REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

ORLANDO V. CALSADO,
Petitioner,

- versus - C.T.A. CASE NO. 104

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a case arising from a claim for refund of petitioner for the sum of ₱55.00 alleged to have been illegally and erroneously collected by the respondent Collector of Internal Revenue by way of income tax for the year 1950, and further, for a review of respondent's assessment for the sum of ₱40.19 as income tax due from petitioner for the year 1949, contending that in both instances he is exempt therefrom.

This case has been submitted partly on an agreed stipulation of facts in addition to the evidence presented by both parties. The pertinent and established facts may be summarized as follows:

In the income tax return filed by the petitioner for the year 1949 (Exh. "2"), it appears that petitioner had a taxable net income of ₱2,339.50; and in his income tax return for the year 1950, (Exh. "3"), there appears a taxable net income of ₱2,892.00. The petitioner has a brother, Abelardo Calsado, then 19 years of age in 1949 and a sister, Angeles Calsado of legal

age, both of whom lived with petitioner and were fully dependent on the latter for education and support during the taxable years 1949 and 1950. (Pars. 2 and 3, Stipulation of Facts). The tax assessment of ₱55.00 for 1950 has been paid under protest on May 15 and August 15, 1951, under Official Receipts Nos. 90788 and 348042 respectively, and refund thereof has been requested on May 16, 1951, (Exhibit "F", and par. 8, Stipulation of Facts). Furthermore, the assessment for the year 1949, in the sum of ₱40.19 has also been contested by petitioner (Exhibit "A", par. 9, Stipulation of Facts). The decision of the respondent regarding the claim for refund and the protest on the assessment (Exhibit "5") from which appeal has been taken is dated February 15, 1955, but it does not appear in the record nor has evidence been adduced as to when petitioner received a copy of the said decision. However, we assume that the petitioner filed his petition for review within the 30-day period following the receipt of the said decision.

As provided for by the Income Tax Law, the personal exemption then enforced in 1949 for an unmarried person was ₱1,000.00 and ₱2,000.00 for a married person or head of a family and in the year 1950, the personal exemption allowed an unmarried person was ₱1,800.00, and for a married person or head of a family, ₱3,000.00.

The petitioner contends that for purposes of paying income taxes, although unmarried, he is, and should be, classified as "head of a family", as de-

fined in section 23, par. (b) of the Internal Revenue Code in view of the fact that during the taxable years 1949 and 1950, a minor brother, Abelardo Calsado, 19 years of age, and a sister, Angeles Calsado of age were fully dependent on him for education and support.

The statutory rule involved in this case is found in section 23, par. (b) of the National Internal Revenue Code which defines the term "head of the family", as follows:

> " x x lx x x .
>
> For the purpose of this section, the term 'head of a family' includes an unmarried man or woman with one or both parents, or one or more brothers or sisters, or one or more legitimate, recognize natural, or adopted children dependent upon him or her for their chief support where such brothers, sisters, or children are less than twenty-one years of age or where such children are incapable of self-support because mentally or physically defective."

Internal Revenue Regulations No. 2, implementing this provision of the Tax Code, defines "head of a family" as follows:

> "A head of a family is an individual who actually supports and maintains in one household one or more individuals, who are closely connected with him by blood relationship, relationship by marriage, or by adoption, and whose right to exercise family control and provide for these dependent individuals is based upon some moral or legal obligation. In the absence of continuous actual residence together, whether or not a person with dependent relatives is a head of a family within the meaning of the statute must depend on the character of the separation. If a father is absent on business, or a child or other dependent is away at school, or on a visit, the common home being still maintained, the additional exemption still applies. If,moreover, thru force of circumstances a parent is obliged to maintain his dependent children with relatives or in a boarding house, while he lives elsewhere, the additional exemption may still apply." (39 O.G. 325)

We believe that the foregoing definitions have to be read in connection with the applicable provisions of the New Civil Code relating to support, more particularly Articles 291, 294, 295 and 299 thereof (formerly Arts. 143-145 and 149, Span. Civ. Code) which we quote hereunder:

> "Art. 291. The following are obliged to support each other to the whole extent set forth in the preceding article:
>
> (1) The spouses;
> (2) Legitimate ascendants and descendants;
> (3) Parents and acknowledge natural children and the legitimate or illegitimate descendants of the latter;
> x x x x x x
>
> "Brothers and sisters owe their legitimate and natural brothers and sisters, although they are only of the half-blood, the necessaries for life, when by a physical or mental defect, or any other cause not imputable to the recipients, the latter cannot secure their subsistence. This assistance includes, in the proper case, expenses necessary for elementary education and for professional or vocational training."
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> "Art. 294. The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:
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> (1) Form the spouse;
> (2) From the descendants of the nearest degree;
> (3) From the ascendants, also of the nearest degree;
> (4) From the brothers and sisters.
>
> "Among descendants and ascendants the order in which they are called to the intestate succession of the person who has a right to claim support shall be observed."
>
> "Art. 294. x x x x x
>
> When two or more recipients at the same time claim support from one and the same person legally obliged to give it, and the latter should not have sufficient means to satisfy

> all, the order established in the preceding articles shall be followed, unless the concurrent obligees should be the spouse and a child subject to parental authority, in which case the latter shall be preferred."
>
> "Art. 299. The person obliged to give support may, at his option, fulfill his obligation either by paying the allowance fixed or by receiving and maintaining in his house the person who has a right to receive support. The latter alternative cannot be availed of in case there is a moral or legal obstacle thereto."

In relation to the foregoing rules, we have the following undisputed facts: that during the taxable years 1949 and 1950, the petitioner had two dependents, one a minor brother and the other a sister, both being fully dependent upon him for support and education; that petitioner and his dependents rented a home for their residence in Pasay; that both dependents were jobless; that during 1949 and 1950, petitioner's father was earning a meager monthly salary of ₱110.00 and was in turn supporting his wife and two minor children, all of whom were likewise wholly dependent upon petitioner's father for support; that on account of the financial limitation of petitioner's father, the father seldom, if at all, sent money to his son and daughter in Manila living with petitioner; and that the petitioner having the means to do so out of his monthly income of ₱225.00, he undertook to provide the entire support of his brother and sister first above-mentioned, then under his control.

Viewed in the light of the foregoing provisions of law, this Court believes and so holds that under the

facts as stated above, the petitioner is included within the term "head of a family" as contemplated in section 23, paragraph (b) of the Tax Code, as implemented by Revenue Regulations No. 2. We believe that the petitioner, under the circumstances was at least legally obliged to give support to his minor brother, in view of the financial inability of his parents to so provide support (Arts. 294, 295 and 299, Civil Code) and having actually maintained such support, placed the petitioner squarely within the purview of the aforecited provisions of the Tax Code. The petitioner is therefore entitled to claim the benefits of the corresponding personal exemptions as "head of a family" for the years 1949 and 1950, with the result that considering these exemptions in relation to the income of petitioner as declared in his income tax returns (Exhs. "2" and "3"), the latter has no taxable income upon which an income tax liability may arise.

However, this Court has noted from the pleadings of the parties that the petition for review in this case was filed only on March 28, 1955, which is more than two years after the petitioner has paid under protest the sum of ₱55.00 on May 15, 1951 (Exhibit "F") the income tax corresponding to 1950, which petitioner contests. Since it is provided in section 306 of the National Internal Revenue Code that a suit for the recovery of a tax alleged to have been erroneously or illegally assessed and collected should be maintained within two years from the date of payment thereof, a

requirement we have held as substantial and jurisdictional, a matter which this Court may raise and resolve motu proprio, (Hoa Hin Co., Inc. v. David, (CTA) Civil Case No. R-3213, August 11, 1955, citing inter alia Venus v. Posadas, 54 Phil. 832; Wee Poco v. Posadas, 64 Phil. 640; North Camarines Lumber Co. v. David, G.R. L-6135, March 31, 1955, 51 O.G. No. 4, p. 1860), the fact that petitioner's action has been commenced beyond this period, we believe and hold to be fatal to his claim for the refund of the sum paid.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the claim for refund of the sum of ₱55.00 as income tax for 1950 alleged to have been illegally and erroneously collected is hereby dismissed for lack of jurisdiction of this Court to entertain the same. With respect to the tax assessment of ₱40.19 for the year 1949, still uncollected and protested, the respondent's assessment therefore is hereby reversed and petitioner is hereby declared free from liability thereto. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, January 11, 1956.

MARIANO NABLE
Presiding Judge

I CON-

CUR:

AUGUSTO M. LUCIANO
Associate Judge

I concur. However, my concurrence in regard to the dismissal of the claim for refund of ₱55.00, which was paid on May 15, 1951, is based solely on the ground stated in my concurring opinion in College of Oral & Dental Surgery v. The Collector of Internal Revenue, C. T. A. No. 121.

ROMAN M. UMALI
Associate Judge