Library

CONRADO LARIDA,
Petitioner,

Sept. 29, 1959

- versus -

C.T.A. CASE NO. 548

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

DECISION

The petitioner herein, Conrado Larida, is the owner of a small motor-powered sugar mill commonly known as "trapiche" located in the Municipality of Talisay, Province of Cebu, from which he had been producing <u>muscovado</u> sugar on a small scale for himself and for the neighboring farmers since 1950 up to the present time.

Since the commencement of the operation of petitioner's "trapiche" in 1950 up to and including the period now under review -- April 16, 1956 to March 12, 1958 -- the respondent Collector (now Commissioner) of Internal Revenue, through his duly authorized representative stationed in the aforesaid municipality and province, had been assessing against, and collecting from the petitioner, as proprietor and operator of a <u>sugar central</u>, a tax of 2% on the gross value of the <u>muscovado</u> sugar manufactured by him allegedly under authority of Section 189 of the National Internal Revenue Code which imposes a tax equivalent to two per centum (2%) of the gross value in money of all the sugar manufactured by proprietors or operators of sugar centrals.

Believing that the "trapiche" belonging to him is not a sugar central within the contemplation of the last cited section of the National Internal Revenue Code, the petitioner through counsel, wrote a letter (p. 2, BIR rec.) dated April 8, 1958 to the respondent questioning the validity of the assessment and at the same time demanding the refund of the total amount of ₱576.66 which the petitioner had paid in small sums and at different times to the respondent during the period from April 16, 1956 up to March 12, 1958, as percentage tax on the gross value of the muscovado sugar manufactured by him. These payments are duly supported by officials receipts, Exhibits A to A-14 (pp. 27-41, CTA rec.).

As will be noted on the rubber stamp appearing at the upper right hand side of petitioner's letter of April 8, 1958 (p. 2, BIR rec.), the respondent received the same on April 16, 1958.

After waiting for almost three months for the reply of respondent to petitioner's letter of April 8, 1958, which never came up to the present time, and fearing that the two-year prescriptive period within which to file his suit for refund from date of payment, as fixed in Section 306 of the National Internal Revenue Code would run out on him, the petitioner on June 23, 1958, appealed the case to this Court praying that we decide the validity of respondent's assessment and the merit of his (petitioner's) claim for refund of the amount of ₱576.66, a relief over which he was not able to obtain a prompt and categorical ruling or decision from the respondent up to the present time.

There are only two issues raised in this appeal:

1. May we assume jurisdiction over this case and decide it on the merits notwithstanding the fact that the respondent has never decided the request for refund of petitioner up to the present time, and, therefore, under Section 11 of Republic Act No. 1125, there is no formal and final decision to appeal from? and,

2. If the answer to the first query be in the affirmative, is the petitioner a proprietor and operator of a sugar central within the contemplation of Section 189 of the National Internal Revenue Code, so as to hold him liable for the percentage tax provided therein?

These two questions are no longer novel with the recent decisions of the Supreme Court involving analogous facts and issues.

In our resolution of August 22, 1956 in the case of Paracale-Gumaus Consolidated Mining Company vs. Silverio Blaquera, Collector of Internal Revenue, C.T.A. Case No. 211, the majority of this Court had occasion to rule on a similar issue as the first one now being raised before us. In said resolution, we held that the provision of Section 306 of the National Internal Revenue Code, insofar as it requires that court actions for refund must be instituted within two (2) years from the date of payment, has not been impliedly repealed by Section 11 of Republic Act No. 1125 which provides that such action must be instituted within thirty (30) days after the receipt of the decision of the Commissioner of Internal Revenue. We tried to reconcile the two provisions and for the future guidance of taxpayers with claims for refund, stated the following:

> "In order to confer jurisdiction upon this Court, the usual claim for refund or credit as a condition precedent, should be filed with the Collector of Internal Revenue within two (2) years from the date of payment, (Section 306, National Internal Revenue Code; P. J. Kiener Co., Ltd. vs. Saturnino David, *supra*). A simple protest at the time of payment or previous objections to the tax assessed do not take the place of the required claim for refund (Santiago Bermejo vs. Collector of Internal Revenue, *supra*). The filing of the petition for review before this Court by the taxpayer for the recovery of taxes paid should be made within thirty (30) days from receipt of the ruling, order or decision of the Collector of Internal Revenue denying the claim for refund (section 11, Republic Act No. 1125) and in no instance may the action be filed after two (2) years from the date of payment (section 306, National Internal Revenue Code; C.T.A. Case No. 80, Bay View Hotel, Inc. vs. Collector of Internal Revenue; C.T.A. Case No. 121, College of Oral and Dental Surgery vs. Collector of Internal Revenue)."

x x x x

> "Let us say that after paying a national internal revenue tax on January 2, 1955, the taxpayer on February 1st of the same year, filed a formal claim for its refund with the Collector of Internal Revenue. The latter, for one reason or another, as had happened in the present case as in the Kiener case, fails to reply to the claim for refund within two (2) years from the date of payment. Under the circumstances, as was held in the Kiener case, the taxpayer 'having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the collector's decision.' In other words, in fairness to the

taxpayer so as not to deprive him of his day in court and the prompt adjudication of his case, he is left by necessity to presume and conclude before the expiration of the two-year prescriptive period, that his claim for refund has been denied by the Collector of Internal Revenue if no action was taken thereon by the latter during the said period. The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. As the Supreme Court said in the Kiener case, '<u>Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim,</u> or that the taxpayer should not go to court before he is notified of the Collector's action.' The taxpayer may, indeed should, proceed without waiting for the decision of the Collector of Internal Revenue, to file his petition for review before this Court on or within a reasonable time before the expiry date of the statutory period of two years prescribed in Section 306 of the National Internal Revenue Code.

"It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under Sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense. However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts." (Paracale-Gumaus Consolidated Mining Co. vs. Silverio Blaquera, Collector of Internal Revenue, <u>supra</u>, citing P. J. Kiener Co., Ltd. vs. Saturnino David, Collector of Internal Revenue, G. R. No. L-5163, April 22, 1953 and Santiago M. Bermejo vs. The Collector of Internal Revenue, G. R. No. L-3029, July 25, 1950.)

In the recent case of Collector of Internal Revenue vs. J. M. Sweeney, et al., G. R. No. L-12178, promulgated on August 21, 1959, the Supreme Court held that:

> "As to the propriety of taking the case to the Court of Tax Appeals before respondents received any advice as to the action taken, if any, on their petition for refund, this question has already been ruled upon by us to the effect that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to court. In the case of P. J. Kiener Co. vs. David, G. R. No. L-5163, April 22, 1953 (49 O.G. 1852), we said:
>
> > 'x x x Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim <u>or that the taxpayer shall not go to court before he is notified of the Collector's action</u>. Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision. x x x' (Underlining supplied.)
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> And in the case of College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Internal Revenue, G. R. No. L-10446, January 28, 1958 (54 O.G. 7055), we ruled:
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> > 'This Court, construing the afore-quoted provisions of law (referring to section 306 of the National Internal Revenue Code) in an identical case, made the pronouncement that although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to court (P. J. Kiener Co., Ltd. vs. David, L-5163, April 22, 1953, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in

> court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter.' (Underlining supplied.)"

Having thus resolved as we do resolve the first query on jurisdiction in the affirmative following well-established precedents, we shall now proceed to dispose of the second issue which goes into the merits of the case.

It has been satisfactorily established through the uncontradicted testimony of petitioner Conrado Larida that his sugar mill or "trapiche" from which he had been producing muscovado sugar since 1950, consists of two small revolving cylindrical steel rollers driven by motor power in which sugar cane is inserted and crushed to draw therefrom sugar cane juice; that formerly, the rollers of his "trapiche" were operated by animal power but now motors are used instead; that the "trapiche" which he owns and operates produces only muscovado sugar unlike sugar centrals which produce a more refined product known as centrifugal sugar; that the juice extracted from his "trapiche" is boiled in containers known as "cawa" and for this purpose dry coconut leaves are used for fuel; that the thick syrup obtained by boiling is set to dry, placed in "buri" bags and then marketed at retail in the different towns of Cebu; and, that he operates his "trapiche" just to mill the sugar cane from his three-hectare plantation and to accommodate a limited group of small plantation owners like him, in the neighborhood, who bring their sugar cane to the mill by hand or in trucks. (pp. 5-10, t.s.n.)

Obviously, from the description given, petitioner's sugar mill is not a sugar central within the contemplation of Section 189 of the National Internal Revenue Code and, therefore, the petitioner is not liable for the payment of the percentage tax provided therein following the decision of the Supreme Court in the analogous case of Collector of Internal Revenue vs. Juan L. Ledesma, G. R. No. L-12158, promulgated on May 27, 1959, wherein it was held -

> "x x x that a 'sugar central', as that term is used in Section 189, applies to 'a large mill that makes sugar out of the cane brought from a wide surrounding territory,' or a sugar mill which manufactures sugar for a number of plantations. The term 'sugar central' could not have been intended by Congress to refer to all sugar mills or sugar factories as contended by respondent. If respondent's interpretation is to be followed, even sugar mills run by animal power (trapiche) would be considered a sugar central. We do not think Congress ever intended to place owners of 'trapiche' in the same category as operators of sugar centrals." (Collector of Internal Revenue vs. Juan L. Ledesma, supra.)

Of the total amount of the claim for refund in the sum of ₱576.66, the petitioner is entitled to the refund of only ₱499.44 it appearing from the Official Receipt, Exhibit "A" (p. 27, CTA rec.) that the amount of ₱77.22 was paid on April 16, 1956, or a period of over two (2) years counting from the date of said payment up to the time the petitioner filed a suit for the recovery thereof when he sent his "Petition for Review" to this Court by registered mail on June 23, 1958 (p. 5, CTA rec.). (Panay Electric Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-10574, May 28, 1958; Collector of Internal Revenue vs. University of Sto. Tomas, G. R. No. L-11280, November 28, 1958.)

WHEREFORE, in view of the foregoing considerations, the respondent Commissioner of Internal Revenue is hereby ordered to refund to the petitioner Conrado Larida the sum of ₱499.44 which the latter was required to pay as percentage tax without authority of law, without pronouncement as to costs.

SO ORDERED.

Manila, September 29, 1959.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge