PARACALE-GUMAUS CONSOLIDATED
MINING COMPANY,
Petitioner,

- versus - C.T.A. CASE NO. 211

SILVERIO BLAQUERA, Collector
of Internal Revenue,
Respondent.

x- - - - - - - - - - - - - - -x August 22, 1956

RESOLUTION

This is in connection with the preliminary question of jurisdiction raised by counsel for the respondent as a special defense in paragraph 3, page 2, of his answer to the "Petition for Review" filed before this Court on November 23, 1955, by the petitioner, Paracale-Gumaus Consolidated Mining Company.

More specifically, the defense is predicated on the provision of section 306 of the National Internal Revenue Code which limits to two (2) years from the date of payment the right of a taxpayer to institute court action for the recovery of national internal-revenue taxes paid to the government.

It is admitted by petitioner in its pleadings that the sum of ₱478.08, subject of the present action for refund was paid by it as compensating tax to the respondent on July 9, 1953, under Official Receipt No. C489620-I; that on July 30, 1953, it filed a written request to the respondent for the refund of said amount; that on October 26, 1955, it received from the respon- a letter dated October 20, 1955, denying its request for refund; and, that it filed its "Petition for Review" before this Court for the refund of the amount in question on November 23, 1955.

Section 306 of the National Internal Revenue Code reads as follows:

> "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 Supreme Court in the case of P. J. Kiener Company, Ltd. vs. Saturnino David, Collector of Internal Revenue, G. R. No. L-5163, promulgated on April 22, 1953, interpreted the above-quoted provision in the following manner:

> "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

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> 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 of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow. Previous and timely notice is, in other cases and for diverse salutary reasons, made a prerequisite to the prosecution of contemplated proceedings without imposing on the party to whom the notice was sent any obligation to make any more." (underscoring supplied)

The other reasons requiring a taxpayer to file a claim for refund as a condition precedent to the filing of a court action for the recovery of national internal-revenue taxes paid to the government, were stated by the Supreme Court in the case of Santiago M. Bermejo vs. The Collector of Internal Revenue, G. R. No. L-3029, promulgated on July 25, 1950, as follows:

> "The law clearly stipulates that after paying the tax, the citizen must submit a claim for refund before resorting to the courts. The idea probably is, first, to afford the collector an opportunity to correct the action of subordinate officers; and second, to notify the Government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. Previous objections to the tax may not take the place of that claim for refund, because there may be some reason to believe that, in paying, the taxpayer has finally come to realize the validity of the assessment. Anyway, strict compliance with the conditions imposed for the return of revenue collected is a doctrine consistently applied here and in the United States." (underscoring supplied) (see also Wee Poco v. Posadas 64 Phil. 640; Venus vs. Posadas 54 Phil. 832.)

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As will be observed in the cases quoted and cited above, the Supreme Court, in interpreting and applying the provisions of section 306 of the National Internal Revenue Code, has consistently held that the two requisites mentioned in said section, viz., (1) a written claim for réfund or credit of the amount paid must first be filed with the Collector of Internal Revenue within two (2) years from the date of payment of the tax and (2) the Court action for the recovery of the amount paid must be filed within the same period of time, are substantive and jurisdictional in nature. Consequently, the failure on the part of the taxpayer to meet both requirements constitutes a bar to any and all court actions for the recovery of the taxes paid.

Had the present question of jurisdiction been raised before June 16, 1954, when Republic Act No. 1125, otherwise known as "An Act Creating The Court Of Tax Appeals", was approved, there would have been not much difficulty in deciding the issue. The provisions of section 306 of the National Internal Revenue Code are quite clear and explicit and our jurisprudence on this particular section was well-established before the passage of Republic Act No. 1125. Offhand, the dismissal of the present case would have been in order considering that while the petitioner has complied with the first requisite by filing its claim for refund with the Collector of Internal Revenue within the statutory period of two years, it failed, by its own admission, to comply with the second requirement by filing its court action for the recovery of the tax paid, beyond two years from the date of payment.

However, the present incident has become perplex and confusing with the passage of Republic Act No. 1125, more particularly section 11 thereof, which provides as follows:

> "Who may appeal; effect of appeal.- Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

The question now before us, for the purpose of resolving the present incident, is whether or not the above-quoted provision of Republic Act No. 1125, limiting the right of appeal from a decision or ruling of the Collector of Internal Revenue to thirty (30) days after receipt of such decision or ruling, has impliedly repealed section 306 of the National Internal Revenue Code giving the taxpayer two (2) years from the date of payment within which to file his action in court for the recovery of taxes paid to the government.

As heretofore stated, the petitioner herein has complied with only one of the two requisites mentioned in section 306 of the National Internal Revenue Code. It filed a formal claim for refund with the Collector of Internal Revenue of the compensating tax paid by it in the amount of ₱478.08 within the statutory period of two (2) years. However, it filed its present action for refund of said amount before this Court by way of a "Petition for Review", four (4) months and fourteen (14) days beyond the statutory period of two years fixed under section 306 of the National Internal Revenue Code.

On the other hand, the petitioner has complied with the provision of section 11 of Republic Act No. 1125, by filing its present action before this Court for the recovery of the taxes paid, within the statutory period of thirty (30) days. It appears that petitioner received on October 26, 1955, the letter of the Collector of Internal Revenue dated Octobdr 20, 1955, denying its request for refund of the amount of ₱478.08. From this decision, an appeal was interposed before this Court by way of a "Petition for Review" filed on November 23, 1955, which, obviously, is within the statutory period of thirty (30) days fixed under section 11 of Republic Act No. 1125.

A We hold that section 11 of Republic Act No. 1125, has not repealed by implication all the provisions of section 306 of the National Internal Revenue Code. It has, in a way, only modified some of them. Courts are especially averse to repeals by implication. Since laws are presumed to be passed with deliberation, and with full knowledge of existing ones on the same subject, it is but reasonable to conclude that Congress, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconciliable.

In other words, repeals by implication may be resorted to by the Courts only as a last recourse where under no reasonable hypothesis can the provisions of both be construed as coexisting. (pp. 549, 550, 551, Vol. 50, American Jurisprudence.)

In the present case, the conflict between the two provisions is more apparent than real. They could easily be reconciled, which it is the function of statutory construction to effectuate, if possible, to give life to the entire enactment.

For the future guidance of taxpayers so as not to deprive them of their day in court, the following rules are worthwhile remembering regarding claims for refund of national internal-revenue taxes.

In order to confer jurisdiction upon this Court, the usual claim for refund or credit as a condition precedent, should be filed with the Collector of Internal Revenue within two (2) years from the date of payment, (section 306 National Internal Revenue Code; P. J. Kiener Co., Ltd. vs. Saturnino David, supra). A simple protest at the time of payment or previous objections to the tax assessed do not take the place of the required claim for refund (Santiago Bermejo vs. Collector of Internal Revenue, supra). The filing of the petition for review before this Court by the taxpayer for the recovery of taxes paid should be made within thirty (30) days from receipt of the ruling, order or decision of the Collector of Internal Revenue denying the claim for refund (section 11, Republic Act

No. 1125) and in no instance may the action be filed after two (2) years from the date of payment (section 306, National Internal Revenue Code; C.T.A. Case No. 80, Bay View Hotel, Inc. vs. Collector of Internal Revenue; C.T.A. Case No. 121, College of Oral and Dental Surgery vs. Collector of Internal Revenue). B

For further clarification, we shall illustrate hereunder the modes of applying the two periods of prescription now in question, adopting as a common starting point January 2, 1955, as the date of payment of the national-revenue tax sought to be refunded. We are adopting this date as the starting point because at that time all the provisions of Republic Act No. 1125, which was approved on June 16, 1954, were already in full force and effect.

Case 1. Let us say that after paying on January 2, 1955, a national internal-revenue tax (this includes compensating tax under section 18(d) of the National Internal Revenue Code), the taxpayer filed on February 1, 1955, a formal claim for its refund with the Collector of Internal Revenue. On March 1, 1955, the taxpayer received a reply letter from the Collector of Internal Revenue denying his request for refund. Under section 11 of Republic Act No. 1125, the taxpayer has only thirty (30) days counting from March 2, 1955, within which to file his petition for review before this Court contesting the adverse ruling of the Collector of Internal Revenue regarding his claim for refund. This should be so, because if the taxpayer were really sincere in having his case decided by this Court as promptly as possible, he may, indeed should, cooperate by availing himself of the thirty (30) day period prescribed in section 11 of Republic Act No. 1125. (C.T.A. Case No. 256, Canoy vs. Collector of Internal Revenue). As far as the government is concerned, it is just as much interested in having the tax refund case decided by the courts as expeditiously as possible, so as to know definitely for appropriation purposes, the status of the money within its coffer sought to be refunded (Santiago Bermejo vs. Collector of Internal Revenue, supra). After the lapse of the thirty-day period prescribed in section 11 of Republic Act No. 1125, the ruling or decision of the Collector of Internal Revenue denying the claim for refund becomes final, and no court in the Philippines, from the highest to the lowest, may review said ruling or decision under sections 11 and 18 of Republic Act No. 1125. The taxpayer, therefore, may no longer avail himself of the remaining period of around 21 months up to January 2, 1957, (section 306, National Internal Revenue Code) within which to file his action before this Court for the refund of the taxes paid on January 2, 1955. By giving him this additional period of 21 months within which to file his action for refund before this Court, we would in effect be legislating an exception to the applicability of the thirty-day period fixed under section 11 of Republic Act No. 1125 in tax refund cases, when the aforesaid Act provides for none. Taxes are the lifeblood of the government and their prompt and certain availability an imperious need (Bull vs. U.S. 260, 79 L. Ed. 1427). Congress created this Court principally to specialize in, to centralize and expedite the disposal of all tax, customs and real estate assessment cases throughout the archipelago (pp. 2208, 2210, 2211 Vol. 1, No. 65, Congressional Record, House of Representatives).

Case 2. Let us say that after paying the tax on January 2, 1955, the taxpayer filed his formal claim for its refund with the Collector of Internal Revenue on February 1, 1955. For one reason or another, it took the Collector of Internal Revenue one (1) year and several months to reply to the taxpayer's letter of February 1, 1955. The taxpayer finally receives the reply letter of the Collector of Internal Revenue denying his claim for refund on December 26, 1956. He has, under section 306 of the National Internal Revenue Code, only seven (7) days within which to file his court action for the refund of the tax paid. After January 2, 1957, the two-year statutory period prescribed in the last mentioned section of the National Internal Revenue Code would have expired and following the decision of the Supreme Court in the Kiener case, the Courts no longer have jurisdiction over the case.

However, if we are to apply section 11 of Republic Act No. 1125, the taxpayer has thirty (30) days counting from December 27, 1956 or up to January 25, 1957, within which to appeal the adverse ruling of the Collector of Internal Revenue to this Court. The question now is:

Are we to extend the two-year period of prescription provided in section 306 of the National Internal Revenue Code by giving the taxpayer an additional twenty-three (23) days beyond January 2, 1957 within which to file his appeal to this Court? We believe and so hold, that under the circumstances, the taxpayer has only seven (7) days counting from December 27, 1956, within which to file his appeal to this Court. To rule otherwise, would be tantamount to judicial legislation extending a period of prescription fixed by law. The taxpayer could have avoided a last minute rush and being pressed for time in the preparation and filing of his petition for review had he, let us say, one month or so before the expiration of the two year period, gone ahead with his court action as ruled in the Kiener case without waiting up to the eve of the deadline for the reply of the Collector of Internal Revenue. After all, he has already given the Collector enough time to reply to his claim for refund. Anyway, should the anticipated reply come later, close before or after the deadline, the pleadings already filed could still be amended _nunc pro tunc_ with leave of court. (section 2, rule 17, Rules of Court; Cayugan vs. Dizon 79 Phil. 80-94.)

Case 3. The case of the petitioner herein is covered by this illustration.

Let us say that after paying a national internal-revenue tax on January 2, 1955, the taxpayer on February 1st of the same year, filed a formal claim for its refund with the Collector of Internal Revenue. The latter, for one reason or another, as had happened in the present case as in the Kiener case, fails to reply to the claim for refund within two (2) years from the date of payment. Under the circumstances, as was held in the Kiener case, the taxpayer "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_."

In other words, in fairness to the taxpayer so as not to deprive him of his day in court and the prompt adjudication of his case, he is left by necessity to presume and conclude before the expiration of the two-year prescriptive period, that his claim for refund has been denied by the Collector of Internal Revenue if no action was taken thereon by the latter during the said period. The taxpayer need not wait indefinitely for a decision or ruling which may or may not be forthcoming and which he has no legal right to expect. As the Supreme Court said in the Kiener case, "Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer should not go to court before he is notified of the Collector's action." The taxpayer may, indeed should, proceed without waiting for the decision of the Collector of Internal Revenue, to file his petition for review before this Court on or within a reasonable time before the expiry date of the statutory period of two years prescribed in section 306 of the National Internal Revenue Code.

It might be argued that without the reply of the Collector of Internal Revenue denying the taxpayer's claim for refund, there would be actually no decision, order or ruling that this Court may pass upon in review under sections 7 and 11 of Republic Act No. 1125. Indeed, that would be the case if we were to interpret the two last cited provisions of Republic Act No. 1125 in their strict literal sense. However, we realize that by following such an unreasonable interpretation, the taxpayer would be left at the mercy of the Collector of Internal Revenue, without any positive and expedient relief from the courts. Let us say for example -- and this is not a remote possibility -- that after receiving a formal claim for refund from the taxpayer, the Collector of Internal Revenue or his subordinates, for one reason or another, or for no reason at all, would just let the claim for refund gather dust in their office files without acting on it for several years or not at all. It has happened once and it can happen again. In the Kiener case, it took the Bureau of Ineernal Revenue over two years to reply to a simple claim for refund of the taxpayer. In the present case, the claim for refund was filed with the respondent on July 30, 1953, and was not acted upon until October 20, 1955, when it was formally denied. Again, it took the Bureau of Internal Revenue, two (2) years and three (3) months to reply to petitioner's claim for refund consisting of only one page which it could have very well been done on the very same day or a few days or weeks after it was received. After all, as intended by Republic Act No. 1125, the ruling, order or decision of the Collector of Internal Revenue that may be appealed to this Court need not be as elaborate and exhaustive as those required of courts of record. In S.C. G.R. No. L-7384, decided on December 19, 1955, the Supreme Court has held that a simple assessment or letter of demand sent by the Collector of Internal Revenue to a taxpayer is a "decision" within the contemplation of section 8 of Executive Order No. 401-A. In C.T.A. Case No. 229 entitled "Angel Saraos vs. Bureau of Internal Revenue", as well as in two other cases, we adopted the same view by considering an assessment and a letter of demand as a decision of the Collector of Internal Revenue within the contemplation of sections 7 and 11 of Republic Act No. 1125. (see also Bull v. U.S. 295 U.S. 247)

Supposing that in the years to come, a much too partisan and/or inept Collector of Internal Revenue is appointed by mistake, and out of political considerations or sheer incompetence, he refuses or fails to act upon a taxpayer's claim for refund during a period of say three, five, seven, ten years or never? Under the circumstances, what possible relief could there be for the taxpayer in order to obtain an early adjudication by this court of his case for tax refund? We see none, if we are to interpret strictly the provisions of sections 7 and 11 of Republic Act No. 1125 by requiring that a ruling, order or decision on the claim for refund be first obtained from the Collector of Internal Revenue in black and white, before assuming jurisdiction over the taxpayer's appeal to this Court. It might be suggested that a petition for <u>mandamus</u> would be the proper remedy of the taxpayer against the Collector of Internal Revenue to compel the latter to act on the claim for refund one way or the other. However, in Olsen & Co. vs. Herstein et al 32 Phil. 520, the Supreme Court has held that "<u>Mandamus</u> will not lie to compel the Insular Collector of Customs or the Collector of Internal Revenue to issue a certificate of origin of cigars about to be exported to the United States although the exporter, according to custom, is justly and equitable entitled thereto, and although the refusal to issue such certificate is, according to such custom, unjust, arbitrary and unreasonable, there being no statute or other law laying a duty on such officials to issue such a certificate." Reasoning by analogy, we can also say that there is no provision of law at present either in the National Internal Revenue Code, Republic Act No. 1125 or other special laws, as there was none when the Kiener case was decided on April 22, 1953, which imposes upon the Collector of Internal Revenue the duty to decide claims for refund and to do it within a certain period of time. Under section 3, rule 67 of the Rules of Court, a petition for *mandamus* may be granted only "when any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station x x x." The act of replying to a claim for refund within a reasonable time after its receipt is not a duty specifically enjoined by law upon the Collector of Internal Revenue. Utmost, it involves merely a matter of courtesy and efficiency - to reply to official communications with dispatch in the interest of public service.

Moreover, granting for the sake of argument, that a petition for *mandamus* might prosper under the circumstances. Are we to require the taxpayer to avail himself of this special remedy before assuming jurisdiction over his case on appeal thereby subjecting him to additional legal expenses and unnecessary loss of time?

It might be suggested that there is still one administrative remedy available to the taxpayer in order to compel the Collector of Internal Revenue to act on his claim for refund one way or the other, before coming to this Court viz., by filing an administrative complaint against said official with the proper authorities for dereliction of duty or for incompetence. Undoubtedly, the taxpayer is free to avail himself of such remedy under the provisions of the Revised Administrative Code or the Civil Service Law. But again, are we to require the taxpayer to go through this long, tedious and expensive _via crucis_ before assuming jurisdiction over his case on appeal? We should not lose sight of the fact that with respect to a great majority of taxpayers with claims for refund -- with the exception perhaps of a few crusaders and radicals -- their main objective is not to obtain the dismissal of an inefficient and/or arbitrary Collector of Internal Revenue. All they are interested in is the immediate refund of their money, especially if it involves a substantial amount, which they in conscience believe was illegally or erroneously exacted from them in the form of taxes by the government.

It is disheartening enough to a taxpayer to keep him waiting for an indefinite period of time for a ruling or decision of the Collector of Internal Revenue on his claim for refund, only to find out later, after a protracted and expensive court litigation resulting in his favor, that the most he would be able to recover from the government is the amount of tax illegally or erroneously collected from him without even the benefit of the legal rate of interest, attorney's fees and costs. It would make matters more exasperating for the taxpayer if we were to close the doors of the courts of justice for such a relief until after the Collector of Internal Revenue would have, at his personal convenience, given the go signal. In effect, that would be the ultimate result, if we were to interpret sections 7 and 11 of Republic Act No. 1125, strictly and literally by requiring the taxpayer in all instances to produce in black and white the ruling, decision or order of the Collector of Internal Revenue denying his claim for refund before assuming jurisdiction over his petition for review filed with this Court.

Moreover, it will be noted in section 51(d) of the National Internal Revenue Code, that a period of prescription of three (3) years is fixed therein within which the Collector of Internal Revenue may exercise summary methods of collection of income taxes. In sections 331 and 332 of the same Code, there are likewise two periods of limitation prescribed (5 or 10 years) upon assessment and collection of taxes through judicial action. It would be incongruous to hold, that with respect to actions for refund filed after two years from the date of payment, an exception should be made by leaving the commencement of the running of the thirty day period fixed under section 11 of Republic Act No. 1125, entirely at the discretion and personal convenience of the Collector of Internal Revenue.

We hold that the ruling of the Supreme Court in the Kiener case with respect to claims for refund left unanswered by the Collector of Internal Revenue within two (2) years from the date of payment, still prevails at present, sections 7 and 11 of Republic Act No. 1125 notwithstanding, and that the failure on the part of the petitioner herein to file his action for refund before the Court of First Instance of Manila, the defunct Board of Tax Appeals or this Court within two (2) years from July 9, 1953, the date of payment of the amount of ₱478.08 now in question, is fatal to his cause.

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

SO ORDERED.

Manila, Philippines, August 22, 1956.

AUGUSTO M. LUCIANO
Associate Judge

I CONCUR:

MARIANO NABLE
Presiding Judge

Associate Judge ROMAN M. UMALI
dissents in a
separate opinion.