REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

UNIVERSITY OF SANTO TOMAS,
Petitioner,

- versus - C.T.A. CASE NO. 10

COLLECTOR OF INTERNAL REVENUE,
Respondent.

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June 4, 1956

D E C I S I O N

This is an appeal from the decision of the respondent Collector of Internal Revenue, dated January 14, 1954, (1) denying the petitioner's claim for refund of the sum of ₱8,293.31, which the latter paid as business printer's percentage tax pursuant to section 191 in relation to section 183 (a) of the Tax Code for the period from January 1, 1948 to June 30, 1951; (2) assessing and demanding from the petitioner herein the amount of ₱2,451.04 representing deficiency percentage tax and surcharge on the amount of ₱98,041.50, which the petitioner allegedly failed to return for taxation purposes within the aforementioned period; and (3) demanding from the petitioner the sum of ₱100.00 as compromise penalty for violation of section 183 (a) in relation to section 191 of the Tax Code, penalized by section 209 of the same Code.

The petitioner herein, the University of Sto. Tomas, is a private non-stock corporation organized and operated for educational purposes. In keeping with the practice of other educational institutions for the furtherance of their educational objectives, it operates a printing press (hereinafter referred to as UST Press), which is maintained as a separate and distinct department, independent from the other departments of the petitioner. The UST Press is primarily engaged in the printing and/or binding of the University's interdepartmental forms, school supplies and school publications, such as VARSITARIAN, AQUANIAN, VOZ, UNITAS, and ESTUDIANTIL, and of the school annuals THOMASIAN and VERITAS. The UST Press also accepts printing and/or binding jobs for the general public.

During the period from January 1, 1948 to June 30, 1950, the petitioner paid on its gross receipts derived from its printing and binding jobs for the public and the different departments of the University the aggregate amount of ₱13,590.03, representing the two per cent (2%) tax on its gross receipts during the period in question, more or less itemized as follows:

SOURCE OF RECEIPTS	AMT. OF GR. RECEIPTS	2% TAX PAID
From the other departments of the University in connection with the binding and/or printing of forms, advertising cards, envelopes, programs, prospectus, stationeries, the different school organs, such as UNITAS, VARSITARIANS, AQUANIANS, VOZ, and ESTUDIANTIL	₱359,972.45	₱ 7,199.45
From printing and binding of school annuals, THOMASIAN and VERITAS	54,693.00	1,093.86
Total for printing and/or the binding for University Annuals	₱414,665.45	₱ 8,293.31

From printing and/or binding jobs for the general public	₱264,836.05	₱ 5,296.72
GRAND TOTAL FOR THE UNIVERSITY, ANNUALS, and GENERAL PUBLIC	₱679,501.50	₱13,590.03

(Exh. "A", pp. 1, 2, BIR record; Exh. 8, pp. 19, 20, BIR record; Exh. 9, pp. 4-17, BIR record.)

On October 17, 1950, the petitioner requested in writing from the respondent the refund of the sum of ₱8,293.31, representing the 2% percentage tax on the aforesaid receipts of ₱414,665.45. This request was predicated on two reasons, namely: (1) that the amount of ₱359,972.45 "paid" by the other departments of the petitioner to the UST Press was for purposes of accounting only and does not legally constitute gross receipts subject to the percentage tax prescribed in section 191 in relation to section 183 (a) of the Tax Code; and (2) that the printing and binding of the annuals THOMASIAN and VERITAS fall under the exception provided for in section 191 of the same Code. On January 14, 1954, the respondent Collector of Internal Revenue denied the said request for refund but at the same time demanded the payment of the sum of ₱2,451.04, as deficiency percentage tax and surcharge on the undeclared receipts derived from the printing and binding of the annuals THOMASIAN and VERITAS, plus ₱100.00 as compromise penalty in extrajudicial settlement for violation of the provisions of said sections 183 (a) and 191, penalized by section 209, all of the same Tax Code. On February 22, 1954, the petitioner herein requested the respondent to reconsider the latter's ruling of January 14, 1954, but this was denied on July

29, 1954. Said denial was received by the petitioner on August 9, 1954. Hence, on September 8, 1954, the petitioner, thru counsel, filed a petition for review with the Court.

At the outset, it will be observed that the amount of ₱7,199.45, which the petitioner seeks to be refunded, has been paid during the period from January 1, 1948 to June 30, 1950. The record of the case shows that the last payment on the aforesaid amount was made on July 15, 1950. (Exhibit 9, p. 4, BIR record). Considering that the action in court for the refund thereof was initiated only on September 8, 1954, with the filing of the present petition for review, or almost four years after the last payment of the tax sought to be refunded, this Court has no longer jurisdiction to order the refund of the said amount of ₱7,199.45, pursuant to the provisions of section 306 of the National Internal Revenue Code. It is already well-settled that the requirements prescribed by section 306 are substantial and jurisdictional. (Venus vs. Posadas, 54 Phil. 832; Wee Poco vs. Posadas, 64 Phil. 640; Bermejo vs. Collector of Internal Revenue, G. R. L-3029, July 25, 1950, 47 O. G., No. 12, Supplement p. 292; David vs. Ramos and Castro, G. R. L-4300, Oct. 31, 1951; Keiner and Co. vs. David, G. R. No. L-5163, April 22, 1953, 49 O. G. No. 6, p. 1852; North Camarines Lumber Company vs. David, G. R. No. L-6135, March 31, 1955, 51 O. G., No. 4, p. 1860). And the fact that the respondent may have informed the petitioner through his letters marked as Exhibits "B", "C", "D" and

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"F", impliedly if not expressly, that said refund or tax credit had been granted, will not estop the former from raising the defense of prescription, because mere reference to a tax credit without a specific express grant of said tax credit is not equivalent to an admission by the respondent that a refund is due to petitioner. More so, when in Exhibit "F", the respondent spoke of "arrangements" being made, which clearly indicate that there was as yet no finality of favorable action taken on the petitioner's claim for refund. The petitioner should have, in view of the provisions of section 306, brought the proper action in court within the prescribed period in order to protect its right to the refund of the amount in question.

We notice, however, that although the UST Press is a distinct department, separate and independent from the other departments of the petitioner, it is nonetheless an integral part of the University of Sto. Tomas, performing coordinated and interrelated functions. The uncontradicted testimony of Daniel Ragasa, accountant of the said University, as corroborated by Dominador Rualo, University Auditor from 1948 to 1952, shows that the departmental system of accounting has been employed by the petitioner as early as 1935 for the purpose of expediting the auditing of its books and making possible the accurate payments of taxes to the government. By this system, one department, which is distinct and separate from the others, "pays" for whatever services or property secured from another department. Such "payments" are being made for accounting purposes only and in order to facilitate the exact determination of taxes that may be due the government from the UST Press, inasmuch as the educational department was not subject to tax (t.s.n. 30, 48). For purposes of taxation, however, it is the petitioner, as a legal entity, which shoulders the taxes that may be due from any of its departments, because the individual existence or personality of the various departments of the petitioner are merged into one taxable being, that of the University of Sto. Tomas.

> "x x x While a corporation organized to engage in business, like petitioner, may be composed of several departments, one filling a function different in nature from the others, the same <u>can not be considered separate and independent in relation to its business</u>, but merely as integral parts with coordinate and interrelated functions, of one whole organization. They are like parts of a machine which function coordinately and harmoniously to accomplish its objectives, and wherein the failure of one affects the efficiency of the whole. <u>This is true in every corporation</u> and the petitioner is no exception." (Sun-Ripe Coconut Products Inc., petitioners vs. National Labor Union, 51 O. G., No. 10, p. 5133). (Underscoring supplied)

Payments from one department to another of the petitioner may not, therefore, be legally considered as forming part of the gross receipts subject to the percentage tax prescribed in section 183 (a), in relation to section 191, of the National Internal Revenue Code.] Hence, the sum of ₱7,199.45 has been erroneously collected by the respondent.

Since the respondent seeks to recover a deficiency assessment from the petitioner for percentage taxes arising from the same gross receipts allegedly received within the same taxable period, we believe that such deficiency may be recouped by "set-off" or "credit" against and to the extent of the amount of taxes erroneously paid for the same period. This can be gleaned from the provisions of Sections 306 and 309 of the National Internal Revenue Code which, under the premises, may be applied in favor of the petitioner.

Before discussing this so-called "doctrine of equitable recoupment", which finds acceptance in the United States, it should first be mentioned that the deficiency assessment in the amount of ₱2,451.04, demanded from the petitioner, covers percentage tax and surcharge on the undeclared receipts derived from the printing and binding of the annuals THOMASIAN and VERITAS for the years 1948 and 1949. By virtue of the exempting proviso contained in section 191 of the Revenue Code, the pertinent portions of which are quoted hereunder, the petitioner claims that it is not liable to the said percentage tax.

> "x x x publishers, except those engaged in the publication of any newspaper, magazine, review or bulletin which appears at regular intervals, with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements, printers, and

> bookbinders, shall pay a tax equivalent to three percentum of their gross receipts." (Underscoring supplied)

An analysis of the above proviso will readily show that there are four requisites for the exemption:

1. The exemption referred to applies only to publishers who are engaged in the publication of any newspaper, magazines, review or bulletin;

2. Such publication should appear at regular intervals;

3. There must be fixed prices for subscriptions and sale; and

4. The newspaper, magazine, review or bulletin should not be devoted principally to the publication of advertisements.

By the very nature of these annuals, we believe that such publications do not have fixed prices for subscription and sale. As testified to by the accountant of the petitioner, Daniel Ragasa, the cost of printing depends on the thickness of the annuals to be printed and the number of copies to be made. The number of the graduating students, which invariably varies from year to year, and the fact that all members of the graduating class do not pay the same price for the same annual, indicate that the publications have no fixed prices for subscription and sale. Furthermore, it has not been shown to us that the UST Press is the publisher of these annuals. Without in the least trying to express an opinion whether it is the graduating class which publishes these annuals, it is of common knowledge that the editorial staffs thereof are composed of students and they are practically given a free hand in the publication thereof. Even more, we éntertain some doubts whether such annuals fall within the purview of the term "newspaper, magazine, review or bulletin" within the meaning of the law. The Court, therefore, is of the opinion that the petitioner is liable for the payment of the deficiency tax and surcharge on the undeclared receipts derived in connection with the printing and binding of the annuals THOMASIAN AND VERITAS for the years 1948 and 1949 in the amount of ₱2,451.04.

Going back to the deficiency assessment for percentage taxes arising from the same gross receipts which the respondent seeks to recover from the petitioner, we believe that it would be oppressive and unfair to leave the latter without any remedy to set-off taxes erroneously collected which were barred by prescription, since the former chose to slap a deficiency tax arising from the same transaction and for the same taxable period. In order to cushion the harsh and iniquitous effects of the statute of limitations, the Court, therefore, finds it necessary to apply in the instant case, what we have mentioned earlier as the "doctrine of equitable recoupment." This doctrine takes out of the field of limitations, tax adjustments where a charge or credit on one side would ordinarily be barred but equitably should be allowed against a nonbarred liability asserted on the other. In other

words,

words, this doctrine allows the interposing of an equitable defense in the nature of set-off. Thus, the Supreme Court of the United States in the case of Lewis v. Reynolds, 284 U.S. 281, 76 L Ed. 293, cited in Vol. 10 Mertens Law of Federal Income Taxation, page 373, held: "that while a Commissioner may not credit an overpayment against a barred deficiency for a different taxable year, he might do so where the deficiency was for the year as to which the taxpayer claims a refund." The development of this so-called "doctrine of equitable recoupment" received further impetus when the U.S. Supreme Court, in the leading case of Bull v. U. S., 295 U.S. 247, 79 L Ed. 1421, permitted a set-off of tax claims arising out of different phases of the same transaction. To quote:

> "When an action is brought by the United States, to recover money in the hands of a party who has a legal claim against them, it would be very rigid principle, to deny him the right of setting up such a claim in a court of justice, and turn him around to an application to Congress. If the right of a party is fixed by existing law, there can be no necessity for an application to Congress, except for the purpose of remedy. And no such necessity can exist, when this right can properly be set up by way of defense, to a suit by the United States x x x x x. The circumstance that by the claims, one for estate tax and the other for income tax, were prosecuted to judgment and execution in summary form does not obscure the fact that in substance the proceedings were actions to collect debts alleged to be due to the United States x x x x. To the objection that the sovereign is not liable to respond to the petitioner, the answer is that it has given him the right of credit or refund, which though he could not assert it in an action brought by him in 1930, had

> accrued and was available to him since it was actionable and not barred in 1925, when the Government proceeded against him for the collection of income tax." (At 262-263, 1428-1429)

The recoupment doctrine, as is true of every doctrine, has its inherent restrictions, and may not be applicable, therefore, to every case where collection or refund is barred by the statute of limitations, but only to those cases falling within the sphere of its restrictions. Mertens in volume 10 of his "Law of Federal Income Taxation", pages 378-379, speaking of these restrictions, said:

> "These restrictions relate back to the doctrine of recoupment itself, which requires: (1) identity of cross-claiming parties, and (2) germaneness of the cross claims to the same subject matter. The tax cases refer to 'recoupment' as an equitable doctrine, founded upon the injustice of permitting recovery by one party with respect to a transaction in connection with which the opposite party has just cross demands. Historically, attributing the doctrine solely to chancery, or fundamental equitable maxims, is of doubtful authenticity, as recoupments were allowed on the law side of the court, in limited instances, long before the advent of statutory 'set-off'. The basis there, however, was also: (1) identity of cross claimants or the source of their claims, and (2) relationship to the same transaction or subject matter."

Coming back to the case at bar, we see that the requirements for the applicability of the doctrine of equitable recoupment, namely, (1) identity of cross claiming parties, and (2) germaneness of the cross claims to the same subject matter are present. The petitioner herein is the same taxpayer who has made an overpayment and at the same time against whom a deficiency tax liability is asserted on the same subject matter, that is, collection of the business printer's percentage tax for the period covering January 1, 1948 to June 30, 1950 pursuant to section 191 in relation to section 183 (a) of the Tax Code. We are therefore of the opinion and so hold, that the overpayments made by the petitioner to the respondent Collector of Internal Revenue, the refund of which is barred by prescription, should be applied to offset whatever deficiency tax that may be due in the instant case from the petitioner to the extent of the overpayment made.

IN VIEW OF THE FOREGOING, the decision of the respondent appealed from is hereby modified in the sense that the petitioner's claim for refund to the extent of the sum of ₱5,842.27 is denied, the same being barred by prescription. The deficiency tax assessment of ₱2,451.04 for percentage taxes and surcharges is recognized, but the amount is deemed paid by way of recoupment to the extent of the sum of ₱2,451.04 which the petitioner had paid erroneously for the period from January 1, 1948 to June 30, 1950. The respondent Collector of Internal Revenue is ordered to desist from further collecting said deficiency assessment. Without pronouncement as to costs.

SO ORDERED.

Manila, Philippines, June 4, 1956.

MARIANO NABLE
Presiding Judge

WE CON-

DECISION -
C.T.A. CASE NO. 10

CUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge