

ANDREA R. VDA. DE AGUINALDO, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS. D E C I S I O N

G .R. No. L-19927. February 26, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Leopoldo R. Aguinaldo and his wife received in 1952 cash dividends in the sum of P10,000.00 from Aguinaldo Brothers, Inc. The spouses did not declare said dividends in their joint income tax return for 1952, but declared P5,000.00 thereof in their income tax return for 1953. On August 14, 1954, they paid the tax due on their declared income for 1953.

One year after or in August 1955 agents of the Bureau of Internal Revenue re-examined the 1952 and 1953 joint income tax return of Leopoldo R. Aguinaldo and his wife and discovered the same. Whereupon, they readjusted the returns, increasing the declared income for 1952 by P10,000.00 and eliminating from the 1953 income tax return the reported dividends of P5,000.00. The result was a deficiency income tax of P3,840.00 for 1952 and an overpayment of tax in the amount of P1,600.00 for 1953.

The examination report, dated August 29, 1955, stated that it was a "mere adjustment of 1952 and 1953 returns", and recommended that the overpayment for 1953 in the amount of P1,600.00 be credited against the deficiency tax for 1952. The Collector of Internal Revenue, however, by his letter dated October 28, 1957, assessed against Leopoldo R. Aguinaldo the amount of P3,840.00 as deficiency income tax for 1952, without crediting in his favor the overpayment in 1953.

Aguinaldo's counsel in a letter dated January 10, 1958, protested against the assessment, and requested that the overpayment for 1953 be credited in favor of the taxpayer. The request was denied and the taxpayer asked for reconsideration. Finally, the Commissioner of Internal Revenue informed him that the amount of P1,600.00 cannot be credited against the tax for 1952 inasmuch as the claim for tax credit was filed beyond the two-year period provided for in Section 309 of the National Internal Revenue Code.

Subsequently, Leopoldo R. Aguinaldo died, but Andrea Vda. de Aguinaldo, his surviving spouse and administratrix, appealed to the Court of Tax Appeals. After hearing, the Tax Court dismissed the appeal for "lack of cause of action." Petitioner thereupon elevated the case to this Court.

The single issue is whether or not petitioner is entitled to tax credit for the year 1953 pursuant to Section 309 of the Tax Code.

Petitioner contends that Section 309 does not require the filing of a claim within two years from the payment of the tax before tax credit could be given.

On the other hand, respondent Commissioner maintains that the authority of the Commissioner of Internal Revenue under Section 309 can only be exercised if a claim for credit is made in writing and filed with him within

two years from the payment of the tax. Section 309 of the Tax Code states:

"SEC. 309. Authority of Collector to make compromises and to refund taxes." The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously or illegally received, or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.

"He shall refund the value of internal-revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.

"The authority of the Collector of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him with two years after the payment of the tax or penalty."

The third paragraph of Section 309, National Internal Revenue Code, afore-quoted, clearly requires the filing by the taxpayer of a written claim for credit or refund within two years after payment of the tax, before the Commissioner of Internal Revenue can exercise his authority to grant the credit or refund. Such requirement is therefore a condition precedent and non-compliance therewith precludes the Commissioner of Internal Revenue from exercising the authority thereunder given.

As noted, the Aguinaldos paid the income tax for 1953 on August 14, 1954 altho the adjustment took place on August 29, 1955. From both dates to January 13, 1958, when the claim for tax credit was filed, more than two years have elapsed. Evidently, petitioner's claim for tax credit was filed beyond the period stated in Section 309.

WHEREFORE, the judgment appealed from is hereby affirmed, with costs.

IT IS SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Zaldivar, JJ., concur.

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