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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARLOS J. REYES,
Petitioner,

- versus - C.T.A. CASE NO. 2581

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

7/31/79

D E C I S I O N

Appeal from the decision of respondent Commissioner of Internal Revenue dated May 9, 1973, denying the claim of petitioner Carlos J. Reyes for refund of the sums of ₱846.72 and ₱522.48 as alleged double payment of his deficiency income tax liabilities and penalties for the years 1952 and 1953, and reiterating his demand against petitioner for payment of the amount of ₱327.53 as surcharge, delinquency interest and penalties for the same years.

There is no dispute as to the facts of the case. As borne out by the pleadings and records, it appears that an anonymous letter (Strictly Confidential) dated June 21, 1957 was received by the Regional Director of the Bureau of Internal Revenue for Western Visayas, informing him of the tax evasion committed by Carlos J. Reyes, petitioner herein. (p. 3, BIR rec.) Because of the aforesaid letter, an investigation and examination of the tax liabilities of petitioner was conducted by the Regional District Office of Iloilo City. (pp. 8, 17, 18 and 19, BIR rec.) As a result thereof, sometime on July 17, 1965, petitioner was assessed for deficiency income tax liabilities in the amounts of ₱846.72 and ₱522.48 for the years 1952 and 1953, respectively. (Exh. "1", pp. 58-61, BIR rec.)

On August 6, 1965, Jose Aclaro, brother-in-law of herein petitioner, was issued Official Receipts Nos. B-1651279 and B-1651280 in the amounts of ₱846.72 and ₱522.48 for the years 1952 and 1953, respectively, by David B. Babol, the revenue collection agent at Estancia, Iloilo, evidencing payment by petitioner of the aforementioned assessment of respondent dated July 17, 1965. (Exh. "B", p. 44; Exh. "A", p. 44, CTA rec.) On December 6, 1966 petitioner himself made payment to the officer-in-charge, collection agent, at Estancia, Iloilo, the amounts of ₱846.72 and ₱522.48 as evidenced by Official Receipts Nos. B-1651897 and B-1651898 involving the same assessment of respondent dated July 17, 1965. (Par. 4, Petition, admitted in par. 3, Answer, pp. 1 and 35, CTA rec.)

In a letter dated July 18, 1967, the Assistant Regional Director, Revenue Region No. 15, Iloilo City, assessed and demanded from petitioner the further amount of ₱327.53 by way of interest from August 17, 1965 to December 6, 1966, compromise penalties and surcharges for late payment of the assessment of July 17, 1965 on the ground that the quadruplicate copies of Official Receipts Nos. B-1651280 for ₱522.48 and B-1651279 for ₱846.72, both dated August 6, 1965, were cancelled by David

B. Babol. (Exh. "2", p. 67, BIR rec.; Par. 5, Petition, admitted in par. 1, Answer, pp. 2 and 35, CTA rec.) Petitioner instead of protesting to the aforementioned deficiency assessment for late payment, filed with the Regional District No. 15 on July 29, 1967 a claim for refund of the amounts of ₱846.72 and ₱522.48 due to double payment erroneously made by him on December 6, 1966. (p. 147, BIR rec.; see also Par. 6, Petition, admitted in par. 4, Answer, pp. 2 and 36, CTA rec.) In a letter decision dated May 9, 1973, however, respondent denied petitioner's claim for refund and reiterated his demand for payment of the amount of ₱327.53 as surcharge, delinquency interest and penalties for late payment of the assessment of July 17, 1965. (Exh. "8", pp. 199-200, BIR rec.) Consequently, on February 26, 1974, petitioner interposed his appeal to this Court.

Submitted for resolution before us are the following:

1. Whether or not petitioner is liable for the deficiency penalty assessment in the amount of ₱327.53 on the basis of late payment made on December 6, 1966; and

2. Whether or not petitioner's right to a refund has already prescribed pursuant to Section 306 of the Tax Code.

Should an internal revenue collection agent be allowed to issue official receipts evidencing payment of internal revenue taxes, later cancel unilaterally, without informing the taxpayer concern, the duplicates, triplicates and quadruplicates thereof allegedly because no payments were actually tendered and received by him? The clear purpose of the issuance of an official receipt is to serve as evidence of payment of the tax indicated thereon. Issuing official receipts, therefore, without actual receipt of payment of the taxes reflected thereon does not only constitute grave abuse of discretion and gross incompetence on the part of the collecting officer for which he should be held liable but destructive of the taxpayers' faith and confidence in their government.

It is alleged, however, in an ex parte affidavit, wherein the Court or the taxpayer (petitioner herein) was never given the opportunity to cross examine the affiant, revenue collection agent David B. Babol, as he was not presented:

x x x x x   x x x x x   x x x x x

> "4. That this came about as a result of an over confidence and good faith of the affiant on the person and character of Mr. Jose Aclaro, brother-in-law of Carlos Reyes, the taxpayer above-mentioned;
>
> "5. That it was sometime in the morning of August 6, 1965 when Mr. Jose Aclaro came to the Office and told me that he wish to pay the deficiency of Mr. Carlos Reyes, his brother-in-law, for 1952 and 1953, in the total amount of ₱1,369.20. He asked me to issue the corresponding receipts for the same;
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> "6. That after issuing O/R No. 1651279 for ₱846.72 and O/R No. 1651280 for ₱522.48, representing income tax deficiency for 1952 and 1953, (in the total amount of ₱1,369.20), respectively, I handed over those receipts to Mr. Jose Aclaro. Upon his receipt of those receipts however, Mr. Aclaro told me that he did not have the money with him at the moment but that if I can trust him, he'll just send

it to me in the Office as soon as he gets home;

"7. That not suspecting anything fishy and relying on the character and integrity of Mr. Aclaro, I took his word for it and did not mind when he left the office with the two (2) herein referred receipts:

x x x x x   x x x x x   x x x x x

While much could be said of the trust or confidence or good faith reposed on the person of Jose Aclaro, this Court could not look with favor on such actuations or motivations of internal revenue collection officers as it would frustrate the very purpose of the issuance of official receipts and expose government revenues to misappropriation or malversation. More importantly, in view of the nature of the official receipt as evidence of payment of taxes paid, involving as it does money received into the public treasury, the Court cannot but doubt the credibility and good faith of internal revenue agent David B. Babol who issued the official receipts. Especially so when without taking the appropirate action for the recovery of the official receipts issued by him allegedly without receipt of payment, he unilaterally cancelled the duplicates, triplicates and quadruplicates without notifying petitioner herein or Jose Aclaro of his action.

Against this backdrop, and on the face of the genuineness and official character of Official Receipts Nos. B-1651280 and B-1651279 dated August 6, 1965 as public documents (U.S. vs.

Leyson, 5 Phil. 447), the veracity and due issuance of which have never been questioned by respondent, payment by petitioner Carlos J. Reyes of his deficiency income taxes and penalties for the years 1952 and 1953 in the total sum of ₱1,369.20 on August 6, 1965 may not be disregarded in the absence of an affirmative showing that what is reflected thereon is not true. In the ordinary and accepted course of official business, no collection agent, unless he is motivated with selfish or dishonest intentions, will ever issue official receipts evidencing payment of taxes due the government without actually receiving and verifying the correctness of the amount officially receipted. Neither will he cancel the duplicates, triplicates and quadruplicates of the official receipts without first informing the taxpayer concern of his action and pursuing appropriate steps for the recovery of the amount of the tax collected or the original of the receipts. The bare allegation in an affidavit, the affiant of which has not been even presented in Court for examination as to the truth of his statements, that no payment was tendered and received, unsupported and standing alone, should not therefore impair the faith and credence normally accorded to official receipts as evidence of payment.

Some stress was placed by respondent upon petitioner claiming refund on the ground of double payment only after receipt of respondent's letter of July 18, 1967 demanding payment of the amount of ₱327.53 as deficiency penalties. And surmising that petitioner's brother-in-law could have effected the payment made on August 6, 1965 only upon specific instructions from herein petitioner, respondent would entertain some doubts on the veracity of petitioner's allegation of double payment.

Human memory suffers from lapse of time, and it is not inconceivable that the letter of respondent might have touched the chord which reminded petitioner, considering that the amount involved is not substantial, of the double payment. Petitioner was acting within his rights, and if he filed his claim for refund after receipt of respondent's demand-letter of the amount of ₱327.53 as delinquency penalties for late payment of the principal assessment, that is a matter which is not inconsistent with petitioner's defense that he had already paid his 1952 and 1953 income tax deficiencies on August 6, 1965 and entitled to the refund of the amount paid of the same liabilities on December 6, 1966.

The net result is that the deficiency income tax liabilities and penalties for the years 1952 and 1953 in the total sum of ₱1,369.20 of petitioner were duly paid on August 6, 1965 under Official Receipts Nos. B-1651280 and B-1651279. The payment of the same tax liabilities and penalties on December 6, 1966 under Official Receipts Nos. B-1651897 and B-1651898 by petitioner was therefore a double payment. Consequently, respondent's letter assessment of July 18, 1967, demanding from petitioner the payment of ₱327.53 as delinquency penalties for late payment of the principal assessment on December 6, 1966 cannot be sustained.

Notwithstanding the double payment of the same income tax liabilities, petitioner is not, however, entitled to the refund of the second payment made by him on December 1966 because his right to the refund has already prescribed under Section 306 (now Section 292) of the National Internal Revenue Code. Section 306 of the Code then reads as follows:

> "Sec. 306. 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 Commissioner 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." (Underlining supplied.)

As stated earlier, petitioner seeks in this proceeding the refund of the payment made by him on December 6, 1966 under Official Receipts Nos. B-1651897 and B-1651898 in the amounts of ₱846.72 and ₱522.48, respectively. However, the records will show that petitioner's appeal to this Court for refund of the aforesaid amounts was instituted on February 26, 1974 or after a period of exactly seven (7) years, two (2) months and twenty (20) days. Definitely, the right of petitioner to the refund has already prescribed.

In the case of Collector of Internal Revenue vs. Court of Tax Appeals and Hume Pipe and Asbestos Co., Inc., L-11494, January 28, 1961, 1 SCRA 87, the Supreme Court held:

> In order to confer jurisdiction upon the court, it is necessary, however, that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in section 306 must have been complied with.

Further,

> Pursuant to section 306 of the Tax Code, no suit or proceeding for refund or credit of any national internal revenue tax erroneously or illegally assessed or collected shall be begun after the expiration of two (2) years from the date of payment. This provision, which is mandatory, is not subject to any qualifications, and, hence, it applies regardless of the conditions under which the payment has been made. (Guagua Electric Light Plant Co., Inc., vs. Collector of Internal Revenue, L-14421, April 29, 1961, 1 SCRA 1221.)

We, accordingly, affirm the first portion of the decision of respondent denying the claim of petitioner Carlos J. Reyes for refund of the sums of ₱846.72 and ₱522.48 as double payment of his deficiency income tax liabilities and penalties for the years 1952 and 1953; and reverse the second part thereof reiterating his demand against him (petitioner) for payment of the amount of ₱327.53 representing surcharge, delinquency interest and penalties for late payment of the principal assessment of income tax deficiencies for the same years.

WHEREFORE, the decision appealed from is hereby modified as indicated in the above opinion of the Court. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 31, 1979.

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge