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MOUNT ARAYAT SUGAR CO., INC.,
Petitioner,

- versus - C.T.A. CASE NO. 422

Nov. 21, 1958

THE COLLECTOR OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a "Petition for Review" of the decision of the respondent Collector (now Commissioner) of Internal Revenue denying the claim for refund of the income tax alleged to have been erroneously or illegally collected from the petitioner. The facts established in this case are summarized hereunder.

The petitioner is a corporation organized under the laws of the Philippines and engaged in the sugar milling business. It has adopted a "fiscal year" which starts October 1 and ends on September 30 of the following year and accordingly files its income tax return on or before November 30 following the close of such fiscal period.

On December 12, 1941, the United States Army commandeered the sugar mill, machineries and equipment of the petitioner situated in Arayat, Pampanga, to be used for military purposes, the procurement being necessary to facilitate the prosecution of the war. On December 30, 1941, when the Japanese forces which invaded the Philippines were approaching Arayat, Pampanga, the United

States Army blew up and destroyed the said sugar mill, machineries and equipment in order to avoid their falling into enemy hands.

.After World War II, or more particularly on August 22, 1945, the petitioner filed a claim against the United States Army for the commandeering, use and destruction of its properties, which it alleged was valued at ₱2,004,400.97. Upon the organization of the War Damage Commission, and in order to preserve its rights, the petitioner also filed a reduced claim for damages (Claim No. 1084199) in the total sum of ₱1,550,368.50, which covered not only the properties commandeered by the United States Army but also other properties not included in the claim filed with the United States Army Claim Service.

On March 29, 1948, the United States Army finally admitted its liability and adjudicated in favor of the petitioner the amount of ₱720,625.94 (Exh. "G-2" & "7", BIR Rec. pp. 55-56). Hence, the petitioner reduced its pending claim before the War Damage Commission in the amount received from the United States Army, but it insisted that the balance should also be compensated (Exh. "G-8", CTA Rec. p. 35; Also Exh. "G-3" & "6", BIR Rec. p. 54). However, in September 1949, the War Damage Commission informed the petitioner that its claim for the balance of the value of the properties destroyed by the United States Army could not be acted upon favorably. In view of the disallowance of its war damage claim, on September 23, 1949 the petitioner considered the same as actual loss and the amount of ₱434,784.37 which was then being carried in its books under the "Suspense Accounts" was transferred to the profit and loss account. In its income tax return for the fiscal year ending September 30, 1949 which was filed on October 21, 1949, together with all supporting documents (Exh. "A" & "1"; BIR rec., p. 45). The petitioner claimed as deduction the aforesaid loss of ₱434,784.37.

Sometime in the month of April, 1955, an examiner of the Bureau of Internal Revenue, examined the books of the petitioner, and as a result of said examination (Exh. "F" & "5", BIR rec., pp. 52-53), the respondent issued assessment Notice No. 90-TC 121169-5-49 dated August 20, 1955 (Exh. "B" & "2", BIR rec., p. 46) demanding from the petitioner the sum of ₱33,134.74 as deficiency income tax for the fiscal period from October 1, 1948 to September 30, 1949.

On September 10, 1955, the petitioner requested for the reconsideration or setting aside of the aforementioned assessment on the ground, among others, that (a) the deduction for war loss was proper and (b) the power of respondent to assess the tax had prescribed (Exh. "G", BIR rec., pp. 54-65). Instead of acting on the request for reconsideration, the respondent, on December 16, 1955, issued an additional assessment against the petitioner for the same fiscal year ended September 30, 1949 in the amount of ₱16,134.37 (Exh. "I-1", BIR rec., p. 68) representing the 50% fraud penalty imposed on it allegedly due to the fraud committed by it in connection with the undeclared income in the amount of ₱7,428.70 (Exh. "H", BIR rec., p. 66). On January 9, 1956, the petitioner again requested for the reconsideration and the cancellation of the assessments issued against it (Exh. "J", BIR rec., pp. 69-71) but on January 27, 1956, the respondent denied the request for reconsideration, and at the same time reiterated the demand for the payment of the assessments in the total sum of ₱49,269.11 (Exh. "J-1" & "8", BIR rec., pp. 72-73).

On February 15, 1956, the petitioner, in answer to respondent's letter of January 27, 1956, requested again for a reconsideration of the assessments under review (Exh. "K", BIR rec., p. 76) but the same was also denied by the respondent in a letter dated February 23, 1956 (Exh. "K-2" & "9", BIR rec., p. 77) which contained an advertence that the latter "would be constrained to enforce the collection of the tax due", if the same is not paid on or before March 15, 1956. On the same date, the respondent also prepared a warrant of distraint and levy (Exh. "L-1" & "11", BIR rec., p. 79) for issuance against the petitioner in case the latter failed to pay the assessments issued against it. The petitioner having failed in its efforts to set aside the assessments and in order to avoid further penalties and interests and a distraint of its properties, paid on March 15, 1956 the sum of ₱49,269.11 as demanded (Exh. "M" & "12", BIR rec., p. 81) and on March 16, 1956, the amount of ₱4,854.22 to cover surcharges and interests (Exh. "M-1", BIR rec., p. 82) or a total sum of ₱54,123.33 (see also Exh. "N", pp. 83-85, BIR rec.). In both instances, the petitioner manifested that the payments were made under a protest, and it reserved its right to contest the assessment by administrative as well as court action.

On June 26, 1956, the petitioner filed its formal claim for refund and requested that it be allowed to present its case before the Conference Staff of the Bureau of Internal Revenue (Exh. "S", CTA rec., pp. 24-25). On November 5, 1956, the Conference Staff, after due hearing originally and unanimously recommended to the respondent that the whole amount of ₱54,123.33 claimed by the petitioner be refunded to it (Exh. "U", CTA rec. p. 27). However, on January 9, 1957, upon oral instruction of the chief of the Legal Department, it recommended that only the sum of ₱18,294.15 be refunded to the petitioner on the theory that the assessment and collection of income taxes was imprescriptible (Exh. "P-3" & "14", BIR rec., pp. 144-159).

On April 27, 1957, the petitioner received Treasury Warrant No. B-0056106, dated March 13, 1956 in the amount of ₱18,294.15 as overpaid income tax for 1949, (Exh. "16", BIR rec., p. 175) but without any communication relative thereto. Hence, in a letter dated May 2, 1957, the petitioner requested that it be furnished with a copy of the decision rendered by the Conference Staff of the Bureau of Internal Revenue as well as a detailed explanation as to how the amount of ₱18,294.15 was arrived at (Exh. "Q", BIR rec., p. 171). In a letter dated May 8, 1957 and received by the petitioner on May 22, 1957, the respondent furnished the former with the a detailed computation relative to the refunded amount of ₱18,294.15 (Exh. "Q-1" & "15", BIR rec., pp. 173-174).

On May 29, 1957, the petitioner filed its motion for reconsideration on the ground that the respondent did not consider its defense of prescription and requested the refund of the remaining ₱35,829.18, plus interest (Exh. "R", BIR rec., pp. 176-178). However, in a letter dated September 20, 1957 and received by the petitioner on September 28, 1957 (Petition for Review, par. 17 and Answer, par. 1) respondent denied the request for reconsideration (Exh. "R-2", & "17", BIR rec., pp. 182-183). From the decision of the respondent, the petitioner filed on October 5, 1957 the instant appeal.

The issues to be resolved in the present case are the following: (1) whether or not the appeal has been seasonably filed by the petitioner as required by Section 11 of Republic Act No. 1125; (2) whether or not the right of the government to examine, review and amend petitioner's income tax return which was filed on October 21, 1949, and its right to assess and collect from the petitioner the disputed deficiency income tax assessment has already prescribed; and (3) whether or not the war losses suffered by the petitioner was properly deductible in the taxable fiscal year 1948-1949.

The first issue was not interposed in the answer of the respondent to the petition for review but was raised as a defense only in his memorandum. The respondent contends that the period to appeal must be counted from April 27, 1957, when the petitioner received thru the mails, Treasury Warrant No. B-0056106 "as refund of the overpaid income tax for 1949". The argument that the treasury warrant constitute a "decision" is without merit and to our mind does not deserve any consideration. Suffice it therefore to state that the period to appeal commenced to run on May 22, 1957 when petitioner received the decision of the respondent and after deducting the period between May 29, 1957 to September 28, 1957 during which time a request for reconsideration was pending, we find and so hold that the appeal instituted on October 5, 1957 was seasonably filed.

We shall now proceed to consider the issue of prescription raised by the petitioner herein, for we believe that a ruling on this point favorable to it will completely and finally dispose of the case at bar.

On this question of prescription, the respondent Collector of Internal Revenue stated in his memorandum that:

> "When the answer in this case was filed, the question of whether the right of the government to assess or to collect income taxes prescribes, was still an unsettled one, so much so that the respondent has once taken the stand that the government's right does not prescribe. This was not an arbitrary nor unfounded stand, for this opinion was generated by interpretation obtained from a perusal of the decision of the Supreme Court in the case of the "Col-

> lector of Internal Revenue vs. Jose Avelino", G.R. No. L-9202, prom. Nov. 19, 1956. In the light, however, of the decision of the Supreme Court in the case of the "Collector of Internal Revenue vs. Florencio Solano, et al.", G.R. No. L-11475, prom. July 31, 1958, clearly deciding the question of the prescription of the right of the government to assess and collect income taxes, the respondent bows before the majesty of the law and accepts the principles enumerated in said decision. Consequently, it would, therefore, seem that since the assessment herein was issued on August 20, 1955 and the returns filed on October 21, 1949, or about 5 years and 10 months after the filing of the return, the government's right to assess may have already exceeded the statute of limitations." (Pp. 10-11, Memorandum for the Respondent.)

With the above-quoted statement which we find to be in accordance with the facts and the applicable law and jurisprudence, the respondent has admitted that his right to assess and collect the disputed deficiency income tax assessment for the fiscal year 1948-1949 has already prescribed. This must be so, for the assessment was made beyond the five-year period counting from the filing of the income tax return of the petitioner (sec. 331, Tax Code) and the respondent admits that the case does not fall within the exception provided by section 332 of the Tax Code.

However, the respondent argues that the "petitioner is now estopped to bring out the defense of prescription or, at least, it may be considered as having waived it", (pp. 11-12, Memorandum for the Respondent) for the petitioner first paid the contested tax assessment and later filed the instant appeal, instead of immediately elevating to this Court respondent's ruling on the matter.

The claim of estoppel interposed by the respondent is without any valid or reasonable basis. The Supreme Court in analyzing and interpreting Section 11 of Republic Act No. 1125 and Section 306 of the National Internal Revenue Code said:

> "The specific provision of Republic Act No. 1125 regarding appeal (section 11) was intended to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to appeal to the Court of Tax Appeals instead of paying the tax. For this reason, the latter part of said Section 11 provides that no such appeal would suspend the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery." (Johnston Lumber Co., Inc. vs. Court of Tax Appeals, and Collector of Internal Revenue, 53 O.G. 5226, No. 16, Aug. 31, 1957.)

In the instant case, what the taxpayer did was but an election of a remedy granted to it by law, i.e., Section 306 of the Tax Code. It paid the contested tax and is now before this Court for its recovery. Manifestly, the petitioner herein, in the exercise of its right granted by law, and/or in the performance of a duty imposed by law, did not lose any available lawful defense against the assessment made or the decision rendered by the respondent Collector of Internal Revenue. To rule otherwise would be to nullify the law providing for the remedy stated above. It may also be added that even <u>at the time of payment</u>, the petitioner had expressly reserved its rights to contest the legality or correctness of the assessment and collection of the tax. Although such protest is not considered necessary under Section 306 of the Tax Code, it negates any argument of estoppel raised by the respondent.

Furthermore, it may be stated that respondent himself was well aware of this defense of prescription. Thus, in the memorandum of the revenue examiner who personally investigated petitioner's income tax liability for the fiscal year 1949, he said:

> "Although we are now barred by prescription from collecting the income tax due on the above income amounting to ₱33,134.74 (12% of ₱276,122.82), it is believed that we may be able to collect a compromise amount from the taxpayer by imposing administrative sanction once it applies for retirement from business probably any time during this year." (Exh. "F" & "5", BIR rec., pp. 52-53, underscoring added.)

And after due hearing and a review of the case, the Conference Staff of the Bureau of Internal Revenue originally on November 5, 1956 recognized that "the defense of prescription was well taken" and that "the taxpayer's claim for the refund of the amount of ₱64,123.33 cannot be denied." (Exh. "U", CTA rec., p. 27). This finding of the Conference Staff was also concurred in by the Chief of the Law Division of the Bureau of Internal Revenue (Exh. "F-2" & "13", BIR rec., pp. 134-139). These circumstances all indicate a persistent and consistent action which denies any theory of estoppel.

The foregoing facts in relation to the law point out clearly that the assessment against and collection from the petitioner herein of the deficiency income tax for the fiscal year 1949 is already barred by the statute of limitations, and pursuant to Section 14 of Republic Act No. 1125, we hold that there is no deficiency income tax for the said fiscal year 1949 and accordingly the assessment and collection of the same is null and void.

In the view that we take of the case and after disposing of the question of prescription against the respondent, we deem it not necessary to decide the third issue raised in the present case.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the disputed deficiency income tax assessment for the fiscal year 1949 is hereby declared null and void and collection of the same illegal. The respondent Collector of Internal Revenue is accordingly hereby ordered to refund to the petitioner the sum of Thirty Five Thousand Eight Hundred Twenty Nine pesos and Eighteen Centavos (₱35,829.18) with legal interest from March 20, 1956, the date when it was paid. Without pronouncements as to costs.

SO ORDERED.

Manila, November 21, 1958.

MARIANO NABLE
Presiding Judge

I concur:

ROMAN M. UMALI
Associate Judge

Not appealed

Associate Judge AUGUSTO M. LUCIANO
did not take part.