Gibbs was then living in Atherton, California, with office at 200 Bosh Street, San Francisco 4 and that the latter was notified by him of the said deficiency assessment. In the same letter, Alison J. Gibbs questioned the disallowance of the items which gave rise to the deficiency assessment and requested for a correction of it On August 26, 1956, however, the respondent Commissioner denied the request.

"As regards the tax liability of your brother, Mr. Finley J. Gibbs, in the sum of P16,873.00, exclusive of surcharge and interest for the year 1951, please be informed that inasmuch as the facts obtaining in his case are similar in all fours with that of your case, the arguments above are applicable to the case of your said brother.

"In view of the foregoing, you are hereby requested for the last time to pay the said amount of P12,284.00 exclusive of surcharge and interest, to the City Treasurer, Manila, within ten (10) days from your receipt hereof in order that this case may be closed. You are further requested to urge your brother to pay the above mentioned amount immediately upon your receipt hereof in order that his case may also be closed."

Having deemed the above reply of August 28, 1956, as the "final decision" of the respondent Commissioner on the matter, Allison J. Gibbs wrote on October 3, 1956, the following correspondence to the latter:

"I consider your final decision, dated August 28, 1956 to be contrary to law but to demonstrate my good faith I herewith send you my Check No. 213082 drawn on the Chartered Bank of India, Australia & China payable to you in the sum of n6,873.00 in full payment of your original deficiency assessment No. AR-5416-55-50. Kindly acknowledge receipt."

At the same time, Allison J. Gibbs, demanded refund of the above payment:

"I demand the immediate refund of this payment for the reasons heretofore given you. Unless refunded on or

before the fourth of October I will file a Petition for Review with the Court of Tax Appeals and charge you with my damages of six percent (6%) interest per annum plus attorney's fees of twenty five percent (25%) of the amount involved." (Italics supplied, Letter of October 3, 1956.)

On October 26, 1956, the respondent Commissioner denied the above demand for refund.

"With reference to your letters both dated October 3, 1956, requesting the refund of the sums of P12,284.00 and P16,873.00 as alleged erroneous payments of your income tax liability and that of your brother, Finley J. Gibbs, respectively, both for the year 1950, I regret to have to inform you that for reasons stated in our letter dated August 28, 1956, this Office finds no justifiable basis to grant your said request."

The above letter of October 26, 1956, denying the petitioner's claim for refund was admittedly received by the office of Allison J. Gibbs on November 14, 1956.

On September 29, 1958, Allison J. Gibbs, signing as counsel for Finley J. Gibbs, wrote another letter addressed to the respondent Commissioner to "reiterate our client's demand for refund of the P16,873.00 he paid on October 3, 1956 on the ground that your deficiency Assessment No. AR-5416-55/50 was illegal ***". This letter also opined that the previous letter of October 26, 1956 of the respondent Commissioner was not "a ruling on our client's claim for refund of P16,873.00". Finally this letter likewise asserted certain claims for tax credits arising allegedly from some previous overpayments made by the petitioner to the respondent Commissioner of Internal Revenue. The Correspondence closed with the notice that should the demand for refund be uneffected on or before October 1, 1958, a petition for that purpose would be filed with the Court of Tax Appeals. The respondent Commissioner never replied to this letter of September 29, 1958.

On October 1, 1958, the petitioner filed with the respondent court a Petition for Review and Refund of Income Tax with Motion for Suspension of Collection of Additional Taxes, alleging, in the main, its claims for refund and Tax, credit discussed above. To this petition, the respondent Commissioner filed an answer on November 10, 1956 to claim, among others the following special and affirmative defenses:

"A. That this Honorable Court has no jurisdiction to take judicial cognizance of the petition for review on the ground that the petition for review was filed beyond thirty (30) days from the date of receipt of respondent's decision, dated October 26, 1966, denying the; claim for refund as prescribed by Section 11 of Republic Act No. 1125;

"B. That this Honorable Court has no jurisdiction over the cause of action with respect to the credit of the amounts stated in the petition for review for the reason that the request for credit and the petition for review praying for the credit of said amounts have been filed beyond two (2) years from the dates of payment of the amounts sought to be credited in the petition for review."

Acting on a motion dated November 17, 1958 filed by the respondent Commissioner for a preliminary hearing on the question of the lower Court's jurisdiction as above contested, the respondent Court after due hearing and reception of evidence, sustained the above objection to its jurisdiction and upheld the respondent Commissioner's claim that the two causes of action asserted by the petitioner were barred by prescription. To this end, the respondent Court promulgated two orders: the Resolution of June 18, 1960 dismissing C.T.A. Case No. 584 for lack of jurisdiction and the Resolution of August 23, 1960 dismissing for lack of Merit the petitioners' Motion for reconsideration filed therefor. These are two orders sought to be reviewed in the instant petition for review.

The petitioners contend that the respondent Court erred in ruling that their petition for review was filed outside the 30-day period prescribed by Section 3 of Republic Act No. 1125 because (a) there is neither evidence nor record that the petitioners received a copy of the letter of October 26, 1956 denying their claim for refund, and (b) the aforesaid letter of October 26, 1956 is not a denial of their claim for refund.

Anent the insistence of the petitioners that they never received a copy of the letter of October 26, 1956, denying their claim for refund, suffice it to say that while they themselves personally might not have received a copy of it, Allison J. Gibbs, as their attorney-in-fact and actually as their counsel, received a copy of the same.

Of course, the petitioners maintain that Allison J. Gibbs, at least until September 30, 1957, acted merely as agent or attorney-in-fact of the petitioners and never as their legal counsel. In support of this, it is argued that prior to October 26, 1956, Allison J. Gibbs had explicitly qualified his signature to all his correspondences regarding the disputed assessment as "attorney-in-fact". Furthermore, it is urged that as might be seen on the face of the assessment notice itself, the real legal counsel of the petitioners in the matter of the said assessment was Atty. Francisco Collantes.

That Allison J. Gibbs was not merely the agent of the petitioners in the matter under litigation, contrary to all that is alleged above, is demonstrated, however, by the following circumstances obtaining in this case.

1. Allison J. Gibbs acknowledged for the petitioners receipt of the deficiency income tax assessment, formally protested the same in writing, paid the assessment and likewise formally demanded in writing its refund.
2. As far back as 1952, Allison J. Gibbs' law office had been representing the petitioners as the latter's counsel.
3. Atty. Francisco Collantes to whom the assessment notice was admittedly addressed, at the time of the said assessment, was a staff lawyer in the firm of Gibbs and Chuidian, of which Allison J. Gibbs was a principal partner.

We find all the above as ample evidence of the lawyer-client-relationship of the petitioners herein and Allison J. Gibbs. Besides, it should be recalled that among the charges which Allison J. Gibbs claimed he would collect if his demand for refund for the petitioners were not effected by the respondent Commissioner was "attorney's fees of twenty five percent (25%) of the amount involved." (Letter of October 3, 1956.) How, then, may this statement be reconciled with the present denial that Allison was indeed the petitioners' counsel when he wrote the said letter of October 3, 1956.

There can be no question, therefore, that the receipt of the October 26, 1956 letter-decision of the respondent Commissioner by Allison J. Gibbs was receipt of the same "by the petitioners, the former being then the latter's legal counsel. In the premises, the respondent Court cannot be considered to have erred, therefore, in computing the 30-day prescriptive period in question from the date said letter was received by Allison J. Gibbs.

On the other hand, the petitioners' claim that the letter of October 26, 1956 was not a denial of their claim for refund is patently unmeritorious. The letter in question clearly stated that "for reasons stated in letter dated August 28, 1956, this office finds no justifiable basis to grant your request". Considering that even Allison J. Gibbs deemed the August 28, 1956 Correspondence as the Commissioner's "Final decision" on the Controversy, it is difficult to see how the Petitioners can now argue that the said letter of October 26, 1956, was not a denial of their claim for refund.

Parenthetically, it may be observed, that in view of our finding that the respondent court had no jurisdiction over the petition for review because it was filed beyond the 30-day period, hence, there is no need for extensive discussion of the second issue, namely: Whether the withholding tax credits amount to payment for the purpose of determining the two-years period as provided for by Section 306 of the Internal Revenue Code.

The petitioners maintain that the respondent Court erred in ruling that their claim for tax credit had already expired since it pertained to tax payments made in 1951 and the protest and claim for demand therefor was made only in 1958. The petitioners insist that they could not be deemed to have paid their 1951 tax obligation until

February 19, 1957, because they merely contributed to the withholding tax system in 1951 and claimed certain refunds against their contribution at the end of the said tax year and they received notice of the resolution on their claim for such refund only on February 19, 1957. In other words, the petitioners' thesis is to the effect that income tax assessments against which claims for refund have been lodged and which are covered by taxes withheld at the source shall be considered paid, not at the time such tax obligations fall due, but, only when the claims for refund against the assessments are finally resolved by the authorities. By the petitioners own formulation of their argument—

"Petitioners also respectfully contend that the statute of limitation of two years prescribed in Section 306 of the NIRC does not start to run until respondent Commissioner has acted on the claim for refund or credit by the non-resident taxpayer and so notified the taxpayer because until then the withholding tax cannot be treated as a payment by the alien non-resident taxpayer; until then it is a mere deposit held by respondent Commissioner for the account of the non-resident alien taxpayer,"

This court cannot subscribe to the petitioners' view.

Payment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other manner, of an obligation (*id.*, Art. 1232). A taxpayer, resident or non-resident, who contributes to the withholding tax system does so not really to deposit an amount to the Commission of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year-prescriptive period under Section 306 of the Revenue code starts to run with respect to payments effected through the withholding tax system. It is no consequence whatever that a claim for refund or credit against the amount withheld at the source may have been presented and may have remained unresolved since, as this Court has previously explained in the case of *Gibbs vs. Collector of Internal Revenue*, 107 Phil. 232.

**** Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same must comply with the requirements of both sections, that is, he must file a claim for refund with the collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund as required by Section 11 of Republic Act No. 1125. If however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Sections 306 and the doctrine, that delay of the collector in rendering decision does not extend the peremptory period fixed by the statute. (*U.S. vs. Michel*, 282 U.S. 656, 51 S.Ct. 284; *P J. Kiener & Co., Ltd. vs. David*, 92 Phil. 945; *College of Oral and Dental Surgery vs. CTA* 102 Phil. 912. *Italics supplied.*)

Wherefore, the instant petition for review is hereby dismissed, with costs against the petitioners.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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