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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

April 21, 1962

ANDREA R. VDA. DE AGUINALDO,
Petitioner,

- versus -

C.T.A.
CASE NO. 790

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

In 1952, the petitioner and her late husband, Don Leopoldo R. Aguinaldo, received a dividend from Aguinaldo Bros., Inc. in the sum of ₱10,000.00 which they failed to report in their income tax return for said year. Upon investigation by an examiner of the Bureau of Internal Revenue, respondent, on October 28, 1957, assessed against petitioner the sum of ₱3,840.00 as deficiency income tax for 1952 arising from the inclusion of the ₱10,000.00 dividend as part of the income of the spouses for said year. However, it appears that the spouses overdeclared their dividend income for 1953 by ₱5,000.00, resulting in overpayment of their income tax in the sum of ₱1,600.00

On January 10, 1958, petitioner addressed a letter to respondent admitting the validity of the deficiency assessment for 1952. However, she requested that the overpayment of the sum of ₱1,600.00 for 1953 be credited against the 1952 deficiency tax. This request was denied in a letter dated December 11, 1959. Petitioner requested reconsideration of the decision in a letter dated January 6, 1960, which was mailed on January 7, 1960. Respondent denied the request for tax credit by letter dated March 11, 1960 and received by petitioner on April 6, 1960. This appeal was instituted on May 6, 1960.

There is no question as regards the correctness of the deficiency assessment for the year 1952. The sole issue presented by petitioner relates to her right to a tax credit for ₱1,600.00, representing overpayment of her income tax for 1953, which must have been paid in due course sometime in 1954. Respondent claims that this Court has no jurisdiction to entertain the appeal for having been filed beyond the 30-day period provided in Section 11 of Republic Act No. 1125, and that the request for tax credit was filed beyond the two-year period prescribed in Section 309 of the National Internal Revenue Code.

Section 309 of the Revenue Code provides that the authority of the Commissioner of Internal Revenue to credit or refund an internal revenue tax erroneously or illegally paid can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax. In this case, the tax in question was paid in 1954. The written claim for tax credit was filed with respondent on January 10, 1958, or more than two years after payment of the tax sought to be credited. Therefore, respondent was right in refusing to grant the request for tax credit.

Section 306 of the Revenue Code provides that no suit or proceeding may be instituted for recovery of an internal revenue tax erroneously or illegally collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue. Where no claim for refund or credit has been filed as required by law, the taxpayer's appeal to this Court is subject to dismissal for lack of cause of action. (Johnston Lumber Co., Inc. v. Court of Tax Appeals, G. R. No. L-9292, April 23, 1957.)

In view of the foregoing, we find it unnecessary to pass upon the question whether or not the petition for review was filed within the 30-day period.

WHEREFORE, the herein appeal is dismissed for lack of cause of action, without pronouncement as to costs.

SO ORDERED.

Manila, April 2, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge