

**PHILIPPINE SUGAR ESTATE DEVELOPMENT CO., LTD., INC.,
PLAINTIFF AND APPELLEE, VS. JUAN POSADAS, JR., COLLECTOR OF
INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

G. R. No. 41206. September 08, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant, as Collector of Internal Revenue of the Philippine Islands, from the court's judgment ordering him to pay to the plaintiff the sum of P14,300.28.

The facts of the case have been stipulated as follows:

"The plaintiff and the defendant assisted by their respective counsel agree and stipulate the following facts:

"1. That the plaintiff is a corporation organized and existing under the laws of the Philippine Islands, with offices at No. 246 Anda Street, Walled City, Manila; the defendant is and during the entire period mentioned in the complaint was the Collector of Internal Revenue of the Government of the Philippine Islands.

"2. That during the years specified in paragraph 4 of this stipulation, the plaintiff owned shares in the following corporations: Bank of the Philippine Islands; San Miguel Brewery; Filipinas Compania de Seguros; Philippine National Bank; Botica Boie; Brias Roxas; Benguet Consolidated Mining Co.; Victorias Milling Co.; La Carlota; China Banking Corporation; H. E. Heacock; Central Azucarera de Tarlac; Central Azucarera de Bais.

"3. That the plaintiff likewise owned 154 liberty bonds at the par value of F100 each.

"4. That the plaintiff received from the above stated corporations, by way of dividends on its said shares and interest on said liberty bonds, the sums specified for the years mentioned in the statement, Annex A, which is attached to and forms part of this stipulation.

"5. That the plaintiff, within the reglementary period, filed its income tax returns for said years, which included the amount of the dividends specified in said Annex A, as well as the interest on the liberty bonds.

"6. That when the defendant computed the income tax to be paid by the plaintiff for said years, the dividends and interest above stated were included in the computation and the plaintiff, without protest, paid by way of normal tax on said dividends and interest the sums specified in the statement, Annex B, which is likewise attached to and forms part of this stipulation. The respective dates on which said taxes were paid also appear in said Annex B.

"7. That the income tax on said dividends had already been paid at their source by the corresponding corporations prior to the receipt thereof by the plaintiff.

"8. That on March 30, 1933, the plaintiff, by means of a letter which is attached to this stipulation as Annex C, demanded of the defendant the refund of the taxes specified in the sixth clause.

"9. That by means of a letter dated April 10, 1933, which is attached to this stipulation as Annex D, the

defendant refused to refund said taxes to the plaintiff.

"10. That in its letter dated April 28, 1933, which is attached to this stipulation as Annex E, the plaintiff excepted to said resolution of the defendant refusing to refund the taxes in question.

"The parties, without prejudice to their presenting evidence relative to matters not covered by this stipulation, respectfully submit the same to this honorable court."

The appellant assigns six (6) alleged errors as committed in the decision, but this court believes that the case may be decided on its merits merely by determining the principal question of whether or not the action brought by the plaintiff-appellee lies, in spite of the fact that it failed to pay under protest the income taxes corresponding to the years from 1916 to 1931, inclusive.

The action brought by the appellee is based on the explanatory or saving clause contained at the end of section 14 (a) of Act No. 2833, which reads as follows:

"* * * 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 appellant contends that the action does not lie on the ground that the appellee failed to make its payments under protest, in open violation of the provisions of section 1579 of the Revised Administrative Code, as amended by Act No. 3685, which reads 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."

The appellee, in turn, contends that section 1579 of the Revised Administrative Code is not applicable to income tax cases on the ground that these should be governed exclusively by Act No. 2833, which is special in character. Interpreting literally the saving clause above stated, said appellee maintains that the protest was unnecessary in view of the fact that the law does not require it. But in arguing thus, the appellee ignores section 19 of said Act No. 2833, in accordance with which all special and general provisions of law relative to the collection and refund of taxes not inconsistent therewith, are extended and made applicable to the provisions of said Act No. 2833. Said section reads as follows:

"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."

By virtue of this latter section and in view of the fact that the provisions of section 1579 of the Revised Administrative Code are not in conflict with the saving clause of section 14 (a) of Act No. 2833, it should be understood that said section 1579 is applicable to Act No. 2833 relative to the refund of income taxes unduly paid.

The alleged distinction between a payment made by reason of an error of fact and another due to an error of law,

is unfounded. The law neither establishes nor permits such distinction. In the former case, it is true that the error is not immediately discovered but for that reason the law prescribes a period of thirty (30) days within which to file the protest. If the person who erroneously made payment fails to file his protest within the reglementary period, he must suffer the consequences of his carelessness and negligence. As to an error of illegality which is apparent or manifest before payment is made, there is no doubt but that the protest should be filed immediately upon making such payment.

But the truth is that according to the evidence before us, the alleged error could not be due to the appellee's ignorance of the fact that the dividends on which it had paid the tax, which it now seeks to recover, had already been taxed at their source before the same were paid to it. Our finding on this matter is based on the contents of the appellee's letter to the appellant (Exhibit C) wherein no reference is made to the alleged discovery of such fact. According to said letter, what was discovered was the illegality of the payment, because, according to the law, said dividends and interest on the liberty bonds were exempt from the payment of income tax.

The appellee invokes the ruling laid down in the case of *Fox vs. Edwards* (287 Fed. Rep., 669), wherein it was established that pursuant to section 252 of the Act of Congress of 1918, relative to income tax, the refund of any unduly paid income tax may be obtained without the necessity of a protest. However, by reading the decision rendered in said case, it will be noted that the ruling therein laid down was based on the provisions of the saving clause of section 252 of said Act of Congress wherein no requisite is imposed notwithstanding the provisions of section 3228 of the Revised Statutes. The terms of said saving clause which was incorporated therein are practically the same as those of section 14 (a) of the Act of Congress of 1916, which was made applicable to the Philippine Islands, as follows:

"* * * . Provided, That upon the examination of any return of income made pursuant to this title, the Act of August fifth, nineteen hundred and nine, entitled, 'An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes', and the Act of October third, nineteen hundred and thirteen, entitled 'An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes', 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 notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes."

Section 3228 of the Revised Statutes (paragraph 5951, U. S. Compiled Statutes [1916]) reads as follows: "All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected Without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two year next after the cause of action accrued: Provided, That claims which accrued prior to June six, eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date."

Comparing the above section with section 1579 of our Revised Administrative Code, as amended by Act No. 3685, it will be noted that although the latter is differently worded, its purpose is the same and that the only substantial difference between the two consists in that instead of the period prescribed by section 3228 for the filing of the claim, section 1579 requires the filing of a protest. It is this distinction that makes the ruling laid down in the case invoked by the appellee inapplicable to the case under consideration. In the former case, it was held that there was no necessity of a protest or any requisite whatsoever for the recovery of a payment unduly made because it is so implied from section 252 of the Act of Congress of 1918, which expressly provides that the relief is granted notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised

Statutes; while in the saving clause of section 14 (a) of Act No. 2833, on which the appellee bases its claim, there is no provision which in any manner repeals or makes the provisions of section 1579 of the Revised Administrative Code inapplicable. On the contrary, section 19 of Act No. 2833 extends it and makes it applicable to all the general provisions of said Act.

This is not the first time that this court has so construed the saving clause contained in section 14 (a) of Act No. 2833. Resolving the same question in the case of *Filipinas Compañia de Seguros vs. Posadas* (59 Phil., 667), this court held:

"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, & 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:

* * * * *

"According to the said section 1579, when the validity of any tax is questioned, or its amount disputed, or other question raised as to the 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."

After what has been said in the foregoing paragraphs, this court is of the opinion that it is unnecessary to pass upon the questions raised in the appellant's other assignments of error. It being held that the action brought by the appellee does not lie in view of the omission of the protest required by the law, the appeal is finally decided on its merits.

Wherefore, the appealed judgment is reversed and let another judgment be entered dismissing the complaint, with the costs of both instances against the plaintiff-appellee. So ordered.

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

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