REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

U. S. T. COOPERATIVE,
Petitioner,

versus

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Dec. 11/06

C. T. A. CASE NO. 1720

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RESOLUTION

Respondent has filed a motion to dismiss the herein appeal on the ground that the claim for refund and the petition for review in this Court were filed beyond the two-year period prescribed in Sections 306 and 309 of the Revenue Code.

As gathered from the petition for review, petitioner is a cooperative association duly organized and existing under and by virtue of the laws of the Philippines. On the theory that it is exempt from all taxes under Republic Act No. 2023, it filed a claim for refund on November 7, 1958 in the total sum of ₱39,390.50 as fixed, percentage and residence taxes for the period covering June 22, 1957 to September 19, 1958 (See Annexes D & F, Petition for Review, pp. 10 & 12, CTA rec.). Respondent, in a letter dated October 20, 1960, denied the claim for refund on the ground that petitioner is not entitled to exemption under Republic Act No. 2023 (Annex F, Petition for

Review, p. 12, CTA rec.). In a letter dated November 16, 1960, petitioner moved to reconsider respondent's decision denying its claim for refund (Annex H, Petition for Review, p. 14, CTA rec.). On December 11, 1965, petitioner received a copy of the decision of respondent dated November 23, 1965, denying its request for reconsideration (See Petition for Review, and Annexes A to I, pp. 1-18, CTA rec.). The petition for review was filed on December 29, 1965.

For purposes of this incident, the filing of a motion to dismiss by counsel for respondent is deemed an admission of the allegations contained in the petition for review (Consul v. Coll. of Int. Rev., CTA Reso. No. 1759, Oct. 21, 1966, and cases cited therein).

Respondent maintains that the claim for refund and the judicial action to recover the taxes in question were filed beyond the two-year period prescribed in Sections 306 and 309 of the Revenue Code, and as such, this Court has no jurisdiction over the instant appeal. On the other hand, petitioner contends that its petition for review was filed within 30 days from receipt of respondent's decision, pursuant to Sections 7 and 11 of Republic Act No. 1125.

In resolving the issue of jurisdiction, the positive requirement of Section 306 of the Revenue Code must be complied with in conjunction with Section 11 of Republic Act No. 1125. The Supreme Court in numerous cases has consistently held that where the tax has been paid, and a claim for refund has been made, the claimant should, within the statutory period of two years, proceed with his suit in court without waiting for the decision of respondent (Kiener Co. Ltd. v. David, L-5163, April 22, 1953; Johnston Lumber Co., Inc. v. C. T. A., L-9292, April 23, 1957; Gibbs v. Coll., L-13453, Feb. 29, 1960; Coll. v. C. T. A. & Hume Pipe & Asbestos Co., Inc., L-11494, Jan. 28, 1961; Guagua Electric Light Plant Co., Inc. v. Coll., L-14421, April 29, 1961; Köppel [Phil.] Inc. v. Coll., L-10550, Sept. 19, 1961). In the case of Gibbs vs. Collector of Internal Revenue, _supra_, the Supreme Court, in deciding a similar issue, held:

> "Under the above ruling, it is clear that Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. 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 Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. _If, however, the Collector 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 the two-year period without awaiting the decision of the Collector_. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute." (Underscoring supplied.)

Petitioner made the first payment of the taxes sought to be recovered on July 10, 1957, and the last payment, on September 19, 1958. It had two years from the date of first payment, or until July 10, 1959, and until September 19, 1960, as to the last payment, within which to file a claim for refund. Since the claim for refund was filed on November 7, 1958, the same was filed within the statutory period of two years from the date of payment pursuant to Section 306 of the Revenue Code. However, we agree with the contention of respondent that the suit for refund was filed beyond two years from the date of payment and as adverted to above, the filing of a claim for refund of taxes erroneously paid and the suit to recover the same must be filed within two years from the date of payment (Guagua Electric Light Plant Co., Inc. v. Coll., supra; Philam Mining, Inc. v. Tabios, C.T.A. Case 1639, Feb. 25, 1966). The petition for review was filed on December 29, 1965, which is 8 years, 5 months and 14 days from the date of first payment (i.e., July 10, 1957), and 7 years, 3 months and 10 days from the date of last payment (i.e., September 19, 1958). Obviously, the instant appeal is already barred by prescription and this Court has no jurisdiction to entertain it.

WHEREFORE, the petition for review is hereby dismissed, with costs against petitioner.

QUEZON CITY

SO ORDERED.

Quezon City, December 12, 1966.

RAMON L. AVANCEÑA
Associate Judge

I CONCUR:

ESTANISLAO R. ALVAREZ
Associate Judge

Presiding Judge Umali did not take part.