REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

HEALD LUMBER COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 561

MELECIO R. DOMINGO, as
Acting Commissioner of
Internal Revenue,
Respondent.

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

R E S O L U T I O N

This is in connection with the petitioner's "Motion for Judgment on the Pleadings" filed on September 30, 1958 and its "Urgent Motion" filed on December 9, 1958. The "Motion for Judgment on the Pleadings" is premised on the fact that the respondent has admitted in his answer the substantial and material allegations contained in the "Petition for Review" which relates to the petitioner's theory that the right to enforce collection of the alleged deficiency income tax in question has already prescribed. The petitioner contends that should a finding be made that the assessment or collection of the tax in question is barred by the statute of limitations, pursuant to Section 14 of Republic Act No. 1125, the decision of this Court shall be to the effect "that there is no deficiency in respect of such tax."

The following are the allegations in the "Petition for Review" (pars. 1 to 8, inclusive) and admitted in the "Answer" (par. 1):

1. That petitioner is a corporation organized in accordance with the laws of the Philippines, with offices at Baguio City, while respondent is the duly qualified and acting Commissioner of Internal Revenue and may be served with summons at the Finance Building, Manila;

2. That on March 30, 1949, petitioner received respondent's letter dated March 3, 1949, demanding payment of the amount of ₱47,065.37 as deficiency income tax assessed under Assessment Notice No. A-96205-45/41 allegedly due from petitioner for the year 1941; a copy of the said letter marked Annex "A" is hereto attached;

3. That on or about April 8, 1949, the law firm of Perkins, Ponce Enrile, Contreras & Gomez, then the attorneys of petitioner, filed with the respondent's office their letter of the same date, contesting respondent's letter of demand and assessment notice referred to in the preceding paragraph; a copy of the letter of the said law firm marked Annex "B" is hereto attached;

4. That respondent's above-numbered deficiency income tax assessment is based mainly on the disallowance of the deduction for war losses amounting to ₱474,623.62 sustained by petitioner in 1941 on the ground that the war damage compensation paid to petitioner allegedly amounting to ₱2,216,801.25 was exempt from income tax under Republic Act No. 227; that the additional basis of the deficiency income tax assessment in question is the disallowance of the amount of ₱117,109.79 representing an alleged overdepreciation of assets claimed as deductions by petitioner in its income tax return;

5. That on March 14, 1958, petitioner received the letter of respondent dated February 27, 1958, reiterating his demand for the alleged deficiency income tax for the year 1941 on a different ground, to wit, that petitioner was allegedly unable to present proof during the reinvestigation that the war losses deducted in its income tax return were actually incurred in 1941;

6. That on March 20, 1958, the undersigned attorneys, on behalf of the petitioner, filed with the respondent's office their letter of March 18, 1958, contesting respondent's afore-

said deficiency income tax assessment on the ground of prescription; a copy of the said letter marked Annex "C" is hereto attached;

That on April 29, 1958, the undersigned counsel received the letter of the Deputy Commissioner of Internal Revenue dated April 18, 1958, reiterating the deficiency income tax assessment against petitioner;

7. That the undersigned attorneys, on behalf of the petitioner, requested that the deficiency income tax assessment in question be reviewed by the Appellate Division of the Bureau of Internal Revenue pursuant to the Bureau's regulations on the matter, as evidenced by a copy of the letter of the undersigned attorneys dated April 29, 1958, filed with the respondent's office on April 30, 1958, a copy of which marked Annex "D" is hereto attached;

8. That on July 11, 1958 (July 12, 1958), the undersigned attorneys received the letter of the respondent dated June 20, 1958 (June 26, 1958), finally holding that, after the review by the Appellate Division, his office has decided to reiterate the deficiency income tax assessment against petitioner for the year 1941;

From the foregoing admitted facts, it appears that the deficiency income tax assessment involved in this case was made on March 30, 1949. There is no showing that the respondent has enforced collection by distraint or levy or by an action in court within five (5) years from March 30, 1949. Neither is there any allegation in the respondent's answer that the period of limitation to collect the tax in question has been suspended by any cause or causes recognized by law. Under the circumstances, we believe and are constrained to hold that the right of the respondent to collect the deficiency income tax in question is already barred by the statute of limitations (see Collector vs. Solano, G. R. No. L-11475, July 31, 1958).

Hence we find it unnecessary to pass upon the petitioner's "Urgent Motion" filed on December 9, 1958.

WHEREFORE, pursuant to Section 14 of Republic Act No. 1125, we hereby declare that the collection of the deficiency income tax for 1941 from the petitioner is barred by the statute of limitations, and that there is no deficiency in respect of such tax. The decision of the Commissioner of Internal Revenue is hereby reversed and he is hereby ordered to desist from collecting the said deficiency income tax.

SO ORDERED.

Manila, January 28, 1959.

MARIANO NABLE
Presiding Judge

WE CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

In the result:

ROMAN M. UMALI
Associate Judge

42