REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ESTATE OF ANDRES M. SORIANO, JR.
represented by A. SORIANO
CORPORATION, A.K.A. ANSCOR
Petitioner,

- versus - C.T.A. CASE NO. 4074

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - x

D E C I S I O N

The case is about a claim for refund of alleged overpaid income tax for the taxable year of 1984.

Petitioner a non-resident alien had for his income tax returns for the year involved filed on April 15, 1985 as follows:

January to March 19, 1984 (Individual)

Gross compensation income	P3,116,500
Less: Exemption	6,000
Taxable compensation	3,110,500
Tax thereon (schedular rate)	1,035,850
Total tax withheld	1,057,419.45
Amount refundable	(P21,569.48)

March 20 through December 31,1984 (Estate)

Gross compensation income	P6,761,549.67
Tax due	2,028,465.00
Less: Tax withheld	2,277,000.44
Excess tax refundable	(P248,535.44)

Petitioner filed a claim for refund of the total amount of P270,104.89 with the respondent on June 27, 1986 and the petition for review on June 30, 1986.

The issues raised are whether 1) petitioner's right to the refund has prescribed and 2) the compensation income of the Estate for the period March 20 to December 31, 1984 is subject to the schedular rate under Section 21(a) and not 30% flat rate under Section 22(b) of the Tax Code.

On the first, respondent Commissioner contends that the income payments from January to June, 1984 were made more than two years prior to June 30, 1986 (date of filing of the petition) and the right to the refund has already prescribed. Section 292 of the Tax Code provides, "In any case, no such suit or proceeding shall be begun after the expiration of the two years from the date of payment of the tax or penalty" and, Section 295, ibid., states, "No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after payment of the tax or penalty."

Adverting to the terms of the law, it appears clear that the date of payment of the tax or penalty, not the date when the taxable income was paid to the taxpayer be deemed the reckoning of the two-year reglementary period for purpose of prescription. The emphasis is on the words "tax" and "penalties". In the case at bar the income tax was paid on April 15, 1985, date of filing of the tax return, hence, petitioner has two years or until April 15, 1987 for its claim, which admittedly was filed in June 1986. Respondent's objection, therefore, is of no moment.

The second and the more significant issue bears on the applicable tax rate on the income of the Estate of Andres Soriano, Jr., covering March to December, 1984, no dispute having been posed on the individual tax return for the period from January to March 20, 1984. The Estate tax return applied the flat rate of 30% provided in Section 22(b) of the Tax Code, which reads:

> "(b) Non-resident alien not engaged in trade or business within the Philippines. - There shall be levied, collected and paid for each taxable year upon the entire income received from all sources within the Philippines by every non-resident alien individual not engaged in trade or business within the Philippines as interests, dividends,

> rents, salaries, wages, premiums, annuities, compensations, renumerations, emoluments, or other fixed or determinable annual or periodical or casual gains, profits, and income, and capital gains (except capital gains realized from buying and/or selling shares of stock of Philippine corporations listed in the dollar or any acceptable foreign currency board of any stock exchange), a tax equal to thirty per centum (30%) of such income."

Petitioner is of the view that the Estate of Andres Soriano, Jr., not being an individual but a legal fiction, was not capable of performing the activity of engaging in business or trade. Hence, the applicable rate of 30% on non-resident alien not engaged in trade or business in Section 22(b) supra.

We are not prepared to attach legal significance to such proposition.

Respondent Commissioner could not have said it better when he noted that compensation income earned for services rendered by the deceased Andres Soriano, Jr., during his lifetime although received after his death is taxable at the schedular rate of income tax as non-resident alien doing business in the Philippines pursuant to Section 21(a) in relation to Section 22(a) both of Tax Code of 1977, respectively quoted as follows:

> SEC. 21 Rates of tax on citizens or residents. - (a) On taxable compensation income. - A tax is hereby imposed upon the taxable compensation income as determined in Section 28(a) received during each taxable year from all sources by every individual, whether a citizen of the Philippines or alien residing in the Philippines, in accordance with the following schedule:
>
> | | | |
> |---|---|---|
> | Net over P2,500 | | 0% |
> | xxx | xxx | xxx |
> | Over P500,000 | | P122,175 |
> | plus 35% excess over P500,000 | | |
>
> SEC. 22 Tax on non-resident alien individuals. - (a) Non-resident alien engaged in trade or business within the Philippines. (1) In general. - Non-resident aliens engaged in trade or business in the Philippines shall be subject to tax in the same manner as resident citizens and aliens on taxable compensation income and/or other taxable net income received from all sources within the Philippines, xxx.

The report of examination upon which the respondent based his assessment of the Estate of Andres Soriano, Jr.'s income tax returns, shows:

April to December 1984

Gross compensation income	P6,591,926
Tax due (schedular rate)	2,307,174
Income from:	
Interest income	120,640
Gain from sale of Valley Golf property	48,983
Taxable income	P169,623.28
Tax due (30% as non-resident not doing business)	50,887
Total tax due	2,358,061
Less: Tax withheld	2,277,000.44
Tax still due	81,060.56

Resume:

1. January to March tax refundable	P21,561.45
2. April to December tax due	81,060.56
Amount still due	59,491.11
Interest up to June 15, 1987	25,759.65
Total tax due	P85,250.76

> The compensation income mentioned in No. 2 computation although received after death of the decedent was earned during his lifetime, and therefore subject to schedular rate of income tax as non-resident doing business in the Philippines.

We find the gross compensation income of the Estate of Andres Soriano, Jr., in the total amount of P6,591,926.39 for the period from March 20, 1984 to December 31, 1984 correctly made subject to the income tax pursuant to the graduated rates under Section 21(a) of the 1977 Tax Code *vis a vis* petitioner's basis of 30% flat rate prescribed under Section 22(b), ibid. Stated otherwise, the income of the estate could not be treated differently from the income during petitioner's lifetime insofar as the tax rate is concerned. Moreover, respondent's application of Section 21(a) is more in accord with Section 23(d) thereof, which reads:

> SEC. 23(d). Change of status. - If the taxpayer married or should have additional dependents as defined in

> subsection (c) above during the taxable year, the taxpayer may claim the corresponding personal and additional exemption, as the case may be, in full for such year.
>
> If the taxpayer should die during the taxable year, his estate may still claim the personal and additional exemptions for himself and his dependents as if he died at the close of such year.
>
> If the spouse or any of the dependents should die or if any of such dependents becomes twenty-one years old during the taxable year, the taxpayer may still claim the same exemptions as if they died, or if such dependents become twenty-one years old at the close of such year.

Upon the records before us there is nothing to take the case out of the operative effects of the statutory proscription as understood and applied. As was the rule during petitioner's lifetime, so here with his estate, the rate applies with equal certainty. Certainly the law requires no more and expects no less.

We therefore reach the same conclusion as the respondent Commissioner of Internal Revenue.

WHEREFORE, petition is dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 15, 1990.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals