

**THE GUAGUA ELECTRIC LIGHT PLANT COMPANY, INC.,
PETITIONER, VS. THE COLLECTOR OF INTERNAL REVENUE AND
THE HON. COURT OF TAX APPEALS, RESPONDENTS.**

G.R. No. 14421. April 29, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a resolution of the Court of Tax Appeals granting a motion to dismiss of respondent Collector of Internal Revenue.

On February 28, 1958, the Guagua Electric Light Plant Co., Inc., a domestic corporation engaged in supplying electricity, filed with the Court of Tax Appeals a petition for review of a decision of the Collector of Internal Revenue (now Commissioner of Internal Revenue) denying the claim for refund of the following sums of money allegedly overpaid as franchise tax for the period stated before each item:

"Ist quarter, 1947-3rd quarter, 1951 P13,616.95

Jan. 1, 1954-June 15, 1954 2,948.94

June 15, 1954-Dec. 31, 1954 2,404.04

TOTAL P18,969.93"

Petitioner alleged that on December 13, 1927, it obtained from the municipality of Guagua a franchise to furnish electric light in said municipality; that petitioner's records, including copy of said franchise, were destroyed in consequence of the last world war; that, sometime in December 1956, petitioner found a copy of said franchise among the salvaged records of the Provincial Board of Pampanga; that said franchise prescribes a franchise tax of 1 per cent of the gross earning for the first twenty (20) years of the existence of the corporation and 2 per cent of said earnings for the remaining fifteen (15) years of its existence; that it paid the amounts above mentioned in excess of said rates, upon demand by the Collector of Internal Revenue, who misrepresented that the franchise tax due was 5 per cent of the gross income, as provided in section 259 of the Internal Revenue Code; that on March 27, 1957, it filed with the Collector of Internal Revenue a claim for refund; that the same was denied in a decision of said officer, dated August 27, 1957, which came to petitioner's knowledge on December 16, 1957; that on December 17, 1957, petitioner moved for a reconsideration of said decision; and that said reconsideration was denied on February 3, 1958.

Respondent moved to dismiss said petition for review upon the ground that it had been filed beyond the period prescribed in section 306 of the Revised Internal Revenue Code, reading:

"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 event, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty." (Italics supplied)

The Court of Tax Appeals, by the vote of its Presiding Judge, concurred in by an Associate Judge, granted the motion and dismissed the petition for review, upon the ground that it had been filed beyond the period of two (2) years fixed in said section 306. The other Associate Judge of said court concurred in the result, the claim for refund having been filed beyond said period. Hence, the petition for review filed with this Court.

It is not denied that petitioner's claim for refund, as well as its petition for review in the Court of Tax Appeals, were filed beyond the period stated in said section 306 of the Tax Code. This notwithstanding, petitioner maintains that the motion to dismiss filed by respondent with the Court of Tax Appeals should have been denied, (1) because the amounts sought to be recovered by petitioner were paid by the same through misrepresentation by respondent, which misrepresentation was discovered by petitioner sometime in December 1956, and (2) upon the authority of *Panay Electric Co. vs. Collector of Internal Revenue*, 103 Phil., 93).

The first argument is based upon a letter of the Deputy Collector of Internal Revenue, reading:

"January 20, 1954

"The Guagua Electric Light Plant Co., Inc.
Guagua, Pampanga

GENTLEMEN:

With reference to your letter dated December 4, 1953, I have the honor to inform you that, according to our records, you were authorized on April 17, 1953, a tax credit of P4,958.42 against your franchise tax beginning the first quarter of 1953. Said amount represents the 2 per cent difference between the 7 per cent franchise tax collected by the Deputy Provincial Treasurer of that Municipality and 5 per cent franchise tax provided for in section 259 of the Tax Code, as amended, during the period from the 4th quarter of 1950 to the 3rd quarter of 1952. As your franchise (Resolution No. 39, series of 1928 of the Municipal Council of that Municipality) does not fix the rate of franchise tax to be paid by you, you are subject to the 6 per cent franchise tax provided for in said section of the Tax Code.

In view thereof, your request for refund of alleged overpayment of P7,501.02 is hereby denied.

Very respectfully,

(Sgd.) SILVERIO BLAQUERA

Deputy Collector

of Internal Revenue"

It appears, however, that in a communication to the Collector of Internal Revenue dated January 2, 1953,

petitioner stated:

"* * * As of and beginning the fourth quarter of 19E0 the Bureau of Internal Revenue thru the Treasurer's Office of Guagua, Pampanga, charged and collected from the corresponding gross earnings of the GUAGUA ELECTRIC LIGHT PLANT CO., INC. a tax on the latter's franchise at the rate of seven (7) percentum every quarter, until the third quarter of 1952. We have, however, recently discovered that under Republic Act No. 418 the tax coUeclible on the corporate franchise as an electric utility is only five (5) percentum for every quarter and this is in fact the rate being paid by other utilities in the province. * * *." (Exhibit 4, p. 95 BIR rec.) (Italics supplied.)

Thus, the Collector of Internal Revenue was the one induced by petitioner to believe that it was subject to a franchise tax of 5 per cent of its gross income, as provided In Republic Act No. 418, amending section 259 of the Tax Code. Indeed, said officer had no reason to believe otherwise, for such is the rate fixed by the Tax Code (as amended) for franchises in general, and he seemed to be tinder the impression (deducible from the above mentioned communication of the petitioner to the Collector of Internal Revenue, dated March 27, 1957), that said provision of the Tax Code amended all previous special laws on the same subject. Moreover, it is not claimed that the Collector of Internal Revenue was aware of the pertinent provisions of petitioner's municipal franchise, the contents of which were allegedly unknown to the very petitioner herein. Hence, the claim of misrepresentation is devoid of factual foundation.

In any event, pursuant to section 306 of the Tax Code, no suit or proceeding for refund or credit of any national internal revenue tax erroneously or illegally assessed or collected shall be begun after the expiration of two (2) years from the date of payment. This provision, which is mandatory, is not subject to any qualification, and, hence, it applies regardless of the conditions under which the payment has been made.

With respect to the second argument, the Court of Tax Appeals had the following to say, with which we are fully in agreement:

"While petitioner cited the ease of Panay Electric Co. vs. Collector of Internal Revenue, 103 Phil., 93, as authority in support of its case, we find the circumstances in that case entirely different from the case at bar. In that case the Supreme Court took into account the special circumstances of the case in which, first: there was a pending litigation between the two parties as to the proper tax to be paid and of the proper interpretation of the taxpayer's charter in relation to Section 259 of the Tax Code; and second: the Collector of Internal Revenue in that case agreed to abide by the decision of the Supreme Court as to the collection of taxes relative thereto, so that the Supreme Court considered that the period under said section 306 had been suspended insofar as it referred to the payment's of franchise taxes made subsequent to the institution of the suit and while the same was pending. Consequently, under these special circumstances, the Supreme Court in that case allowed the taxpayer, Panay Rlectric Co, to claim the alleged overpayment of the tax in the sense that the institution of the suit which was then pending in the Supreme Court ha.d the effect of suspending or waiving the prescriptive period provided for under Section 306 of the Tax Code, as regards the payment made of the franchise taxes subsequent to the institution of the suit. Consequently, the filing of the suit for the recovery of the tax by the Panay Electric Co. against respondent Collector was not yet deemed barred by section 306 of the Tax Code.

"We find the aforesaid circumstances absent in the instant case. There has been no pending¹ case between the two parties and neither has respondent Collector of Internal Revenue manifested that he would bo bound by any particular decision, such as was cited in the said Panay Electric Case. Under the herein set of facts, therefore, the right of petitioner to claim for refund or tax credit for the amounts in controversy can no longer he made by judicial action as the two-year period under Section 306 of the Revenue Code has barred the same."

Wherefore, the resolution appealed from is hereby affirmed, with costs against petitioner, Guagua Electric Light Plant Company, Inc. It is so ordered.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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