

FILIPINAS COMPANFA DE SEGUROS, PLAINDFF AND APPELLEE, VS. JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.

G. R. No. 39801. March 14, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant, as Collector of Internal Revenue, from a judgment rendered by the Court of First Instance of Manila, ordering him to pay to the plaintiff the sum of P1,921.35, with the costs. The amount in question represents the normal tax of 3 per cent on the sum of P64,045 which the plaintiff received as dividends from three corporations.

The material and pertinent facts of the case have been agreed upon by the parties and are as follows:

"I. That the facts alleged in paragraphs 1 and 11 of the complaint are admitted.

"II. That the plaintiff, with the competent authority of the Insurance Commissioner, has invested part of its funds in shares of other corporations.

"III. That, as such shareholder, the plaintiff received from other corporations dividends or net profits for the year 1930, the amounts being more particularly specified as follows:

Central Azucarera de Bais.....

P1,200.00

Insular Life Assurance Co., Ltd.....

40,000.00

The Philippine Guaranty Co.....

22,845.00

Total.....

64,045.00

"IV. That on the amounts specified in the next preceding paragraph, the corresponding 3 per cent income tax has already been paid at source by each of the above-named corporations.

"V. That the plaintiff, on or about January 27, 1931, filed voluntarily with the defendant its income tax return

for the calendar year ended December 31, 1930, in a form furnished by the defendant marked herein Exhibit A, and the said plaintiff declared in said return dividends received from other corporations, among them and as a part thereof being the P64,045 specified in paragraph III of this agreement; that the defendant, acting under the authority of the provisions of section 14 (a) of Act No. 2833, commonly known as the Income Tax Law, computed the three (3) per cent normal tax on the sum of P493,349.76, the entire taxable net income of the plaintiff as declared in its aforesaid return; that the plaintiff was notified of this assessment on or about February 13, 1931.

"VI. That, on June 12, 1931, the plaintiff paid the said sum of P14,800.49, voluntarily and without protest, of which sum the amount of P1,921.35 represents the income tax due on the dividends or net profits in the aggregate amount of P64,045 as specified in paragraph III of this agreement.

"VII. That, on July 31, 1931, the plaintiff through its attorney requested the refund or reimbursement of the said tax in the sum of P1,921.35, but the defendant under its letter dated June 13, 1932, denied said request.

"VIII. That both parties hereby reserve the right to introduce further evidence in support of their pleadings."

The defendant assigns the following four alleged errors as committed by the trial court in its appealed judgment, to wit:

"I. The trial court erred in holding that, under section 14 (a) of Act No. 2833, appellee can recover income taxes paid without protest.

"II. The trial court erred in sentencing defendant-appellant to pay appellee the sum of P1,921.35.

"III. The trial court erred in sentencing defendant-appellant to the payment of the costs of this action.

"IV. The trial court erred in denying the motion for new trial of defendant-appellant."

The parties admit that the dividends amounting to P64,045, which the plaintiff received from other corporations, are exempt from the payment of income tax in accordance with the provisions of section 10 of Act No. 2833, as amended by Acts Nos. 2926 and 3761. However, the defendant contends that the plaintiff has lost its right to ask for the refund of the tax paid by it on the ground that it was voluntarily paid and no protest was filed within the period prescribed by law for that purpose.

The trial court based its decision on the saving clause contained in section 14 (a) of Act No. 2833 which reads as follows:

"SEC. 14. (a) All assessments shall be made by the Collector of Internal Revenue, and the several corporations, joint-stock companies, partnerships, joint-accounts (cuentas en participacion), associations, and insurance companies shall be notified of the amount for which they are respectively liable on or before the first day of June of each year, and said assessment shall be paid on or before the fifteenth day of June; Provided, That every corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, and insurance company, computing taxes upon the income of the fiscal year which it may designate in the manner hereinbefore provided, shall pay the taxes due under its assessments within one hundred and five days after the date upon which it is required to file its list or return of income for assessment; except in cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, in which cases the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is made or due, make a return upon information obtained as provided for in this law or by existing law or require the return made to be corrected and the assessment made by the Collector of Internal Revenue thereon shall be paid by such corporation, joint-stock company, partnership, joint-account (cuenta en participacion), association, or insurance company immediately upon notification of the amount of such assessment; and to the tax due and unpaid after the fifteenth day of June of any year, or after one hundred and five days from the date

on which the return of income is required to be made by the taxpayer, and after ten days' notice and demand thereof by the Collector, there shall be added five per centum on the amount and interest at the rate of one per centum per month upon the said tax, from the time the same becomes due: Provided, That upon the examination of any return of income made pursuant to this law, if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayers shall be permitted to present a claim for refund thereof."

The trial court held that inasmuch as the refund authorized in the last clause of the above-quoted section is not made to depend upon any condition precedent, a protest was not an indispensable requisite and the absence thereof did not deprive the plaintiff of its right to bring the action.

This court is of the opinion that the conclusion of law arrived at by the trial court is erroneous. In interpreting section 14 (a), it did not take into consideration the provisions of section 1579 of the Revised Administrative Code, as amended by Act No. 3685, and those of section 19 of Act No. 2833, which read as follows:

"SEC. 1579. Recovery of tax paid under protest.—When the validity of any tax is questioned, or its amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within thirty days, and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax to bring an action against the Collector of Internal Revenue for the recovery without interest of the sum alleged to have been illegally collected, the process to be served upon him, upon the provincial treasurer, or upon the officer collecting the tax."

"SEC. 19. All administrative, special, and general provisions of law, including the laws in relation to the assessment, remission, collection, and refund of internal-revenue taxes not Heretofore specifically repealed and not inconsistent with the provisions of this law are hereby extended and made applicable to all of the provisions of this law and to the tax herein imposed."

According to the said section 1579, when the validity of any tax is questioned, or its amount disputed, or other question raised as to liability therefor, the taxpayer, if he desires to preserve his right, should pay it under instant protest, or upon protest within thirty (30) days from the date of such payment. Section 19 extended such rule and made it applicable to all the provisions contained in Act No. 2833, otherwise known as the Income Tax Law. Applying the rules on interpretation of laws, it is evident that the refund authorized under the last clause of section 14 (a) should be understood as subject to the indispensable prerequisite or condition precedent that the taxpayer should make the payment under protest, to be filed immediately or within thirty (30) days after such payment is made.

It being admitted that the plaintiff did not pay under protest the tax which it now seeks to recover, nor did it file such protest within the period of thirty (30) days fixed by law, it follows that it has entirely lost its right to recover the same.

The foregoing favorably disposes of the first two assignments of error. The third assignment is likewise well founded on the ground that no costs should be allowed against the Government, which, in this case, is represented by the defendant, in accordance with the doctrine laid down in the case of *Hongkong & Shanghai Banking Corporation vs. Rafferty* (39 Phil., 145).

The judgment appealed from is hereby reversed and the defendant is absolved from the complaint, with the costs of both instances against the plaintiff. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

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