REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

MARCELINO T. VIDUYA,
Petitioner,

- versus -

C.T.A. CASE NO. 32

COLLECTOR OF INTERNAL REVENUE,
Deputy Collector of Internal
Revenue, and MUNICIPAL TREASURER
of San Fernando, La Union,
Respondents.

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D E C I S I O N

This is an appeal interposed by Marcelino T. Viduya to recover from the respondents the sum of ₱943.20 which he has paid to the respondent Municipal Treasurer of San Fernando, La Union, by way of compensating tax.

It appears that on November 7, 1952, David H. Sencindiver, Jr., a member of the staff of the American Embassy in the Philippines, brought from the United States a 1950 Model Buick Sedanet bearing Motor No. 59877524, which he had acquired for his personal use in Virginia and registered with the Motor Vehicles Division of that State in his own name (Exhibit C-1).

Upon its arrival in the Philippines, the vehicle was released to David H. Sencindiver, Jr. by our customs authorities without requiring him to pay the compensating tax prescribed under section 190 of the National Internal Revenue Code, he being a citizen of the United States and member of the staff of the American Embassy in the Philippines and therefore exempt from such tax.

On November 7, 1952, David H. Sencindiver, Jr. registered his automobile with the Motor Vehicles Office for which he was issued the corresponding certificate of registration, Exhibit D-1, and a "SPL" plate reserved for members of the diplomatic corps and other agencies of the U. S. Government in the Philippines.

On December 4, 1953, Sencindiver sold the vehicle to the petitioner herein, Marcelino T. Viduya. The buyer immediately registered the transfer in his name by obtaining from the Motor Vehicles Office the certificate of registration, Exhibit F.

On June 22, 1954, the Bureau of Internal Revenue demanded from the petitioner the payment of ₱943.20 as compensating tax on the automobile which the latter had bought from David H. Sencindiver, Jr., pursuant to the provision of section 190 of the National Internal Revenue Code as implemented by BIR General Circulars Nos. V-145 and V-152, dated November 20, 1952 and March 10, 1953, respectively.

The tax demanded, as computed and itemized by the Bureau of Internal Revenue, is as follows:

"Blue Book" value	$1,320.00	
Less: 15% thereof	198.00	
Add: Freight from the West Coast	$1,122.00	
to the Philippines	450.00	
	$1,572.00	or
Total landed cost	₱3,144.00	
30% tax due thereof	₱ 943.20	

On October 8, 1954, after an exchange of correspondence with the respondent Collector of Internal Revenue, the petitioner paid the amount demanded under protest as evidenced by the receipt, Exhibit G.

On October 19, 1954, the petitioner appealed the case to this Court for review without first filing a formal claim for refund of the amount in question from the respondents as required under section 306 of the National Internal Revenue Code.

The issues raised in this appeal are as follows:

> 1. Would payment under protest without a formal claim for refund by the petitioner of the tax paid by him to the respondent be sufficient compliance with the provision of section 306 of the National Internal Revenue Code so as to confer jurisdiction upon this Court to hear and decide this appeal?
>
> 2. Could the purchase of the automobile in question by petitioner from David H. Sencindiver, Jr., a member of the staff of the American Embassy in the Philippines be considered as an "importation or purchase from without the Philippines" as contemplated by section 190 of the National Internal Revenue Code?

The petitioner claims that the protest he had made upon paying the amount of ₱943.20 to the Municipal Treasurer of La Union as well as the letters which he had written to the respondent Collector of Internal Revenue protesting against the assessment before paying the same, are equivalent to a formal claim for refund as required by section 306 of the National Internal Revenue Code and therefore with such protest and letters, he has sufficiently complied with the conditions precedent essential to confer upon this Court jurisdiction to hear and decide his appeal. Moreover, petitioner claims that the question of jurisdiction was never raised before this Court by respondents in a motion to dismiss nor in their answer to the petition for review and, therefore, such omissions constitute a waiver of objection to jurisdiction on their part.

The Supreme Court had occasion to decide a similar issue in the case of Wee Poco & Co. vs. Juan Posadas Jr. 64 Phil. 640-666, where it held that:

> "The protest, however, is not sufficient. The law requires the taxpayer to request the decision of the collector, and such requirement is not merely directory but clearly mandatory, as may be inferred from the words: 'and shall thereupon request the decision of the Collector of Internal Revenue.' Taking into consideration that the protest is entered for the sole purpose of preserving the taxpayer's right to question the legality of the tax, hence the necessity of the latter requesting the decision of the Collector of Internal Revenue, and in order that said official may have an opportunity to render a decision with knowledge of the facts of the case, the taxpayer must state in his petition his reasons for questioning the legality of the tax and for demanding the refund of the amount paid by him."

> "x x x x x Failure to comply with this requisite is fatal because it has been repeatedly held that no action for the recovery of a tax paid can be maintained without strictly complying with each and every one of the conditions required by the law to that effect."

The Supreme Court, in interpreting section 306 of the National Internal Revenue Code in the subsequent case of Santiago Bermejo vs The Collector of Internal Revenue, G.R. No. L-3029, July 25, 1950, reiterated its ruling in the Wee Poco case thus:

> "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." (see also P. J. Kiener Co., Ltd. vs. Saturnino David, Collector of Internal Revenue, G.R. No. L-5163, April 22, 1953).

We find no merit in the contention of petitioner that the failure on the part of respondents to raise before this Court the question of jurisdiction in a motion to dismiss or in their answer to the petition for review, constitutes a waiver of such objection on their part. Objections to the timeliness of a motion to dismiss for lack of jurisdiction are unavailing, since the court may raise such issue at any time even on its own motion. (p. 215, Vol. I, 1952 edition, Moran's Comments on the Rules of Court.)

Having thus decided that this Court is without jurisdiction to entertain the present appeal for failure on the part of petitioner to file a formal claim for refund with the Bureau of Internal Revenue after paying the amount of ₱943.20, as required under section 306 of the National Internal Revenue Code, we deem it therefore unnecessary to decide the second issue bearing on the merits of the case.

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

SO ORDERED.

Manila, February 15, 1955.

AUGUSTO M. LUCIANO
Associate Judge

I concur:

MARIANO NABLE
Presiding Judge