REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

V. E. LEDNICKY and
MARIA VALERO LEDNICKY,
Petitioners,

- versus - C.T.A. CASE NO. 646

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The petitioners herein, V. E. Lednicky and Maria Valero Lednicky, husband and wife, both American citizens and residents of the Philippines, seek by this appeal for the refund of the sum of ₱112,437.90, which they claim to have overpaid as income tax for the year 1956, resulting from the deduction of the amount of ₱205,939.24 which was paid by them in 1956 as foreign income tax. The petitioners also claim for the payment of interest on the amount of ₱112,437.90, at the rate of six per cent (6%) a year from the date of payment. (Exh. B, pp. 5-6, BIR rec.)

The salient facts are not controverted. In 1956, all the income of the spouses was derived from sources within the Philippines.

On March 27, 1957, the petitioners filed their 1956 income tax return reporting a gross income of ₱1,017,287.65 and a net income of ₱733,809.44, on which the amount of ₱322,201.00 was assessed, less

₱4,805.59 in withholding tax, or a net income tax due and payable of ₱317,395.41 for the year 1956. (Par. 3, Petition, & Par. 1, Answer; Exh. A, pp. 7 & 11, BIR rec.)

On April 15, 1959, the petitioners, pursuant to respondent's assessment notice No. A-31462-56, paid ₱326,247.41, as evidenced by Official Receipts Nos. 764592 and 764593 for ₱8,852.00 and ₱317,395.41, respectively. Hence, the total sum of income tax paid for the year 1956, including the withholding tax of ₱4,805.59, amounted to ₱331,053.00. (Par. 4, Petition, & Par. 1, Answer.)

On March 17, 1959, the petitioners filed an amended income tax return for 1956 reporting the same gross income of ₱1,017,287.65 reported in their original income tax return, but a smaller net income of ₱527,870.20 on which the sum of ₱213,809.51 is due as income tax after deducting ₱4,805.59 as withholding tax. (Exh. C, pp. 1 & 4, BIR rec.) The only difference between the original and the amended income tax returns is the claim to a deduction in the amended return of the sum of ₱205,939.24 paid in 1956 to the U.S. Government as federal income tax.

Simultaneously with the filing of the amended income tax return for 1956 on March 17, 1959, the petitioners also filed a writtencclaim for refund of the sum of ₱112,437.90, plus six per cent (6%) interest a year from the date of payment. (Exh. B, pp. 5-6, BIR rec.)

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In view of respondent's failure to answer the claim for refund, and inasmuch as the two-year period prescribed by Section 306 of the National Internal Revenue Code within which to file the action in court to recover the income tax allegedly erroneously collected by the respondent was to expire on April 15, 1960, the petitioners filed the instant "Petition for Review and Refund of Income Tax" on April 11, 1959.

As correctly stated by the respondent Commissioner of Internal Revenue, the "legal issue in this case is identical to that involved in C.T.A. Case No. 570 which is (was then) pending decision by this Honorable Court, i.e., whether or not income tax paid to the U.S. Revenue Service in 1956 is deductible from Philippine gross income earned in the same year by an American resident who has no income other than that derived from Philippine sources". (P. 1, Memorandum for the Respondent; p. 103, CTA rec.) The case referred to by the respondent (C.T.A. Case No. 570) is between the same parties as in the instant case, who are also represented by the same attorneys, and involve the same kind of tax and practically the same facts, the only difference being the taxable year under review.

The petitioners claim the disputed deduction under Section 30 (c) (1) (B) of the National Internal Revenue Code which provides as follows:

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"SEC. 30. Deductions from gross income.- In computing net income there shall be allowed as deductions -

x x x

(c) Taxes:

(1) In general: Taxes paid or accrued within the taxable year, except -

x x x

(B) Income, war-profits, and excess-profits taxes imposed by the authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credit for taxes of foreign countries);"

Interpreting and applying the above-quoted provision of the Tax Code to C.T.A. Case No. 570 (V. E. Lednicky and Maria Valero Lednicky vs. Collector of Internal Revenue) which was decided by this Court on December 29, 1960, we said:

"A perusal of the above-quoted codal provision yields the unmistakable conclusion that a taxpayer, who does not indicate in his return a desire to have the benefits of credit for taxes of foreign countries, shall be entitled to a deduction claim for income, war-profits, and excess-profits taxes imposed by authority of a foreign country and paid or accrued within the taxable year. In the case at bar, it is admitted that the petitioners paid U.S. Federal income taxes in 1955 and did not indicate in their 1955 re-amended tax return that they desired to enjoy the benefits of credit for the income taxes they paid to the United States government. Clearly, they are entitled to deduct from their gross income for the year 1955 the amount of ₱471,867.32 paid as U.S. Federal income taxes."

And we ruled further that:

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> "x x x even on the assumption *arguendo* that the petitioners are not entitled to any credit for the taxes paid to the United States government, still, they should be allowed a deduction therefor."

Considering that no valid and strong argument was advanced by the respondent Commissioner of Internal Revenue to justify a departure from our ruling in C.T.A. Case No. 570, *supra.*, we are of the opinion and so hold that the petitioners in the case at bar are entitled to a deduction in their 1956 income tax return of the amount of ₱205,939.24 which was paid to the U.S. government as Federal income tax, and as a consequence of said deduction, they should be refunded the sum of ₱112,437.90, as erroneously collected 1956 income tax.

However, with regard to the claim of the petitioners for the payment of interest on the amount refundable, it shall suffice to state that the latest decisions of the Supreme Court in point is to the effect that the government cannot be required to pay interest on national internal revenue taxes which were erroneously or illegally collected by the Commissioner of Internal Revenue. (Collector of Internal Revenue vs. Sweeney, G.R. No. L-12178, Aug. 21, 1959; Collector of Internal Revenue vs. St. Paul's Hospital of Iloilo, G.R. No. L-12127, May 25, 1959.)

WHEREFORE, in view of the foregoing considerations, the respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioners V. E. Led-

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nicky and Maria Valero Lednicky the sum of ₱112,437.90, without interest, as overpayment of income tax for the year 1956. Without pronouncement as to costs.

SO ORDERED.

Manila, March 2, 1961.

AUGUSTO M. LUCIANO
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

ROMAN M. UMALI
Associate Judge