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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

EMILIO BENITEZ (Retired C.F.I.
Judge of Borongan, Samar),
Petitioner,

Dec. 18, 1962

- versus - C.T.A. CASE NO. 1268

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

RESOLUTION

This is in connection with a motion to dismiss, filed by respondent on September 21, 1962, on the ground that this court has no jurisdiction over the subject matter of the action.

On March 18, 1954, petitioner, thru his son, filed a "Claim For Refund And Recovery of Taxes Paid On Income Exempt From Taxation (Re: Endencia et al., vs. David, G. R. No. L-6355, prom. Aug. 31, 1953)," amounting to ₱2,616.33. On October 18, 1960, respondent denied the claim for refund.

On June 1, 1962, petitioner filed with the Office of the Deputy Commissioner, an "Urgent Supplementary Petition For Refund Of Taxes Paid On Exempt Income Of Judge Emilio Benitez (Retired C.F.I. Judge, Branch II, Borongan, Samar)." On June 29, 1962, respondent rendered a letter decision, denying the claim. Hence, the instant petition for review was filed with this Court on September 7, 1962.

This incident was submitted by the parties on the basis of their pleadings.

The resolution of the instant motion turns upon whether or not petitioner's claim for refund is within the jurisdiction of this Court.

Respondent contends that this Court has no jurisdiction to take cognizance of the instant case inasmuch as the action has already prescribed, citing Section 306 of the National Internal Revenue Code.

On the other hand, petitioner contends that Section 306 of the National Internal Revenue Code is inapplicable to the case at bar and argues that the inconsistency between Section 306 of the National Internal Revenue Code and Sections 7 and 11 of Republic Act No. 1125 implies a repeal and/or modification of the two-year period of limitation for court action, pursuant to Section 21, Republic Act No. 1125. Petitioner contends further that in reality there is no claim for refund of "taxes" ..... rather, it is an action for the recovery of his full compensation which had been diminished or impaired by the taxes collected on it in violation of the Constitution.

We agree with respondent's contention that this case should be dismissed inasmuch as it was filed beyond the two-year period prescribed in Section 306 of the National Internal Revenue Code. Although the petition for review was filed within the thirty-day period as required by Section 11 of

Republic Act No. 1125, said provision should be construed in relation to Section 306 of the National Internal Revenue Code as held by the Supreme Court in the case of Gibbs vs. Collector of Internal Revenue, G. R. No. L-13453, Feb. 29, 1960 as follows:

> "x x x In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Commissioner of Internal Revenue within 2 years from the date of his payment of the tax, as required by Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Commissioner's decision or ruling denying his claim for refund, as required by Section 11 of Republic Act No. 1125. If, however, the Commissioner takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of two-year period without awaiting the dedision of the Commissioner. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute."

Granting arguendo, that petitioner's claim is not a claim for refund of "taxes", but is an action for full compensation, there is more reason for this Court to decline taking cognizance of the case. The jurisdiction of the Court of Tax Appeals is defined in Section 7 of Republic Act No. 1125. In the case of Amilbangsa vs. Angangco, C.T.A. Case No. 255, May 7, 1956, it has been held that the Court of Tax Appeals is a court of special and limited jurisdiction. Its organic law, Republic Act No. 1125, deliberately delimits and carefully canalizes its jurisdiction. And, in the case of Collector of Customs vs. Court of Tax Appeals, G. R. No. L-8811, Oct. 31, 1957, the Supreme Court held that the Tax Court has no jurisdiction over cases which do not involve taxes.

In the light of the foregoing considerations, we find and so hold that the dismissal of the case at bar is warranted.

WHEREFORE, let this case be, as it is hereby, dismissed, with costs against petitioner.

SO ORDERED.

Manila, December 18, 1962.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

Associate Judge ROMAN M. UMALI
did not take part.