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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

JOSE LEON GONZALEZ,
Petitioner,

- versus -

COLLECTOR OF INTERNAL REVENUE,
Respondent.

C.T.A.
CASE NO. 328

x - - - - - - - - - - - - - - - x

July 16, 1958

JUANA F. GONZALEZ and FORTUNATO DE LEON,
Petitioners,

- versus -

COLLECTOR OF INTERNAL REVENUE,
Respondent.

C.T.A.
CASE NO. 329

x - - - - - - - - - - - - - - - x

DECISION

These two cases involve claims for refund of income taxes paid to the respondent Collector by petitioners Jose Leon Gonzalez (C.T.A. Case No. 328) and the spouses Juana F. Gonzalez and Fortunato de Leon (C.T.A. Case No. 329) in the respective amounts of ₱86,166.00.

On the basis of the partial stipulation of facts submitted by the parties and the additional evidence presented by them, the following facts have been established.

Petitioners Jose Leon Gonzalez and Juana F. Gonzalez (the latter married to petitioner Fortunato de Leon) were part owners of a parcel of land, each to the extent of one-sixth (1/6) thereof. This parcel of land, situated in Baesa, Caloocan, Rizal, contains an area of 871,982 square meters. The property was inherited by petitioners and four other co-heirs from their mother, Doña Rufina Narcisa Vda. de Gonzalez, who died in the City of Manila on August 14, 1940.

On January 24, 1947, the Republic of the Philippines filed an action in the Court of First Instance of Rizal to expropriate the aforesaid property under Commonwealth Act No. 539, and the day following, took possession of the same after depositing the amount of ₱28,850.00. The expropriation proceeding was ultimately elevated to the Supreme Court (G. R. No. L-4918, prom. on May 14, 1954), which decided by virtue of a final judgment that the just compensation which the Government should pay for the expropriated parcel of land in question should be ₱1.50 per square meter which amount as per decision was paid to the owners by the Government exclusive of interest at the legal rate of 6% from January 25, 1947, the date the Government took possession of the property. Sometime in November, 1954, petitioners and the other co-owners thereof were paid the amount of ₱1,307,973.00, the declared just compensation for the expropriated land, as well as the sum of ₱535,587.70, representing 6% interest per annum on the amount of ₱1,279,123.00 (₱1,307,973.00 minus ₱28,850.00, the amount deposited with Court in 1947), for the period from January 25, 1947 to October 31, 1954, less the amount of ₱60,000.00, payment of which was waived by petitioners and the other co-owners.

On the basis of the above figures, respondent determined that petitioners Jose Leon Gonzalez and Juana F. Gonzalez each made a capital gain of ₱213,328.83 and that each also received the amount of ₱89,309.61 as their share in the interest of ₱535,587.70. Treating the said amounts as taxable income and after allowing each petitioner a personal exemption of ₱4,800.00, respondent assessed and demanded from each of them the sum of ₱86,166.00 as income tax due and payable for the year 1954.

On November 18, 1954, upon the request of respondent, the People's Homesite and Housing Corporation turned over to the Bureau of Internal Revenue the total sum of ₱516,007.00, representing income tax due from the six co-owners of the expropriated Gonzalez property. Petitioners Jose Leon Gonzalez and Juana F. Gonzalez were each credited by respondent with the amount of ₱86,166.00 as payment of income tax for 1954 as evidenced by the following official income tax receipts:

Petitioner	Receipt No.	Date	Amount
Jose Leon Gonzalez	520491	Nov. 19, 1954	₱86,166.00
Juana F. Gonzalez	520496	Nov. 19, 1954	86,166.00

Petitioner Juana F. Gonzalez, in her letter (pp. 33-36 BIR rec. of C.T.A. Case No. 329) dated February 29, 1956 which was received by respondent on March 1, 1956, requested for the refund of the sum of ₱24,426.00 only, claiming that the assessment was erroneous on the sole ground that the amount of ₱89,309.61 representing interest, was considered as an ordinary income when it should have been treated as capital gain. For the same reason, petitioner Jose Leon Gonzalez also requested for the refund of the amount of ₱24,426.00 in his letter dated November 5, 1956 (Exhibit R, Folio of exhibits, Annex C, Petition for Review in C.T.A. Case No. 328; pp. 47-49 BIR rec. in C.T.A. Case No. 328) which was received by respondent on November 14, 1956.

On November 12, 1956, respondent denied the request for refund of the sum of ₱24,426.00 filed by petitioner Juana F. Gonzalez but no action had been taken on the refund claim of Jose L. Gonzalez. On November 15, 1956, petitioners appealed to this Court for the review of the disputed income tax assessments for the year 1954.

Before we proceed to review the instant case on the merits, we must first determine whether or not this Court has jurisdiction over the present petitions for refund of the sum of ₱86,166.00 filed by each of the petitioners.

Section 306 of the National Internal Revenue Code reads as follows:

> "Sec. 306. Recovery of tax erroneously or illegally collected.- 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 case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

As will be noted from the above-quoted provision of our tax code, one of the requirements before a suit or proceeding can be maintained in any court for the refund of any internal revenue tax, is that a written claim for its refund should be duly filed with the Collector of Internal Revenue before filing the action in court and before the expiration of two years from the date of payment of the tax sought to be refunded. This requirement is clearly mandatory and non-compliance therewith is fatal to the action (Wee Poco & Co. vs. Posadas, 64 Phil. 640; Santiago Bermejo vs. Collector of Internal Revenue, 47 O.G. 292 (Supplement); P.J. Kiener Co., Ltd. vs. David, 49 O.G. 1852; Johnston Lumber Co. Inc. vs. the Collector of Internal Revenue, G.R. No. L-9292, April 23, 1957). The claim for refund should set forth in detail the facts and grounds upon which the same is based and apprise the Collector of Internal Revenue accordingly. (Asiatic Petroleum Co. vs. Posadas, 52 Phil. 728, Wee Poco vs. Posadas, supra; see also U. S. vs. Felt & Tarrant Mfg. Co. 283 U.S. 269).

In the case at bar, we note that petitioner Juana F. Gonzalez's claim for refund dated February 29, 1956, and petitioner Jose Leon Gonzalez's request for refund dated November 5, 1956 which are identical, cover only the amount of ₱24,426.00 and that the only basis for their claims for refund is the alleged erroneous treatment of the interest of ₱89,309.61 as an ordinary income, which petitioners allege, should be considered as a capital gain for income tax purposes. Their claims for refund do not mention the total sum of ₱86,166.00 which is the subject of their present actions for refund, nor of any other ground or basis for their claims for refund. There is no showing that respondent considered the claim as regards the entire tax of ₱86,166.00, but appears to have limited his findings to the contested amount of ₱24,426.00. While petitioner Juana Gonzalez de Leon has made a last minute modification of her claim for refund by increasing it from ₱24,426.00 to ₱86,166.00 as appearing in her letter, Exhibit J (Folio of Exhibits) dated November 24, 1956, the same was made more than two years from date of payment of the tax on November 19, 1954, and must therefore be considered time-barred by section 306 of the Tax Code. The records do not show whether or not the petitioner Jose Leon Gonzalez in C.T.A. Case No. 328 has ever filed a claim for refund of the full amount of ₱86,166.00 before or after the deadline of the two-year prescriptive period as was done by the other petitioner, Juana Gonzalez de Leon five (5) days after the deadline.

Consequently, we are of the opinion and so hold that petitioners failed to comply with the mandatory requirement of the law with respect to the filing of their respective claims for refund of the amount of

₱86,166.00, although they have complied with said requirement with respect to their claims for refund of the amount of ₱24,426.00. Therefore, the jurisdiction of this Court must and should be limited to the determination of whether or not petitioners are entitled to the refund of the sums of ₱24,426.00 as contemplated by their claims for refund and this would depend on whether or not the treatment by respondent of the interest in the amount of ₱89,309.61 is correct and in accord with law.

Thus, the only issue left for us to determine in these two cases is whether or not the respective sums of ₱86,309.61 which the petitioners received as interests represent capital gain or ordinary income.

Petitioners contend that interest paid in expropriation proceedings constitutes capital gain and not an ordinary income, and therefore conclude that respondent committed an error in taxing the interest paid to them as ordinary income. In support of their contention, petitioners rely on the cases of David S. Brown v. Commissioner of Internal Revenue, 47 BTA 139; Pioneer Real Estate Co. v. Commissioner of Internal Revenue, 47 BTA 886; Commissioner of Internal Revenue v. Appleby's Estate, 123 F. 2d 700; and Seaside Improvement Co. v. Commissioner of Internal Revenue, 105 F. 2d 990. However, we find that the ruling in said cases relied upon by petitioners has already been abandoned and the prevailing view is that interest paid in expropriation proceedings on account of late payment of the compensation for the expropriated property is taxable as ordinary income and not as capital gain. Thus, in the case of Commissioner of Internal Revenue v. Kieselbach, 127 F. 2d 359, the Circuit Court of Appeals held:

> "We think the interest, while part of 'just compensation', was a payment to property holder which compensated him for the delay in paying him for his land. Our first impression on the question is thus borne out. The sum of money the taxpayer received was designated as a round sum in principal with interest computed from the date of taking to the date of payment. It seems clear, even apart from everything else, that the principal sum was capital, and the part specified as interest, as we have already said, was compensation for the period during which the property owner had neither land nor money. It is, therefore, for income tax purposes, ordinary income, not capital gain." (Decided on April 7, 1942, underscoring supplied.)

On appeal, the Supreme Court of the United States affirmed the decision of the Circuit Court of Appeals in the Kieselbach case, stating that:

> "We agree with the Court of Appeals. The sum paid these taxpayers above the award of $58,000 was paid because of the failure to put the award in the taxpayers' hands on the day, January 3, 1933, when the property was taken. This additional payment was necessary to give the owner the full equivalent of the value of the property at the time it was taken. Whether one calls it interest on the value or payments to meet the constitutional requirement of just compensation is immaterial. It is income under section 22, paid to the taxpayers in lieu of what they might have earned on the sum found to be the value of the property on the day the property was taken. It is not a capital gain upon an asset sold under section 117." (Henry A. Kieselbach and Olga M. Kieselbach v. Commissioner of Internal Revenue, 317 U.S. 399; 87 L. Ed 358; Decided on Jan. 4, 1943. Underscoring supplied.)

On June 12, 1945, the Circuit Court of Appeals reiterated its decision in the Kieselbach case in

Isaac G. Johnston & Co., v. United States, 149 F. 2d 851, in the following words:

> "The opinion states very definitely that the so-called interest is 'not a part of the sale price', but 'is income under Sec. 22, (26 U.S. CA. Int. Rev. Acts, page 825) paid to the taxpayers in lieu of what they might have earned on the sum found to be the value of the property on the day the property was taken.' If not part of the sale price, it cannot be used to determine whether there was gain or loss but remains taxable income regardless of gain or loss. On the taxpayer's appeal the judgment must be affirmed."

And in a footnote, the Court further stated:

> "Our previous holdings to the contrary in Seaside Improvement Co. v. Commissioner of Internal Revenue, 2 Cir., 105 F 2d 990, certiorari denied 308 U.S. 618, 60 S. Ct. 263, 84 L. Ed. 516, and Commissioner of Internal Revenue v. Appleby's Estate, 2 Cir., 123 F 2d 700, can no longer be followed."

For one thing, the interest does not form part of the sales price and therefore cannot be considered in the determination of the capital gain (see Seaward Airline Rwy. vs. U. S. 261 U.S. 229). Rather it is payment or "compensation for the use or forbearance of money as damages for its detention". (Fall River Electric Co. vs. Commissioner, 23 BTA 168, 171; see also Hogan vs Commissioner's Court, 160 Ala. 544, 49 So. 417; Kieselbach v. Commissioner, 317 U.S. 399)

Following the present rule in the United States as gathered in the cases cited above, we are of the opinion and so hold that the sum of ₱86,309.61 received by petitioners as interest, is ordinary income and not capital gain.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decisions of the respondent Collector of Internal Revenue denying petitioners' claims for refund should be, as they are hereby, affirmed with costs against petitioners.

SO ORDERED.

Manila, Philippines, July 16, 1958.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge

Aff'd. in GR Nos. L-14532-33, May 26, 1965.