REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ENGINEERING EQUIPMENT
AND SUPPLY CO.,
Petitioner,

versus

CTA CASE NO. 713

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner sought the refund of ₱13,532.00 alleged to have been erroneusly assessed and collected by respondent as 1954 deficiency income tax based on the disallowance of bad debts claimed by petitioner in its income tax return for the said year.

Petitioner is a duly organized domestic corporation with principal office and place of business at Manila. (Par. 1, Partial Stipulation of Facts, hereinafter referred to as "STIFACTS" for brevity, pp. 20-21, CTA rec.) On February 19, 1955, petitioner filed its corporate income tax return for 1954 declaring therein a net income of ₱125,237.52 and a tax liability of ₱27,066.00 (Exh. L, pp. 1-10, BIR rec.) which has already been paid. (Par. 3, STIFACTS, ibid.)

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In the said income tax return for 1954, petitioner deducted from its gross income the total sum of ₱48,527.95 representing "1941 Accounts Receivable" written off (Exh. L, p. 1, BIR rec.; see also Exhibit E, Journal Voucher No. 2-1254) as bad debts but which was disallowed by respondent. On account of the disallowed deduction a deficiency income tax assessment of ₱13,-532.00 (No. 90-5C-326-54) was issued against petitioner, computed as follows:

Net Income as per return	..	₱125,237.52
Add: Accounts receivable written off	..	48,527.95
Net income per return	..	₱173,765.47
Income tax due thereon	..	40,598.00
Less: Amount already assessed and paid	..	27,066.00
Deficiency income tax	..	₱ 13,532.00

(Par. 4, STIFACTS, ibid.)

On October 31, 1957, respondent notified petitioner that he had applied the refundable amount of ₱1,362.96 as sales tax erroneously collected to the payment of the deficiency income tax liability of ₱13,532.00, thereby leaving a balance of ₱12,169.04 (par. 5, STIFACTS, ibid.)

On November 13, 1957, a warrant of distraint and levy was issued by respondent to enforce the collection of petitioner's income tax liability of ₱12,169.04 (p. 67, BIR rec.). On November 27, 1957, petitioner paid the said deficiency income tax of ₱12,169.04 under protest (par. 6, STIFACTS, ibid.).

On November 18, 1959, before the lapse of two years from the date of payment, petitioner filed with respondent a claim for the refund of ₱13,532.00 on the ground that the said amount was illegally, erroneously and excessively assessed and collected (pars. 7 & 8, STIFACTS, ibid.). No final action having been taken by respondent on petitioner's claim for refund, it filed against the Commissioner of Internal Revenue the present petition for review.

The issues raised in this appeal are as follows:

(1) Whether or not petitioner could still, after having paid the deficiency income tax of ₱13,532.00, legally claim the refund thereof; and

(2) Whether or not the disallowance by respondent of ₱48,527.95 as pre-war bad debts deducted by petitioner in its 1954 gross income is legal and justified.

First Issue -

Respondent contends that the petitioner, after paying the deficiency income tax assessment which has become final and executory for failure to contest the same, is estopped from claiming the refund thereof, citing as authority the case of Commissioner of Internal Revenue v. Jose Concepcion, et al., G.R. No. L-23912, promulgated March 15, 1968.

The contention of respondent that petitioner is estopped from claiming the refund of the alleged overpaid income tax by judicial action is in order. In the case of Jose Concepcion, supra, our Supreme Court held:

> For subsequently, in Republic v. Lim Tian Teng Sons & Co., Inc., the above doctrine was reaffirmed categorically in this language: "Taxpayer's failure to appeal to the Court of Tax Appeals in due time made the assessment in question final, executory and demandable. And when the action was instituted on September 2, 1958 to enforce the deficiency assessment in question, it was already barred from disputing the correctness of the assessment or invoking any defense that would reopen the question of his tax liability on the merits. Otherwise, the period of thirty days for appeal to the Court of Tax Appeals would make little sense." Once the matter has reached the stage of finality in view of the failure to appeal, it logically follows, in the appropriate language of Justice Makalintal, in Morales v. Collector of Internal Revenue, that it "could no longer be reopened through the expedient of an appeal from the denial of petitioner's request for cancellation of the warrant of distraint and levy."
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> In the same way then that the expedient of an appeal from a denial of a tax request for cancellation of warrant of distraint and levy cannot be utilized for the purpose of test-

> ing the legality of an assessment, which had become conclusive and binding on the taxpayer, there being no appeal, the procedure set forth in Section 306 of the National Internal Revenue Code is not available to revive the right to contest the validity of an assessment once the same had been irretrievably lost not only by the failure to appeal but likewise by the lapse of the reglementary period within which to appeal could have been taken. Clearly then, the liability of respondent Concepcion as an ancillary administrator of the estate of the deceased wife and of respondent Mitchell-Roberts as the husband for the amount of ₱1,181.33 as estate tax and ₱2,616.10 as inheritance tax was beyond question. Having paid the same, respondents are clearly devoid of any legal right to sue for recovery. The decision of the Court of Tax Appeals ordering petitioner Commissioner of Internal Revenue to refund the above total sum of ₱3,797.43 cannot stand.

In the case at bar, petitioner did not dispute the 1954 deficiency income tax assessment of respondent for an unreasonable length of time until a warrant of distraint and levy was issued by said respondent on November 13, 1957 to enforce the collection of petitioner's income tax liability. The action, therefore, filed by petitioner against respondent on November 18, 1959 seeking the recovery of the income tax paid does not constitute an appeal within the 30-day period prescribed by Section 11 of Republic Act No. 1125. Accordingly, we hold that petitioner's action has prescribed because it was filed in court beyond the period required by law.

Having arrived at the conclusion that the taxpayer's failure to appeal to this Court in due time made respondent's assessment final, executory and demandable, and that the said taxpayer is now estopped from claiming the refund by judicial action of the deficiency income tax paid, it is idle and purposeless for the Court to go into the merits of the case.

WHEREFORE, petitioner's action for the recovery of ₱13,532.00 representing the deficiency income tax paid on account of the disallowed bad debts in 1954, should be, as it is hereby dismissed, with costs against petitioner.

SO ORDERED.

Quezon City, August 30, 1969.

ESTANISLAO R. ALVAREZ
Associate Judge

WE CONCUR:

ROMAN M. UMALI
Presiding Judge

RAMON L. AVANCEÑA
Associate Judge

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