REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

KOPPEL (PHILIPPINES) INC.,
Petitioner.

MANILA CIVIL
CASE NO. 22893

- versus -

THE COLLECTOR OF INTERNAL
REVENUE,
Respondent.

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

March 5, 1956

D E C I S I O N

This is an appeal from the decision of the respondent Collector of Internal Revenue denying the claim of the petitioner Koppel (Philippines) Inc. for the refund of the sum of ₱30,726.53 paid by it as deficiency income tax for the year 1947.

It appears from the stipulation of facts of the parties that the petitioner is a domestic corporation with American capital, doing business in the Philippines. During the year 1942 to the early part of 1945, it sustained losses arising from the occupation of the Philippines by the Japanese Military Forces. Relying on the War Damage Insurance Act of the United States Congress (Public Law No. 506) which was passed on March 27, 1942, the petitioner entered in its books as accounts receivable from the United States the value of its properties damaged and destroyed by the war. However, on April 30, 1946, the United States Congress enacted the Philippine Rehabilitation Act of 1946 (Public Law No. 370), under the provisions of which, the war damage claim of the petitioner herein was "reduced by 25 per centum of the excess over $500." In 1947, the petitioner allegedly came to know for the first time that its losses equivalent to 25% of the excess over ₱1,000.00, or ₱256,054.88, could not be recovered, and therefore wrote it off in its books of accounts for the year 1947, and included in its income tax return for 1947, as war losses, bad debts and/or as business losses, the said sum of ₱256,054.88. The respondent Collector of Internal Revenue disallowed the amount of ₱256,054.88 as deduction from petitioner's income tax return for 1947, and on June 6, 1949, assessed against and demanded from the petitioner payment of deficiency income tax for the year 1947 in the sum of ₱34,636.21 corresponding to the disallowed amount of ₱256,054.88.

On June 29, 1949, the petitioner, pursuant to the deficiency assessment and demand of the respondent, paid under protest the sum of ₱34,636.21 on September 5, 1949, and thereafter, it repeatedly sought from the respondent a reconsideration of the deficiency income tax assessment and the refund of the amount of ₱34,636.21 which was later reduced to ₱30,726.53, alleging that the said assessment was illegal under Section 30, par. (d), sub-par. (2), and Section 30, par. (2), sub-par. (1) of the National Internal Revenue Code. On July 28, 1953, the respondent denied the claim for refund of ₱30,726.53. Hence, on August 27, 1953, the petitioner filed a "Petition for Review" with the defunct Board of Tax Appeals which affirmed the decision of the respondent and denied the claim of refund of the petitioner on October 26, 1953. On December 8, 1953, (not 1951 as stated in the stipulation of facts) the petitioner appealed the decision of the defunct Board of Tax Appeals to the Supreme Court, but the same was dismissed without prejudice by the Supreme Court on April 9, 1954, in consonance with its decision in the case of University of Sto. Tomas vs. Board of Tax Appeals, G.R. No. L-5701, prom. June 23, 1953 (49 O.G. 2245).

On May 18, 1954, viz approximately one month before the creation of this Court, the petitioner filed this case with the Court of First Instance of Manila, and on April 16, 1955, the Court of First Instance of Manila remanded the case to this Court for final disposition pursuant to Section 22 of Republic Act No. 1125.

There are only two issues raised in this appeal, condensed as follows:

1. Whether or not this Court has jurisdiction over the instant case under Section 306 of the National Internal Revenue Code which gives the taxpayer only two (2) years from the date of payment of taxes within which to commence his suit or proceeding in court for the recovery of the same; and

2. Whether or not the losses sustained by the petitioner in the amount of ₱256,054.88 is deductible under Section 30, par (d), sub-par. (2) and/

or Section 30, par. (e), sub-par. (1) of the National Internal Revenue Code.

Being as it is a prejudicial question, we shall first proceed to resolve the question of jurisdiction which was raised by the respondent as a special defense in paragraph (b) of his answer.

The respondent contends that a mere perusal of the uncontroverted facts of the case will readily and clearly show that the right of the petitioner to maintain the present action for the refund of the sum of ₱30,726.53 has long prescribed under Section 306 of the National Internal Revenue Code which 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 prodeeding shall be begun after the expiration of two years from the date of payment of the tax or penalty. (Underscoring supplied.)

In P. J. Kiener Company Ltd. vs. Saturnino David, G.R. No. L-5157, April 27, 1953 (49 O.G. No. 5, 1852) the Supreme Court blazed the computation of the two year prescriptive period fixed in the above-quoted provision of our Tax Code, thus:

> "To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say, without doing violence to the context of either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends, that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. 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. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that, unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow." (Underscoring supplied.)

In the case at bar, the petitioner admittedly paid to the respondent on June 29, 1949, the deficiency income tax which it seeks to recover in the present action. Obviously, from the said date, it had under Section 306 of our Tax Code, two (2) years within which to file its action in Court for the recovery of the amount paid (₱34,636.21 thereafter reduced to ₱30,726.53) or until June 29, 1951. During all this period, the petitioner failed to file an action for refund either in the Court of First Instance of Manila or the Board of Tax Appeals immediately after the creation of the latter under Executive Order No. 401-A, promulgated on January 5, 1951. Instead, the petitioner simply folded its hands and just waited for the decision of the respondent Collector of Internal Revenue — which as ruled in the Kiener case it should not have waited — on its claim for refund which was handed only after more than four (4) years, or more particularly on July 28, 1953. On that date, the action for refund of the tax in controversy had already long prescribed by such unnecessary waiting on the part of the petitioner.

On January 5, 1951, Executive Order No. 401-A creating the Board of Tax Appeals was issued by the President of the Philippines by authority of Republic Act No. 422. From the date of payment of the tax in question, i.e., June 29, 1949, to the creation of the Board of Tax Appeals on January 5, 1951, the petitioner herein could have maintained its suit to recover the tax paid in the Court of First Instance. That was the relief available to it then before the creation of the Board of Tax Appeals. During this period from the date of payment to the creation of the Board of Tax Appeals, one (1) year, six (6) months and six (6) days were consumed by the petitioner without any suit being filed by it in the Court of First Instance of Manila thereby leaving only five (5) months and twenty-four (24) days of the two-year statutory period provided for in Section 306 of the Tax Code.

Pursuant to Section 20 of Executive Order No. 401-A which was then presumed to be valid and enforceable and considered to be legal in all respects, "No judicial proceedings against the Government involving matters arising under the National Internal Revenue Code, x x x x x shall be maintained except as herein provided, until and unless an appeal has been previously filed with the Board of Tax Appeals and disposed of in accordance with the provisions hereof." Inasmuch as the petitioner herein under the above-quoted section of Executive Order No. 401-A, could not have filed an action for the refund of the tax in question in the Court of First Instance during the remaining period of five (5) months and twenty-four (24) days, then it should have gone to the Board of Tax Appeals within the said remaining period for the recovery of the taxes paid as that was the last and only possible remedy left to it at that time. However, as heretofore stated, the petitioner, for reasons of its own, preferred to wait for the decision of the Collector of Internal Revenue regarding his claim for refund which, as ruled in the Kiener case, he should not have waited for, and allowed the remaining five (5) months and twenty-four (24) days of the two-year period fixed by law to expire without taking the necessary legal action. Thus, from the foregoing facts and applying Section 306 of our Tax Code and the ruling of the Supreme Court in the Kiener case, it is obvious, that the right of action of the petitioner herein to recover the sum of ₱30,726.53 which it alleges to have been illegally collected by the respondent, has long prescribed and this Court is now without jurisdiction over the instant case filed before the Court of First Instance of Manila on May 18, 1954.

Moreover, even if we were to consider in all liberality to the petitioner, the running of the two-year prescriptive period suspended from the creation of the Board of Tax Appeals on January 5, 1951 to the promulgation by the Supreme Court of its decision in the case of University of Sto. Tomas vs. The Board of Tax Appeals (49 O.G. 2245) on June 23, 1953, let us say because the petitioner was then at a quandary as to where to file its action for refund inasmuch as the defunct Board of Tax Appeals was not a regular court of justice, still we shall arrive at the same final result. In the University of Santo Tomas case cited above, the Supreme Court held in clear and unmistakable words that "Executive Order No. 401-A is null and void in so far as it interferes with the jurisdiction of the Courts of First Instance in cases arising not only under the internal revenue law but also customs law and assessment law x x x ." However, notwithstanding such ruling which should have served as a clear guide to the petitioner, after receiving the Collector's decision of July 28, 1953 denying its claim for refund, (approximately one month after the promulgation of the decision in the Sto. Tomas case) it still filed its petition for review with the Board of Tax Appeals, instead of with the proper Court of First Instance. It was only on May 18, 1954, after the case was brought on appeal to and dismissed by the Supreme Court, when the petitioner filed its action to recover the tax in controversy with the Court of First Instance of Manila. Indeed, even if we were to interpret the provision of Section 306 of the Tax Code to liberal extremes in favor of petitioner, we would still have no jurisdiction over the present case filed far beyond the two-year prescriptive period.

Having thus decided that we have no jurisdiction over the instant case, it becomes unnecessary therefore to decide the second issue which goes into the merit of the case.

WHEREFORE, let the above-entitled case be, as it is hereby dismissed for lack of jurisdiction, with costs against the petitioner.

SO ORDERED.

Manila, Philippines, March 5, 1956.

AUGUSTO M. LUCIANO
Associate Judge

WE CON-

CUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge