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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

THE ROMAN CATHOLIC ARCHBISHOP OF CEBU,
Petitioner,

October 21

- versus -

C.T.A.
CASE NO. 505

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This is an action brought by petitioner to recover from respondent the sum of ₱5,201.52, paid as income taxes for the years 1955 and 1956, including surcharge and interests.

The records show that on February 21, 1956, petitioner, in behalf of the Roman Catholic Church of Cebu, filed an income tax return for 1955, reporting a gross income of:

From sales or exchanges of capital assets	₱ 465.00
From rentals and royalties ...	8,969.90
From dividends received	922.00
TOTAL GROSS INCOME	₱10,356.90

Petitioner claimed deductions for depreciation of the following:

Archbishop's Palace Building..	₱ 4,477.65
Major Seminary	10,451.55
Minor Seminary	3,963.33
Furniture & Fixtures	1,032.56
TOTAL	₱19,898.09

On February 18, 1957, petitioner, in behalf of the Roman Catholic Church in Cebu, filed an income

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tax return for 1956, showing the following gross income:

From sales or exchanges of capital assets	₱ 2,090.00
From rentals and royalties ...	11,954.84
From dividends received	4,811.58
TOTAL	₱18,856.42

Petitioner claimed deductions for depreciation of the following properties:

Archbishop's Palace Building	₱ 4,477.65
Major Seminary	10,451.55
Minor Seminary	3,936.33
Furniture & Fixtures	1,360.62
TOTAL	₱20,226.15

On the theory that the gross incomes in 1955 and 1956 were realized independently of the use of the buildings, furniture and fixtures, respondent totally disallowed the deductions for depreciation, thereby determining against petitioner, on July 15, 1957 and March 30, 1957, income tax liabilities for 1955 and 1956 in the respective amounts of ₱1,825.00 and ₱2,493.00 (Exhibits "1-B" & "2-b", pp. 17 & 3, BIR rec.). On May 10 and 14, 1957, petitioner requested for the reconsideration of the determinations (Exhibits "G" & "H", pp.15-16 & 12-13, BIR rec.), which requests were denied by respondent in a letter dated July 18, 1957, wherein he demanded the payment of ₱1,825.00 and ₱2,493.00, including 5% surcharge and 1% legal interest on the latter amount (Exhibit "3", pp. 18-23, BIR rec.). On August 28, 1957, petitioner requested for the reconsideration of the denial and the cancellation of the assessments (Exhibits "J", pp. 24-30, BIR rec.). On November 5, 1957, respondent denied this request for reconsideration and demanded the payment of ₱4,318.00, plus delinquency penalties incident to late payment (Exhibit "4", pp. 36-37, BIR rec.). Again, on November 23, 1957, petitioner requested for the reconsideration and cancellation of the assessments (Exhibit "K", pp. 38-44, BIR rec.), which request was denied on January 20, 1958, with a demand "for the last time x x x to pay the total sum of ₱4,318.00 plus delinquency penalties incident to late payment immediately upon receipt hereof in order that no drastic action may be taken by this office on the matter" (Exhibit "5", pp. 45-46, BIR rec.).

Meanwhile, on December 4, 1957, respondent issued a warrant of distraint and levy against the properties of the Roman Catholic Church of D. Jakosalem St., Cebu City, to satisfy the sums of ₱1,916.25 and ₱2,617.65 as deficiency income tax and surcharge due for 1955 and 1956.

On February 7, 1958, petitioner paid under protest the total amount of ₱5,201.52 as income tax for the years 1955 and 1956, including surcharge and interests. And on February 19, 1958, he filed before this Court his petition for review.

The issues are:

1. Whether or not this Court has jurisdiction to entertain the instant appeal; and if in the affirmative -

2. Whether or not the claims for depreciation deductions are allowable under the law.

Relative to the first issue, it is contended on behalf of respondent that this Court has no jurisdiction to entertain the appeal on the ground that petitioner did not file a claim for refund with the former before interposing said appeal. Petitioner, however, did not make a discussion on this issue in his memorandum.

Section 306 of the National Internal Revenue Code provides:

> "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 proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

The above-quoted provision contemplates of a case where the taxpayer has paid the tax and then comes to this Court to seek the recovery thereof. But a claim for refund must be filed with the Collector. The filing of such claim for refund is mandatory and a prerequisite or condition precedent for the recovery of taxes said to have been erroneously or illegally collected. Failure to comply therewith bars and is fatal to the action (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, et al., G. R. No. L-9292, April 23, 1957).

The present case falls squarely under Section 306 of the Tax Code. Petitioner paid the taxes in question. Later, he elected to appeal to this Court without first filing with respondent a claim for the refund thereof. From a perusal of the petition for review, it is clear that petitioner is seeking to recover the amount he paid as taxes. His failure to file with respondent a claim for the refund thereof bars and is fatal to this action. Consequently, this Court has no jurisdiction to take cognizance of this appeal.

In view of our resolution on the first issue, we find it unnecessary to pass upon the issue of whether or not the claims for depreciation deductions are allowable under the law.

WHEREFORE, the petition for review, filed on February 19, 1958, is hereby dismissed for lack of

DECISION -
C.T.A. CASE NO. 505

jurisdiction, with costs against petitioner.

SO ORDERED.

Manila, Philippines, October 21, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge