

**MARGARITA ROXAS Y AYALA VIUDA DE SORIANO ET AL.,
PLAINTIFFS AND APPELLEES, VS. JUAN POSADAS, JR., COLLECTOR
OF INTERNAL REVENUE, DEFENDANT AND APPELLANT.**

G.R. No. 41731, December 21, 1935

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The plaintiffs brought this action to recover from the Collector of Internal Revenue the sum of P46,338.91 paid by them as income tax on certain dividends which they received from different corporations.

The defendant appealed from the judgment ordering the refund of said sum to the plaintiffs.

The relevant facts were stipulated by the parties as follows;

"1. That the facts alleged in paragraphs 1 and 2 of the complaint relative to the personal circumstances of the plaintiffs and the defendant and the capacity in which the latter is sued, are true.

"2. That from the year 1920 to 1930, inclusive, Carmen Ayala Viuda de Roxas, Carmen Gargollo Viuda de Roxas and the plaintiffs Antonio, Maria Ramona, Jose and Eduardo, surnamed Roxas y Gargollo, were general partners of the partnership then known as Viuda de P. P. Roxas y Herederos de Antonio R. Roxas and at present doing business under the firm name of Roxas y Cia. which was and is a general partnership organized and existing under the laws of the Philippine Islands and domiciled in the City of Manila.

"3. That during said period, the partnership in question owned stock in the corporations known as 'San Miguel Brewery, 'Luzon Rice Mills, Inc.' and 'Paracale River Dredging Co.

"4. That of the dividends received by said general partnership from said corporations, the sums specified for the years in which said dividends has been obtained in the Table Annex A attached to and forming part of this stipulation, belonged to the above named partners.

"5. That said partners filed their respective income tax returns for the years 1920 to 1930, inclusive, and included certain income in the item 'Net Profits Received from duly Registered General Partnerships' of Table I thereof, as shown by the copies of said returns attached to this stipulation as Annex D, D-1 to D-36, and upon receipt of the defendant's notice based on said returns, they paid, without protest, some of the taxes assessed by the defendant on the total net amount stated by them in their aforesaid income tax returns, within the period fixed by law; that the income thus stated in Table I of the returns in question included the dividends specified in Annex A attached to this stipulation, and said partners paid, without protest, the 3 per cent normal tax on them, in the amounts, for the years and on the dates mentioned in Annex B attached to and forming part of this stipulation. During the years when nothing was paid on account of said tax, as shown by the Table Annex B, it was due to the fact that after the expenses had been deducted and the legal deductions made, the revenues together with the dividends for said years did not amount to a taxable net income.

"6. That before the dividends in question were delivered by said corporations, the three per cent (3%) normal tax thereon had already been paid annually, at their source, by said corporations.

"7. That said Carmen Ayala Viuda de Roxas died on or about August 29, 1930, leaving as her heirs, as declared in her testamentary proceedings, civil case No. 37978 of the Court of First Instance of Manila, the herein plaintiffs, to each of whom was allotted the part or proportion as follows:

Margarita Roxas y Ayala Viuda de Soriano 1/12

Enrique Roxas y Argelliez 1/12

Jacobo Zobel y Roxas 1/36

Alfonso Zobel y Roxas 1/36

Mercedes Zobel y Roxas 7/36

Carmen Soriano y Roxas Viuda de Angoso 2/12

Antonio Roxas y Gargollo 5/48

Maria Ramona Roxas y Gargollo 5/48

Jose Roxas y Gargollo 5/48

Eduardo Roxas y Gargollo 5/48

"8. That said Carmen Gargollo Viuda de Roxas died on or about January 4, 1932, leaving her children, the herein plaintiffs Antonio, Maria Ramona, Jose and Eduardo, surnamed Roxas y Gargollo, as her sole heirs in equal shares, as declared in the intestate proceedings of said deceased, civil case No. 41152 of the Court of First Instance of Manila.

"9. That Antonio Roxas y Gargollo is the judicial guardian appointed by the Court of First Instance of Manila of the property of the minors Jose and Eduardo, surnamed Roxas y Gargollo, plaintiffs herein.

"10. That the defendant has been required by the plaintiffs, on April 4, 1933, to refund the sum stated in the complaint, in a letter copy of which is attached hereto as Annex C, but said defendant has refused to do so, as shown by the letter dated June 10, 1933, copy of which is attached to this stipulation as Annex E.

"The parties reserve the right to present evidence regarding the points not covered by this stipulation which they submit to the court."

The defendant assigns several errors in the appealed judgment, but the only questions to be decided are: (1) Whether the action brought by the plaintiffs lies in spite of not having paid the tax under protest, and (2) whether the action has prescribed on account of the time that has elapsed from the date of the payment of the tax to the bringing of the action.

The first question involves the interpretation of the saving clause contained at the end of section 14 (a) of Act No. 2833 and of section 1579 of the Revised Administrative Code, as amended by Act No. 3685, which read:

"* * * 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."

"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."

In connection with said precepts, we have section 19 of said Act No. 2833 which reads:

"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."

The defendant contends that under the iast two sections, the plaintiffs cannot recover the amount of money claimed by them because they failed to file their protest within the period fixed by section 1579. The plaintiffs vigorously maintain that said protest was unnecessary according to the explanatory clause of section 14 (a) of Act No. 2833. This same question has been raised, discussed and decided adversely to the plaintiffs' claim in the cases of *Filipinas, Compania de Seguros vs. Posadas* (59 Phil., 667), and *Philippine Sugar Estate Development Co. vs. Posadas* (60 Phil., 565). In the latter case we said:

"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 Ms 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. 2832, 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 or 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 years next after the cause of action accrued: Provided, That claims which accrued prior to June six, eighteen hundred and seventytwo, 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 nonnecessity 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

tioenty-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, Compania 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, 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 ia), 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 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 of 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.' "

We have again carefully examined the same legal question and found neither precedent nor authority on which to base a different conclusion, thus compelling us to apply to this case the same doctrine already laid down in the two cases above cited.

We hold that the defense of prescription set up by the defendant is well founded because it appears that the last payment of the income tax was made on June 15, 1930, and the action was brought only on June 13, 1933, or more than two years after the payments had been made. Under section 1579, the period within which an action for the recovery of a tax paid may be brought is two years, and we see no reason why this provision should not be applied to the plaintiffs' case. If the necessity of a protest was made applicable to the action for the recovery of an income tax unduly paid by virtue of the precept of section 19 of Act No. 2833, the precept relative to the period within which to bring the same action should also be applied thereto. It follows, therefore, that the action brought by the plaintiffs has already prescribed under the legal provisions in question.

Wherefore, the appealed judgment is reversed and the defendant is absolved from the complaint, with the costs of both instances to the plaintiffs. So ordered.

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

Judgment reversed.

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