

ALLISON J. GIBBS AND ESTHER K. GIBBS, PETITIONERS, VS. COLLECTOR OF INTERNAL REVENUE AND COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 13453. February 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

From the resolution of respondent Court of Tax Appeals (in C.T.A. Case No. 418) dismissing, for lack of jurisdiction, their petition for review and refund of income taxes paid, petitioners Allison J. Gibbs and Esther K. Gibbs, interposed the present petition for review.

On March 14, 1956, petitioners protested the deficiency income tax assessment in the amount of P12,284.00, exclusive of surcharge and interest, for the year 1950, issued against them by the respondent Collector of Internal Revenue, on the ground that said deficiency assessment was based on a disallowance of bad debts and losses claimed in their income tax return for 1950.

On August 28, 1956, respondent Collector rejected petitioners' protest and reiterated his demand. On October 3, 1956, petitioners sent a check in the amount of P12,284.00 (Check No. C-643963) to respondent Collector as payment of said deficiency assessment, at the same time demanding the immediate refund of the amount paid.

On October 26, 1956, respondent Collector denied the request for refund, and required petitioners to pay the amounts of P1,469.04 and P1,997.26 as surcharge, interest, and compromise penalty. Notice of said denial was received by petitioners on November 14, 1956.

On September 27, 1957, petitioners filed with respondent Court a petition for review and refund, with a motion for suspension of collection of penalties. On October 7, 1957, respondent Collector filed a motion to dismiss, on the ground that the petition was filed beyond the 30-day period provided under Section 11, in relation to Section 7, of Republic Act No. 1125, which motion, was opposed by petitioners on October 24, 1957.

On December 2, 1957, respondent court dismissed the petition, in a resolution which, in part, reads:

"Petitioners paid the tax in question on October 3, 1956, at the same time asking for the refund of the same. He received the letter of respondent denying said request for refund on November 14, 1966. Pursuant to Section 11 of Republic Act No. 1125, petitioners had only 30 days from November 14, 1956, or up to December 15, 1956, within which to file their appeal to this Court. However, petitioners appealed from the aforesaid decision of respondent only on September 27, 1957, more than ten (10) months from November 14, 1956. Obviously, the appeal has been filed beyond the 30-day period set by law.

"Petitioners contend that Section 306 of the Revenue Code provides that judicial proceedings may be instituted for recovery of an internal revenue tax within two years from the date of payment. This was so before the enactment of Republic Act No. 1125. * * *

"* * * petitioners should have appealed to this Court within 30 days from November 14, 1956, that is, not later

than December 15, 1956, pursuant to Section 11 of Republic Act No. 1125. As the appeal was filed on September 27, 1957, we have no jurisdiction to entertain the same."

On December 11, 1957, petitioners filed a motion for reconsideration of said order, but the same was denied by respondent court on January 31, 1958. Hence, this petition for review.

The only issue to be resolved in this case is whether or not petitioners' appeal (petition for review and refund) from the decision of respondent Collector of Internal Revenue, was filed with respondent Court of Tax Appeals within the statutory period.

Section 7 of Republic Act No. 1125,[1] in part, provides:

"SEC. 7. Jurisdiction.—The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided:

"(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue * * *." (Emphasis supplied.)

And Section 11 of the same Act, in part, states that:

"SEC. 11. Who may appeal; effect of appeal.—Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling. * * *." (Emphasis supplied.)

It is not disputed that petitioners received on November 14, 1956, notice of respondent Collector's decision denying their request for a refund of the deficiency assessment paid by them. Pursuant to the above-quoted provision of Section 11 of Republic Act 1125, they had 30 days from said date within which to file their appeal (petition for review and refund) with respondent court. However, they filed said appeal only on September 27, 1957, or more than ten (10) months thereafter, much beyond the aforementioned 30-day period within which to file the same. Consequently, respondent court had acquired no jurisdiction to entertain said appeal and the dismissal of the same was proper.

Petitioners, however, contend that although their appeal was filed beyond said 30-day period, respondent court still had jurisdiction over the same, by virtue of the provision of Section 306 of the National Internal Revenue Code,[2] which reads:

"Sec. 30. 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." (Emphasis supplied.)

The contention is devoid of any merit. In the case of *Johnston Lumber Co., Inc. vs. Court of Tax Appeals, et al*, 101 Phil., 654; 54 Off. Gaz. [16] 5226, we held:

"It is the contention of petitioner that the aforequoted provisions cannot stand side by side because, whereas Section 306 of the Tax Code required the filing of a claim before an action in court may be maintained,

Republic Act No. 1125 which confers jurisdiction upon the Court of Tax Appeals to take cognizance of appeals from the decisions of the Collector of Internal Revenue does not require any more the filing of said claim but merely provides that said appeal may be filed within 30 days from receipt of such decision or ruling.

"A careful analysis of the provisions of both enactments would negative the assertion of petitioner. The specific provision of Republic Act No. 1125 regarding appeal (Section 11) was intended to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to appeal to the Court of Tax Appeals instead of paying the tax. For this reason, the latter part of said Section 11, provides that no such appeal would suspend the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306, of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery. We can, therefore, conclude that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the National Internal Revenue Code and that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is being appealed; as required by Section 11 of Republic Act No. 1125. We see no conflict between the aforementioned sections of said laws." (Emphasis supplied.)

Under the above ruling, it is clear that 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 said 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 said 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 Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.[3]

In the case of a taxpayer who has not yet paid the tax and who is protesting the assessment made by the Collector of Internal Revenue, he must file his appeal with the Court of Tax Appeals within 30 days from his receipt of the Collector's assessment, as required by said Section 11 of Republic Act No. 1125. Otherwise, his failure to comply with said statutory requirement would bar his appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain or determine the same.

We do not find the cases of Collector of Internal Revenue vs. Avelino, et al. (100 Phil., 327; 53 Off. Gaz. 645) and Collector of Internal Revenue vs. Zulueta, et al. (100 Phil., 872; 53 Off. Gaz. [19] 6582) invoked by petitioners applicable to the instant case. The issue presented in both cited cases was whether or not the Court of Tax Appeals may enjoin the Collector of Internal Revenue from collecting through summary administrative methods, the income tax liabilities of Messrs. Avelino and Zulueta, 3 years after the filing of their income tax returns, and not whether their petition for review was seasonably filed with said court, in accordance with Section 11 of Republic Act No. 1125, or Section 306 of the National Internal Revenue Code. Furthermore, the instant case involves a refund of taxes paid, while the cited cases involved the legality of the collection of taxes by summary administrative methods.

Appellants, in their supplemental brief, urge two additional grounds for the revocation of respondent court's decision. It is claimed that since the letter-decision dated October 26, 1956 denying their request for refund, of the

deficiency income tax paid by them, was signed not by the Collector, but merely by the Deputy Collector of Internal Revenue, it could not be considered as a final decision on their said request. They cite as authority, Section 309 of the National Internal Revenue Code reading partly:

"SEC. 309. Authority of Collector to make compromise 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.

* * * * *

"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." (Emphasis supplied.)

and No. 9 of Paragraph 4, Section 7, as amended, of the Internal Revenue Manual on Audit and Investigation Procedure and General Circular No. V-182, providing:

"9. The authority to remit before payment any tax that appears to be unjustly assessed or excessive, or credit or refund taxes erroneously or illegally received under Section 309 of the National Internal Revenue Code shall be exercised exclusively by the Collector of Internal Revenue." (Emphasis supplied.)

Appellants contend that under the above-quoted provisions, only the Collector has the authority to deal in refund cases. This is fallacious. In the first place, the cited provisions refer to the authority of the Collector of Internal Revenue to compromise, or to credit or refund taxes erroneously or illegally received, that is, when the action, in a manner of speaking, is against the Government. In such case, the authority is vested exclusively in the Collector himself. The purpose is to assure that no improper compromise, credit, or refund is made to the prejudice of the Government. But in the case before us, the action taken by the Deputy Collector in his letter of October 26, 1956, was precisely to deny the request for refund and demand the payment of the deficiency tax from petitioners. Certainly, this is well within the authority of the Deputy Collector and is final and binding unless revoked by the Collector.

The other point raised that the letter of October 26 is not final because in addition to denying the refund it demanded payment of surcharges and interests is, likewise, without merit. The ruling in the case of *St. Stephen's Association, et al. vs. Collector of Internal Revenue* (104 Phil., 314; 55 Off. Gaz. [13] 2243) cited by petitioners, is inapplicable to the instant case, for there the Collector wrote two letters to the taxpayers, one on April 6, 1955, denying their first request for the withdrawal and cancellation of the assessment, and another on July 11, 1955, denying their second request and stating in its last paragraph: "This decision becomes final thirty days after your receipt hereof unless an appeal is taken to the Court of Tax Appeals within the same period, in accordance with the provisions of Republic Act No. 1125." Undoubtedly, this second letter, and not the first was the final decision of the Collector in that case, because it finally resolved the then pending petition for reconsideration filed by the taxpayers. In the instant case, after the letter of October 26, 1956 denying petitioners' request for refund, no further action was taken either by petitioners or the Collector, both parties treating the letter-decision as final. In fact, petitioner's next move was to file their petition for review and refund with respondent court. The Collector, on the other hand, consequent to his understanding that said letter-decision was final, filed his motion to dismiss with respondent court, on the ground that petitioners' petition was filed out of time and, therefore, the court acquired no jurisdiction to entertain the same.

Wherefore, finding no error in the decision of the court a quo, the same is hereby affirmed, with costs against the

petitioners. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

Padilla, J., on leave, took no part.

[1] Effective June 16, 1964.

[2] Com. Act No. 466, as amended.

[3] U.S. vs. Michel, 282 U.S. 656, 51 S. Ct. 284; P. J. Kiener & Co., Ltd. vs. David, 92 Phil., 945, 49 Off. Gaz. [5] 1852, College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil., 912; 54 Off. Gaz. [29] 7055).

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