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FINLEY J. GIBBS and
DIANE P. GIBBS,
Petitioners,

- versus - C.T.A. CASE NO. 584

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

June 18, 1960

R E S O L U T I O N

This is in connection with the preliminary questions, raised by respondent as affirmative defenses in his answer to the petition for review and refund of income tax with motion for suspension of collection of additional taxes, that this Court has no jurisdiction (1) to take cognizance of the instant petition for review on the ground that the same was filed beyond thirty (30) days from the date of receipt of respondent's decision, and (2) over the cause of action with respect to the credit of the amounts stated in the petition for review for the reason that the request for credit and the petition for review were filed beyond two (2) years from the dates of payments of said amounts.

The records show that, on February 6, 1956, respondent issued Assessment Notice No. AR-5416-55/50, assessing against petitioners the sum of ₱16,873.00 as deficiency income tax for the year 1950 (Exhs. 1 & G, p. 57, BIR rec., Vol. I). On March 14, 1956, petitioners, through their attorney-in-fact, Allison J. Gibbs, protested the assessment (Exhs. 2 & I, p. 65, BIR rec., Vol. I), which protest was denied in respondent's letter dated August 28, 1956 (Exhs. 3 & J, pp. 69-70, BIR rec., Vol. I).

On October 3, 1956, petitioners, through said attorney-in-fact, sent to respondent a check (No. 213082) drawn against the Chartered Bank of India, Australia and China for the amount of ₱16,873.00 as payment of the alleged deficiency assessment and, at the same time, demanded the refund of the said amount (Exhs. 4 & K, p. 73, BIR rec., Vol. I). On October 26, 1956, respondent denied petitioners' request for refund (Exhs. 5 & L, pp. 75-76, BIR rec., Vol. I). The letter of denial was admittedly received by Allison J. Gibbs on November 14, 1956 (p. 4, Answer to Respondent's Memorandum, p. 78, CTA rec.; see also Exh. 42-N, BIR rec., Vol. III, CTA Case No. 547).

On September 29, 1958, petitioners filed with respondent an amended demand for refund of ₱12,802.95, computed as follows:

1) On October 3, 1956 of	₱16,873.00
2) On March 29, 1952 of	4,916.82
Total overpayments for which claims for refund filed	₱21,789.82
Less 1952 income tax as per 1952 Income Tax Return and Assessment Notice No. A-20587-52 dated June 3, 1953	2,229.42
Balance refundable	₱19,560.40
Less 1955 Income Tax due as per return or	7,763.29
Less payment -- Receipt No. 675427 dated May 15, 1956	1,010.84
	₱ 6,757.45
Balance still refundable	₱12,802.95

(Exh. M, pp. 80-83, BIR rec., Vol. I; see also p. 18, Answer to Respondent's Memorandum, p. 92, CTA rec.; par. 12, Petition for Review and Refund of Income Tax, pp. 3-4, CTA rec.)

Without waiting for respondent's reply to their amended demand for refund, petitioners, on October 1, 1958, filed the instant petition for review and refund of income tax.

Respondent contends that this Court has no jurisdiction to take cognizance of the petition for review and refund of income tax because it was filed beyond thirty (30) days from the receipt of the decision of respondent dated October 26, 1956; that the right to claim for tax credit of the amount of ₱4,916.82 has already prescribed inasmuch as the suit for the recovery thereof was filed beyond two (2) years from the date of payment; and that the setting off of the amounts of ₱2,229.42 and ₱6,757.45 against the amounts alleged as refundable, being in the nature of equitable recoupment, is not cognizable in this jurisdiction.

Upon the other hand, petitioners contend that the letter of respondent dated October 26, 1956 is not a denial of their claim for refund, and, therefore, is not a decision appealable within 30 days as provided in Section 11 of Republic Act No. 1125; and that the amended demand for refund and the petition for review having been filed within two (2) years from and after the date of payment on October 3, 1956, this Court acquired jurisdiction over the appeal.

Petitioners paid the tax in the amount of ₱16,873.00 on October 3, 1956. They asked for the refund of this sum. On November 14, 1956, petitioners received the letter of respondent dated October 26, 1956 denying their request for refund. Under Section 11 of Republic Act No. 1125, petitioners had only 30 days from November 14, 1956, or up to December 15, 1956, within which to file their appeal for the refund of this sum to this Court. However, petitioners appealed from the said decision only on October 1, 1958, or more than one year from November 14, 1956. Obviously, the appeal was filed out of time.

Petitioners' contention that respondent's letter of October 26, 1956 is not a denial of their claim for refund is untenable. The fact of denial is patent from the first paragraph of the letter which reads:

> "With reference to your letters both dated October 3, 1956, requesting the refund of the sums of ₱12,284.00 and ₱16,873.00, as alleged erroneous payments of your income tax liability and that of your brother, Finley J. Gibbs, respectively, both for the year 1950, I regret to inform you that for reasons stated in our letter dated August 28, 1956, this Office finds no justifiable basis to grant your said request." (Exhs. 5 & L, p. 76, BIR rec., Vol. I; Exh. 42-N, p. 88, BIR rec., Vol. III, CTA Case No. 547)

With respect to the claim for refund and credit in the amount of ₱4,916.82 as alleged overpayment of income tax withheld at source in the year 1951, the evidence does not show that such claim was filed with respondent within two (2) years from the date of payment thereof.

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Furthermore, it appearing that the present petition for refund was filed only on October 1, 1958, the judicial suit was instituted beyond the prescriptive period of two (2) years from the date of payment in 1951 (Section 306, National Internal Revenue Code). Consequently, petitioners' right to claim for the refund and credit of this amount has prescribed. (College of Oral & Dental Surgery vs. Court of Tax Appeals & Collector of Internal Revenue, G. R. No. L-10446, January 28, 1958; 54 Off. Gaz. No. 29, p. 7055.)

FOR THE FOREGOING CONSIDERATIONS, let this case be dismissed for lack of jurisdiction, with costs against petitioners.

SO ORDERED.

Manila, June 18, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.