

PANAY ELECTRIC CO., INC., PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 10574. May 28, 1958

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Petitioner Panay Electric Co., Inc. is appealing the decision of the Court of Tax Appeals, denying the refund to it of the amount of P85,355.72, balance of P135, 872.67, representing overpayment of franchise taxes from January 19, 1947 to January 18, 1952.

Petitioner is a grantee of a legislative franchise under Act No. 2983, as amended by Act No. 3665, to install, operate, and maintain an electric light, heat and power system in certain municipalities of Iloilo, for a period of fifty years from the approval of its franchise on January 22, 1921. Under the franchise, it was required to pay a franchise tax equal to 11/2 per cent of its gross earnings, during the first twenty years, and 2 per cent during the remaining thirty years.

Upon the promulgation of Republic Act No. 39, amending Section 259 of the National Internal Revenue Code, respondent Collector of Internal Revenue required petitioner to pay a franchise tax of 5 per cent instead of 2 per cent of its gross earnings. In view of the insistence of respondent in his demand, petitioner paid the franchise tax of 5 per cent, as provided for in Section 259 of the Revenue Code as amended, beginning January 19, 1947 and up to January 18, 1952, in the total sum of P135,872.67, at the same time protesting the imposition and collection of the 5 per cent tax, in its letters of May 7, 1948 and June 7, 1948. The protest, however, was denied by respondent.

On March 25, 1952, the Supreme Court promulgated its decision in the case of Philippine Railway vs. Collector of Internal Revenue (91 Phil., 35), wherein it was held that the rate of tax provided in Section 259 of the Revenue Code as amended by Republic Act No. 39, is not applicable to holders of franchises which fix a specific rate of franchise tax. On the basis of this decision, petitioner on April 16, 1952, wrote a letter to the City Treasurer of Iloilo City, demanding the refund of excess franchise taxes paid since October 1, 1946. This claim for refund was reiterated in a letter to respondent Collector, dated July 8, 1952, wherein petitioner demanded the refund of excess franchise taxes from January 19, 1947 to January 18, 1952, in the amount of P135,872.67. In the meantime, respondent Collector accepted the ruling laid down in the case of Philippine Railway vs. Collector of Internal Revenue, *supra*, and thereafter, collected from petitioner franchise taxes at the rate of only 2 per cent. The last payment made by petitioner at the rate of 5 per cent was on January 18, 1952. On July 22, 1952, respondent Collector wrote to petitioner, informing it of his stand on the question of refund, to the effect that the first claim for refund filed by it was made only in its letter of April 16, 1952, and, that refund may be effected only of the overpayment made two years prior to said demand, that is to say, from April 16, 1950. Petitioner on August 20, 1952, filed a petition for review with the defunct Board of Tax Appeals, docketed as BTA case No. 85, seeking the refund in the amount of P135,872.67.

In his answer, respondent admitted that there had been overpayment, but contended that it could allow a refund of overpayment made for a period of only two years prior to April 16, 1952, when petitioner filed a formal demand for refund. Respondent accordingly agreed to credit petitioner with P64,607.07, the amount of the overpayment from April 19, 1950 to January 18, 1952, and stated that "steps have been taken by the respondent to credit to the petitioner the amount of P64,607.07, computed below, as overpayment. * * *"

On October 18, 1952, the Board of Tax Appeals rendered its decision reversing that of respondent Collector and ordering him to refund to petitioner not only the P64,607.07 as overpayment for the period 1950-51, and which respondent was willing and even offered to credit petitioner, but also P70,272.49, covering the period of 1947-50. However, upon motion for reconsideration by respondent, the Board of Tax Appeals on December 29, 1952, modified its decision in the sense that the refund to petitioner should be only P64,607.07, corresponding to the period of two years prior to the filing of the letter of demand for refund, dated April 18, 1952. Petitioner appealed the decision as modified to the Supreme Court and this Tribunal in its resolution of March 30, 1954, following its decision in the case of *University of Santo Tomas vs. Board of Tax Appeals*,[*]G.R. No. L-5701, promulgated on June 23, 1953, dismissed the appeal without prejudice.

Thereafter, petitioner filed the corresponding complaint against respondent in the Court of First Instance of Iloilo for the refund of the whole amount of P135,872.67. Upon the creation of the Court of Tax Appeals under Republic Act No. 1125, the case was sent up to said court for final disposition. After due hearing, the Tax Court decided on March 10, 1956 that "only the excess payments made by plaintiffs from October 18, 1950 to January 18, 1952 in the aggregate amount of P50,516.95 were made within two years prior to the institution of judicial proceedings for recovery thereof. The excess payments made prior to October 18, 1950 (from January 19, 1947 to July 18, 1950) in the amount of P85,355.72 cannot be recovered, the right of action of plaintiff in regard thereto having prescribed." Consequently respondent was ordered to refund to petitioner only the sum of P50,516.95. It is this decision which is now before us on a petition for review by the petitioner, Panay Electric Co., Inc.

The pertinent provisions of law applicable to the present case are sections 306 and 309 of the Revenue Code, which we reproduce for purposes of reference:

"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 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."

"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 within two years after the payment of the tax or penalty."

Petitioner in its appeal, reiterates its contention before the Court of Tax Appeals that the franchise tax stipulated and payable under its franchise is not an internal revenue tax and, therefore, Section 806 of the Tax Code, providing for refund of overpayment for a period of only two years, is not applicable to it; that the legislative franchise constituted a contract between itself and the Government; that the rate of franchise tax payable under it is part of said contract and the collection of any amount in excess of said rate fixed in the contract is a violation of the contract itself; and that under said view, petitioner may avail itself of the regular ten year period of prescription within which to bring an action for redress.

We are satisfied that the franchise tax is an internal revenue tax within the meaning of the Tax Code, and we agree with the Court of Tax Appeals on its view and ruling on this point, and reproduce with favor the pertinent portion of its decision overruling the contention of the petitioner, and holding that a franchise tax is an internal revenue tax, and consequently, refund of any overpayment is governed by Section 306 of the Tax Code:

* * * "Defendant contends that plaintiff failed to comply with the requirements of Section 306 of the Revenue Code relative to the filing of a written claim for refund and the institution of judicial proceedings for recovery of taxes erroneously or illegally collected within two years from the date of payment. On the other hand, plaintiff contends that Section 306 of the Revenue Code does not apply, its franchise tax liability not being an internal revenue tax.

"On the question whether or not the tax payable by plaintiff under its franchise is an internal revenue tax, the former Board of Tax Appeals expressed the opinion that the same is an internal revenue tax.

" * * * Petitioner draws a distinction between tax proper and franchise tax.

'A tax is a forced charge, imposition or contribution; it operates in invitum, and is in no way dependent upon the will or contractual assent, express or implied, of the person taxed, (51 Am. Jur. pp. 38-39.)

'Franchise tax is "in consideration of the granting of the franchise," and it operates because a person taxed assents expressly or impliedly. It is, in one word, a contractual assent. As correctly maintained by the respondent, Section 18 of the Tax Code enumerates what are National Internal Revenue Taxes, and among others franchise taxes are clearly listed; Section 259, Tax on Corporate Franchises, deals with franchise taxes.' (B.T.A. No. 85, October 18, 1952.)

"It is clear from a reading of Section 259 of the Revenue Code that the 'franchise tax' provided therein refers not only to the tax imposed in said section but also to the 'taxes, charges, and percentages' prescribed in the special charters under which holders of franchises operate. In fact, the collection of franchise taxes and the penalty, for delinquency are governed by Section 259, in so far as the provisions thereof are not inconsistent with the special charters. And Section 18 of the Revenue Code, as pointed out by the former Board of Tax Appeals, clearly classifies franchise taxes as national internal revenue taxes. We might also add that Section 359 of the Revenue Code provides for the disposition of franchise taxes as other national internal revenue taxes. We have, therefore, no doubt in our minds that the franchise taxes prescribed in Act No. 2983, as amended by Act No. 3665, under which plaintiff operates, is a national internal revenue tax, and the provisions of law governing refunds of national internal revenue taxes are applicable to refunds of the franchise tax here in question."

Petitioner contends that its letters of May 7, 1948 and June 7, 1948 (Annexes A and B of the Petition for Review) should be considered claims for refund. Whether they are demand for refund or not does not really matter because a claim for refund not followed by a judicial action avails the claimant nothing. Besides, the refund of any tax already paid or illegally collected is limited to a period of two years, counted from the date of the suit in court, not from the date of the claim for refund. The claim for refund is only a preliminary step to court action. As a matter of fact, we believe that the letters of May 7, 1948 and June 7, 1948 are not really claims for refund, but mere

protests against the action of the Collector or his agent in claiming and collecting 5 per cent instead of 2 per cent of the gross earnings, and may well be regarded as requests that the Collector and his agent stop making the illegal collection, nothing more. The real claim for refund was made only on April 16, 1952 in petitioner's letter to the Iloilo Treasurer, acting as agent of the Collector.

Applying the doctrine laid down in the case of *Philippine Railway vs. Collector of Internal Revenue*, supra, it is clear that under the franchise of the petitioner, it was liable to pay only a franchise tax of 2 per cent of its gross earning and not 5 per cent, consequently, the difference between 5 per cent and 2 per cent should be considered as overpayment. From a reading of Section 306 of the Tax Code above reproduced, it is also equally clear that aside from the requirement that before a suit or proceeding could be maintained in any court for the recovery of any tax said to have been erroneously or illegally assessed or collected, a claim for refund of said overpayment or illegal collection should first be made, the taxpayer is entitled to refund only if he brought the action within two years from the date of the payment. In other words, all overpayment or illegal collection made beyond the said two year period may not be refunded.

Under a strict interpretation and application of law, petitioner is entitled to a refund of this overpayment or illegal collection for a period of only two years prior to the date of the suit or proceedings before the Board of Tax Appeals on August 20, 1952, that is to say, all payments and illegal collections from August 20, 1950 which amount to P50,516.95 as found and adjudged by the Court of Tax Appeals. Legally speaking, the decision of the Tax Court is therefore correct, being in accordance with law. However, one's conscience does not and cannot rest easy on this strict application of the law, considering the special circumstances that surround this case. Because of his erroneous interpretation of the law on franchise taxes, the Collector, from the year 1947, had illegally collected from petitioner the respectable sum of P135,872.65. From a moral standpoint, the Government would be enriching itself of this amount at the expense of the taxpayer. True, the Tax Court ordered the Collector to refund to it (petitioner) the sum of P50,516.95, which approximately, is only 37 per cent of the whole illegal collection. Of course, petitioner is to blame in part for supposedly sleeping on its rights and in not filing the claim for refund and the suit to enforce said refund earlier. It should be borne in mind, however, that before the promulgation of our decision in the case of *Philippine Railway vs. Collector of Internal Revenue*, there had been no court ruling or doctrine on the relation between a franchise tax stipulated in a legislative franchise and the ordinary or regular internal revenue tax fixed in the Tax Code, on the gross earnings of a corporation or a public utility. The Collector played safe and collected the regular 5 per cent rate. The petitioner should have also done the same by not merely protesting the illegal collection, but by claiming a refund of the overpayment and filing a suit to enforce the same, and should have asked the courts to decide the controversy. We do not advocate the refund of the entire overpayment of P135,872.67, but on moral and equitable grounds, we believe that the petitioner is entitled to the refund of P64,607.07, basing on the two year period, beginning from the day the claim for refund was made on April 18, 1952.

It will be recalled that under Section 309 of the Tax Code, the Collector of Internal Revenue is authorized to credit or refund taxes erroneously or illegally received, for a period of two years from the date of the claim for refund. In other words, the Collector had authority to refund or credit this overpayment of P64,607.07. He not only offered to do this, but in his answer to the suit filed by petitioner with the Board of Tax Appeals, he also assured the Board that steps were being taken to credit petitioner with this amount. One aspect of this question is that by not only offering to credit but also taking steps to credit petitioner with overpayment for a period of two years from the date of the claim for refund, he waived the prescriptive period of two years from the date of the actual filing of the suit, a time difference of about four months. The claim was filed on April 18 and the suit was filed on August 20 of the same year. As a matter of fact, this was the final decision of the Board of Tax Appeals, ordering the Collector to refund the amount of P64,607.07. There is also some evidence to the effect that if

petitioner did not file its suit for refund earlier than August 20, 1952, it was because of an agreement or understanding with the agent of the Collector that they should await the result of the then pending case in this Court of *Philippine Railway vs. Collector of Internal Revenue*, in order that the parties may act correctly and in accordance with the law, as interpreted by this High Tribunal. By modifying as we do, the decision of the Tax Court so as to increase the amount of the refund from P50,516.95 to P64,607.07 for the reasons above-stated, and considering as we said, the peculiar circumstances involved in the case, we would be tempering the rigors of the law with fairness and equity.

In view of the foregoing, and with the modification above-indicated, the appealed decision is hereby affirmed. No costs.

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

[*]93 Phil., 376, 49 Off. Gaz., [6], 2245.

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