Library

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

Dec. 2, 1959

CARLOS PALANCA, JR.,
Petitioner,

- versus -

C.T.A. CASE NO. 571

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The petitioner asks for refund of the amount of ₱20,624.01 representing alleged overpayment of income taxes for the calendar year 1955.

Sometime in July, 1950, the late Don Carlos Palanca, Sr. donated in favor of his son, the petitioner herein, shares of stock in La Tondeña, Inc. amounting to 12,500 shares (see Memorandum for the Petitioner, CTA rec. p. 43). For failure to file a return on the donation within the statutory period, the petitioner was assessed the sums of ₱97,691.23, ₱24,422.81, and ₱47,868.70 as gift tax, 25% surcharge and interest, respectively, which he paid on June 22, 1955 (Exhibit D, CTA rec. p. 37; see also Memorandum for the Petitioner, CTA rec. p. 43).

On March 1, 1956, the petitioner filed with the Bureau of Internal Revenue his income tax return for the calendar year 1955, claiming, among others, a deduction for interest amounting to ₱9,706.45 and reporting a taxable income of ₱65,982.12 (BIR rec. p. 1; Exhibit A, CTA rec. pp. 28-31). On the basis of this

450

return, he was assessed the sum of ₱21,052.01, as income tax, which he paid, as follows:

Taxes withheld by La Tondeña, Inc. from Mr. Palanca's wages (BIR rec. p 1)	₱13,172.41
Payment under Income Tax Receipt No. 677359 dated May 11, 1956 (BIR rec. p. 6)	3,939.80
Payment under Income Tax Receipt No. 742334 dated August 14, 1956 (BIR rec. p. 5)	3,939.80
Total	₱21,052.01

(BIR rec. pp 11 & 31; CTA rec. pp 43 & 59)

Subsequently, on November 10, 1956, the petitioner filed an amended return for the calendar year 1955, claiming therein an additional deduction in the amount of ₱47,868.70, representing interest paid on the donee's gift tax, thereby reporting a taxable net income of ₱18,113.42 and a tax due thereon in the sum of ₱3,167.00. The claim for deduction was based on the provisions of Section 30 (b)(1) of the Tax Code, which authorizes the deduction from gross income of interest paid within the taxable year on indebtedness (BIR rec. pp. 3-11). A claim for the refund of alleged overpaid income taxes for the year 1955 amounting to ₱17,885.01, which is the difference between the amounts of ₱21,052.01 he paid as income taxes under his original return and of ₱3,167.00, was filed together with this amended return. In a communication dated June 20, 1957, the respondent denied the claim for refund, (Exhibit 1, BIR rec. pp. 15-16).

On August 27, 1957, the petitioner reiterated his claim for refund, and at the same time requested that the case be elevated to the Appellate Division of the Bureau of Internal Revenue for decision (Exhibit 2, BIR rec. p. 17). The reiterated claim was denied on October 14, 1957 (Exhibit 3, BIR rec. p. 19).

On November 2, 1957, the petitioner requested that the case be referred to the Conference Staff of the Bureau of Internal Revenue for review (BIR rec. p. 21). Later, on November 6, 1957, he requested the respondent to hold his action on the case in abeyance until after the Court of Tax Appeals renders its decision on a similar case (Exhibit 4, BIR rec. p. 22). And on November 7, 1957, the respondent denied the claim for the refund of the sum of ₱17,885.01 (Exhibit 5, BIR res. pp. 23-25).

Meanwhile, the Bureau of Internal Revenue considered the transfer of 12,500 shares of stock of La Tondeña, Inc. to be a transfer in contemplation of death pursuant to Section 88(b) of the National Internal Revenue Code. Consequently, the respondent assessed against the petitioner the sum of ₱191,591.62 as estate and inheritance taxes on the transfer of said 12,500 shares of stock (tsn pp. 24-26). The amount of ₱170,002.74 paid on June 22, 1955 by the petitioner as gift tax, including interest and surcharge, under Official Receipt No. 2855 was applied to his estate and inheritance tax liability (Memorandum for the Petitioner, CTA rec. p. 44). On the tax liability of ₱191,591.62, the petitioner paid the amount of ₱60,581.80 as interest for delinquency, as follows:

1% monthly interest on ₱76,794.38, September 2, 1952 to February 16, 1955	₱22,633.69
1% monthly interest on ₱71,264.77 February 16, 1955 to March 31, 1955	1,068.97
1% monthly interest on ₱50,632.77, March 31, 1955 to June 22, 1955 ...	1,372.48
1% monthly interest on ₱114,867.24, September 2, 1952 to April 16, 1953	4,287.99
1% monthly interest on ₱119,155.23, April 16, 1953 to June 22, 1955 ...	31,218.67
Total	₱60,581.80

(Exhibit E-1, CTA rec. p. 38)

On August 12, 1958, the petitioner once more filed an amended income tax return for the calendar year 1955, claiming, in addition to the interest deduction of ₱9,076.45 appearing in his original return, a deduction in the amount of ₱60,581.80, representing interest on the estate and inheritance taxes on the 12,500 shares of stock, thereby reporting a net taxable income for 1955 in the amount of ₱5,400.32 and an income tax due thereon in the sum of ₱428.00. Attached to this amended return was a letter of the petitioner, dated August 11, 1958, wherein he requested the refund of ₱20,624.01, which is the difference between the amounts of ₱21,052.01 he paid as income tax under his original return and of ₱428.00 (Annex B, Petition for Review, CTA rec. pp. 7-9).

Without waiting for the respondent's decision on this claim for refund, the petitioner filed his petition for review before this Court on August 13, 1958. On July

24, 1959, the respondent denied the petitioner's request for the refund of the sum of ₱20,624.01.

By way of affirmative and special defense, the respondent questions the jurisdiction of this Court to take cognizance of this case on the grounds that:

(1) The instant petition for review was filed beyond the 30-day period prescribed in Section 11 of Republic Act No. 1125; and

(2) The instant petition for review was filed beyond the two-year period prescribed in Section 306 of the Tax Code.

On the first jurisdictional question of whether or not the instant petition for review was seasonably filed, it may be observed that the petitioner filed two claims for refund involving different amounts.

The respondent contends that the two claims for refund are one and the same claim, and that this Court has no jurisdiction to take cognizance of this case to the extent of ₱17,885.01 inasmuch as the instant petition for review was filed after a lapse of more than 30 days from receipt by the petitioner of the respondent's letter, dated June 20, 1957, denying the claim for the refund of the ₱17,885.01. On the other hand, the petitioner maintains that the two claims for refund are two separate claims, different from each other in amount and basis. The petitioner further avers that the first claim for refund was filed before submission by BIR Examiner Testa of his investigation report on the estate and inheritance tax liabilities of the estate of the late Don Carlos Palanca, Sr. It was only after the submission of said report, which considered the petitioner liable for estate and inheritance taxes instead of for gift taxes, that the second claim for refund was filed. And the instant appeal involves the second claim for refund. Hence, it is concluded that the period within which to appeal the case to this Court should not be reckoned from receipt of the respondent's letter dated June 20, 1957 denying the first claim for refund.

The resolution of this jurisdictional issue hinges upon the determination of whether the second claim for refund is merely a repetition of the first. This determination in turn depends upon the circumstances surrounding the case and the petitioner's intention which may best be ascertained from the claim for refund itself.

The uncontroverted facts of the case show that the petitioner filed with the respondent two claims for refund. The first claim for refund involving the sum of ₱17,885.01 was based upon the petitioner's claim for deduction of the interest he paid by reason of delinquency in the payment of gift taxes on the 12,500 shares of stock. This claim for refund was denied by the respondent in his letter dated June 20, 1957. Subsequently, the respondent treated the donation of 12,500 shares of stock as a transfer in contemplation of death, thereby holding the petitioner liable for the payment of estate and inheritance taxes, instead of gift taxes. The amount paid by the petitioner for gift taxes, interest and surcharge thereon was applied to his liability for estate and inheritance taxes and the corresponding interest and surcharge for delinquency in the payment thereof. Consequently, the petitioner filed an amended return, claiming a deduction of the interest on the estate and inheritance taxes he paid by reason of delinquency in the payment of the said taxes. On the basis of this claimed deduction for interest on the estate and inheritance taxes, he filed his second claim for refund in the amount of ₱20,624.01. The second claim for refund never mentioned nor referred to the first claim which earlier had been considered and decided by the respondent. Neither did it state that it included the first claim, much less declare that it was an amendment or supplement to the first.

Obviously, the two claims for refund differ in amount and basis. Consequently, we believe and so conclude that the second claim for refund is a new claim, entirely different from the first. This conclusion is strengthened by the fact that the petition for review specifically mentions only the second claim and prays only for the refund of the amount of ₱20,624.01, thus clearly manifesting the intention of the petitioner to appeal only the second claim for refund. The law does not prohibit the filing of separate claims for the refund of a single tax or portion thereof, as long as all claims are filed within the period of limitations (Law Opinion 1116, C.B. June, 1954, page 350, cited in par. 20,040, Prentice-Hall Federal Taxes, 1956). And, a second claim may be filed even after the first was disallowed by the Commissioner of Internal Revenue (Pacific Mills vs. Nichols, 72 F. (2d) 103; First National Pictures, Inc. vs. U.S., 32 F. Supp. 138).] In a case where two successive claims for refund of the same amount were filed by the taxpayer, both claims being based on different theories and supported by different facts, the Court of Claims of the United States regarded the two claims separate and different from each other for purposes of applying the statute of limitations for the filing of claims for refund (First National Pictures, Inc. vs. U.S., supra).

/The two claims for refund being entirely different from each other, it follows that the second claim is not merely a repetition of the first. Consequently, the period within which to appeal the second claim to this Court should not be counted from receipt by the petitioner of the respondent's letter dated June 20, 1957 denying the first claim for refund.

It appears from the records of the case that the petitioner's second claim for refund in the total amount of ₱20,624.01 was denied by the respondent only on July 24, 1959 (see Exhibit F, CTA rec. p. 40), long after the filing of the petition for review in this case. But the petitioner did not wait for the Commissioner's action on his claim. On August 13, 1958, a day after he filed his claim for refund with the Commissioner of Internal Revenue, he instituted this suit for the reason, as advanced by him, that he had only up to August 14, 1958 within which to commence his action in court under the provisions of Section 306 of the Revenue Code. This procedure adopted by the petitioner in the prosecution of his present suit has been sanctioned by the Supreme Court in at least three cases wherein it was held that the taxpayer need not wait for the action of the Commissioner of Internal Revenue on his claim for refund before bringing his case to court (College of Oral and Dental Surgery vs. Court of Tax Appeals, et al., G. R. No. L-10446, January 28,1958; P. J. Kiener Co., Ltd. vs. Saturnino David, G. R. No. L-5163, April 22, 1953; Muller & Phipps (Manila) Ltd. vs. Collector of Internal Revenue, G. R. No. L-10694, March 20, 1958).

The next jurisdictional question is whether or not the instant petition for review was filed within the two-year period prescribed in Section 306 of the Tax Code.

The respondent insists that the petition for review was filed beyond the two-year period prescribed in Section 306 of the Tax Code, within which to institute an action in court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected. Contrarily, the petitioner maintains that the instant petition for review was seasonably filed inasmuch as from May 14, 1956, the date when the last installment of the tax was paid, to August 13, 1958, the date when the petition for review was filed, a period short of the two years prescribed in Section 306 of the Internal Revenue Code has elapsed.

We find the respondent's stand not tenable. It appears that the tax sought to be refunded was paid in installments, as follows:

Taxes withheld by La Tondeña, Inc. from Mr. Palanca's wages	₱13,172.41
Payment under Income Tax Receipt No. 677459, dated May 14,1956	3,939.80
Payment under Income Tax Receipt No. 742334, dated August 14, 1956	3,939.80
Total	₱21,052.01

Where a tax is paid in installments, the tax is deemed paid on the date the last installment is paid for purposes of determining the date from which the statute of limitations for maintaining an action in court for the recovery of taxes erroneously or illegally assessed or collected shall commence (Antonio Prieto, et al vs. Collector of Internal Revenue, C.T.A. Case No. 77, December 29, 1956; Ohio Oil Co. vs. U.S., AFTR 1114 (D.C.N.D. Ohio, W. Div. 1936); Harvey Coal Corp. vs. U.S., 47 F. Supp. 805 (Ct. Cls. 1942); Harr, receiver vs. U.S. (D.C. Pa., 1937) 20 F. Supp. 206, 20 AFTR 82; Broderick vs. Anderson (D.C. N.Y., 1938) 23 F. Supp. 488, 21 AFTR 472; South Georgia Ry. Co. vs. U.S. (D.C. Ga.) 24 AFTR 1193). The last installment was paid on August 14, 1956. From August 14, 1956 to August 13, 1958 only 1 year, 11 months and 29 days have elapsed, one day short of the prescribed two-year period. In fine, the present petition for review was filed within the statutory period of two years prescribed in Section 306 of the Tax Code.

Having disposed of the jurisdictional question in favor of the petitioner, we now come to the issue of whether or not the interest on the estate and inheritance taxes paid by the petitioner by reason of delinquency in the payment of the taxes are deductible under the provisions of Section 30 (b)(1) of the National Internal Revenue Code.

The petitioner claims that the amount of ₱60,581.80, representing interest on the estate and inheritance taxes, is deductible from his gross income under the provisions of Section 30 (b)(1) of the Tax Code. The respondent, on the other hand, contends that said amount of ₱60,581.80 is not deductible from the petitioner's gross income on the following grounds:

(1) To allow deduction of interest paid as a result of delinquency in the payment of estate and inheritance taxes will place a premium on tax delinquency;

(2) Section 80 of Revenue Regulations No. 2, known as the Income Tax Regulations, does not allow deductions for interest paid as a result of delinquency in the payment of taxes;

(3) The interpretation prevailing in American jurisprudence allowing deduction for interest on delinquent taxes should not be applied in the Philippines due to disparity in regulations;

(4) Taxes are not indebtedness; and

(5) Provisions allowing deductions should be construed strictly.

Whether or not the deduction from gross income of interest paid as a result of delinquency in the payment of taxes would put a premium on tax delinquency is a question which this Court may not pass upon. The wisdom of the law is within the exclusive province of the legislative body (see Flint vs. Stone Tracy Co., 220 U.S. 107; Green River vs. Fuller Brush Co. (C.C.A. 10th) 65 F. (2d) 112; Thompson vs. Lear, 77 Ark. 506; Britton vs. Election Commrs., 129 Cal. 337; Pittsburgh, C.C. & St. L. R. Co. vs. State, 180 Ind. 245; Andrews vs. Heiney, 178 Ind. 1; State ex rel. Starke County vs. Laramore, 175 Ind. 478; State vs. Balden, 107 La. 116; State vs. Mayo, 106, Me 62), and is not a question for the courts to determine (Abueva vs. Wood, 45 Phil. 612).

It is argued on behalf of the respondent, that interest paid in consequence of delinquency in the payment of taxes is not deductible from gross income inasmuch as Section 80 of Revenue Regulations No. 2 does not allow such deduction. This contention is without merit. Section 80 of Revenue Regulations No. 2 implements Section 30 (c)(1) of the Tax Code which in turn refers to deductibility of taxes from gross income.

But the petitioner seeks deduction of the interest payment in question in pursuance of Section 30 (b)(1) of the Tax Code, which authorizes the deduction of interest on indebtedness, not under Section 30 (c) (1) (D) (as implemented by Section 80 of Revenue Regulations No. 2), which disallows the deduction of estate, inheritance and gift taxes from gross income. In Prieto vs. Collector, C.T.A. Case No. 359, April 22,1958, where the respondent advanced the same objection against the interest deduction claimed by the taxpayer, this Court ruled that:

> "To sustain the proposition that the interest payment in question is not deductible for the purpose of computing petitioner's net income, respondent relies heavily on Section 80 of Revenue Regulation No. 2, (known as Income Tax Regulation) promulgated by the Department of Finance, which provides that 'the word 'taxes' means taxes proper and no deductions should be allowed for amounts representing interest, surcharge,or penalties incident to delinquency.' This provision is identical to that of Section 33 of Regulations No. 20, which interpretative provision, is cited by respondent as authority for his proposition, and which was sanctioned in Anderson v. Posadas, 66 Phil. 205. We find Section 80 of Regulation No. 2 and the interpretative ruling in the Anderson v. Posadas case, supra, to be inapplicable to the issue raised here. It should be noted that petitioner seeks deduction of the interest payment in question as interest on indebtedness, under Section 30 (b)(1) and not as taxes, under Section 30 (c)(1) (D) of the Tax Code."

The respondent further argues that the American interpretation on interest paid on taxes is not applicable in this jurisdiction on the ground that there exists a disparity between Section 39.23 (c)-1 of the U.S. Income Tax Regulations 118, which implements Section 164 of the 1954 U.S. Internal Revenue Code, and Section 80 of our Revenue Regulations No. 2, which implements Section 30 (c) (1) of our Tax Code. We find this argument not in point. These regulations, American and local, implement the corresponding codal provisions on the non-deductibility of certain taxes paid or accrued within the taxable year. As heretofore stated, the petitioner seeks the deduction in question as interest on indebtedness under Section 30 (b)(1), not as taxes under Section 30 (c)(1) of our Tax Code.

Section 30 (b)(1) of our Tax Code provides:

> "Sec. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -
>
> x x x x
>
> "(b) Interest:
>
> "(1) In general.- The amount of interest paid within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations the interest upon which is exempt from taxation as income under this Title."

The above quoted provision of law requires (a) that there should be an indebtedness; (b) that interest qua interest is paid or accrued thereon; and (c) that what is claimed as an interest deduction should have been paid or accrued within the year in order that interest paid within the taxable year on indebtedness may be allowed as interest deduction (Consuelo L. Vda. de Prieto vs. Collector of Internal Revenue, supra.; Mertens, Law of Federal Income Taxation, Vol. 4, Section 26.01, p. 535).

The respondent concedes the presence of the last two requisites in the case at bar. He denies the concurrence of the first requisite, suggesting that taxes are not indebtedness. We have ruled that a tax may be considered an indebtedness within the contemplation of Section 30 (b)(1) of the Tax Code and, therefore, deductible from gross income.] (Prieto v. Collector, supra, citing Zambrano v. Court of Tax Appeals, et al., 53 O.G. 4839, No. 15, August 15, 1957, decisions of the U.S. Board of Tax Appeals, Tax Court, District Courts and Circuit Courts of Appeals, and U.S. Treasury opinion). We find no convincing reason to justify departure from our said ruling.

In view of our adverse rulings on the foregoing contentions of the respondent relative to the deductibility of the claimed interest deduction in question, we find it unnecessary to pass upon the contention regarding the strict construction of statutory provisions allowing deductions from gross income. Considering as justified, under the law, the claimed interest deduction of ₱60,581.80, the net taxable income of the petitioner for the calendar year 1955 was ₱5,400.32. The corresponding tax thereon was ₱428.00. Since the petitioner has paid a total of ₱21,052.01, he has overpaid the amount of ₱20,624.01.

WHEREFORE, the decision appealed from is hereby reversed, and the respondent Commissioner of Internal Revenue is hereby ordered to refund to the petitioner Carlos Palanca, Jr. the amount of ₱20,624.01. Without pronouncement as to costs.

SO ORDERED.

Manila, December 2, 1959.

MARIANO NABLE
Presiding Judge

I concur in the result.

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI abstained.