REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CATALINO V. MORALES,
Petitioner,

- versus -

C.T.A. CASE NO. 2838

COMMISSIONER OF INTERNAL
REVENUE, BUREAU OF INTERNAL
REVENUE, MANILA and UNIVERSITY
OF THE EAST, MANILA
Respondents.
x - - - - - - - - - - - - - - - x

1/24/78

D E C I S I O N

In this suit for the recovery of the amount of ₱6,094.87 paid as withholding income tax on the retirement gratuity received by petitioner Catalino V. Morales from the University of the East, the latter as co-respondent, filed a motion to dismiss the petition for review on the basis of its affirmative defense of prescription as alleged in its answer, while respondent Commissioner of Internal Revenue, as one of his special and affirmative defenses, raised the issue of lack of jurisdiction of this Court.

As borne out by the pleadings submitted by the parties, the annexes thereto, and the records of the Bureau of Internal Revenue in connection with the case, it appears that petitioner was a faculty member of respondent University of the East from June, 1949 to April 30, 1972. Upon reaching the compulsory retirement age of sixty-five (65) years, and after almost twenty-three (23) years of service as faculty member, petitioner retired and received a retirement gratuity of P32,431.82 under the Retirement Benefit Plan established and maintained by the said institution for the benefit of its faculty members and employees. From the said retirement gratuity, however, the University of the East, as collecting agent of the Bureau of Internal Revenue, deducted and withheld on November 13, 1972 the amount of P6,094.87 as income tax thereon.

Petitioner avers that on December 12, 1972, he filed with respondent Commissioner of Internal Revenue a claim for refund of the amount withheld as income tax from his retirement gratuity on the ground that under Republic Act No. 4917 he (petitioner) possesses all the qualifications of exemption and none of the disqualifications thereof, although respondent Commissioner alleges that the claim was filed on August 10, 1973 with the Regional Director, Revenue Region No. 9, San Pablo City. However, said claim for refund was denied by the Commissioner in his letter of March 26, 1973 on the ground that retirement gratuity is exempt from income tax only if received under a retirement plan previously approved, and found to be reasonable, by the Bureau of Internal Revenue, which is not obtaining in this case. Nonetheless, on November 22, 1973, petitioner filed a request for reconsideration which was likewise denied by the Commissioner in his letter dated

July 21, 1976, which letter was (allegedly) received by petitioner on September 27, 1976.

On October 27, 1976, petitioner filed a petition for review with this Court, making as party-respondents the Commissioner of Internal Revenue and the University of the East, and seeking the refund of the amount of ₱6,094.87 withheld from his retirement pay and, as against the University of the East, claiming that, despite the provision in the 1969 Working Agreement between the University of the East Faculty Association and the said University, the latter failed and still fails to register the said Retirement Benefit Plan with the Bureau of Internal Revenue.

On January 27, 1977, respondent University of the East filed its answer raising, among others, the affirmative defense of prescription; while on March 11, 1977, respondent Commissioner of Internal Revenue filed his answer raising, among others, the special and affirmative defense of lack of jurisdiction.

At the scheduled date of hearing on April 20, 1977, counsel for petitioner moved for the postponement of the trial of the case for the reason that his client was bedridden and asked that the issue of jurisdiction be first resolved by this Court. In granting the motion, the Court gave the parties thirty days within which to file their respective memorandum on the question of jurisdiction.

Respondent University of the East, in its memorandum, contends that petitioner's petition for review filed on October 27, 1976 is already barred by prescription because the two-year period within which the suit for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally collected, under Section 306 of the National Internal Revenue Code, has already elapsed, counting from November, 1972 when the income tax was deducted and withheld from the retirement gratuity of petitioner. On the other hand, respondent Commissioner of Internal Revenue argues that this Court has no jurisdiction to entertain said petition for review because the same was instituted only after the lapse of more than three years from April 2, 1973, when petitioner filed his income tax return and paid the tax for the taxable year 1972.

In brushing aside the theses of respondents, petitioner, in his opposition, contends that its petition raises the following supervening causes, to wit:

> 1) the proper determination whether the retirement benefits accruing in favor of petitioner under Republic Act 4917, under a private retirement plan of respondent University of the East is exempt from taxation;
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> 2) the proper determination whether the failure of the respondent University of the East to comply with the registration requirement under Revenue Reg. 1-68 removes the tax exemption despite compliance of all requisites of law by the petitioner;
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> 3) the proper determination whether Revenue Regulation 1-68 as an implementing rule of R.A. 4917 imposes conditions precedent beyond the intent and spirit of the law and therefore may not be countenanced in the availment of the benefit of tax exemption.

And that, since the said supervening causes have not yet been resolved, the two-year prescriptive period provided in Section 306 of the National Internal Revenue Code, as amended, has not yet prescribed, citing the case of Commissioner of Internal Revenue vs. National Power Corporation, L-18874, Jan. 20, 1970, 31 SCRA 112.

We find no merit in petitioner's cause. The matrix of respondents' stand is whether the suit or proceeding for the recovery of the amount of P6,094.87 alleged to have been erroneously or illegally withheld and collected from petitioner's retirement gratuity was instituted in this Court within two years after payment.

Under Section 306 of the National Internal Revenue Code, a claim for refund of a tax alleged to have been erroneously or illegally collected shall be filed with the Commissioner of Internal Revenue within two years from the date of payment of the tax, and that no suit or proceeding for refund shall be begun after the expiration of the said two-year period. (See Section 306, National Internal Revenue Code; Collector of Internal Revenue vs. Court of Tax Appeals & Hume Pipe & Asbestos Co. Inc., G.R. No. L-11497, January 28, 1961, 1 SCRA 87-93; Guagua Electric Light Plant Co., Inc. vs. The Collector of Internal Revenue & The Hon. Court of Tax Appeals, G.R. No. L-14421, April 29, 1961, 1 SCRA, 1221-1226.) And as amended by Presidential Decree No. 69, which took effect on January 1, 1973, said Section of the Revenue Code provides that: x x x "In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment." (Emphasis supplied.)

The two-year period for judicial recovery of the tax alleged to have been erroneously or illegally paid or collected is a positive and mandatory requirement of Section 306 of the Tax Code. (Gibbs vs. Collector of

Internal Revenue, L-13453, Feb. 29, 1960, 107 Phil. 232; Quagua Electric Light Plant Co., Inc. vs. The Collector of Internal Revenue & The Hon. Court of Tax Appeals, supra.) It is prescriptive (College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil. 912; Pasay Electric vs. Collector of Internal Revenue, 103 Phil. 819; Lu Do & Lu Ym vs. Central Bank of the Philippines, 108 Phil. 566.), and is even jurisdictional. Thus:

> " x x x. In order to confer jurisdiction upon the court, it is necessary, however, that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in Section 306 must have been duly complied with. (Collector of Internal Revenue vs. The Court of Tax Appeals & Hume Pipe & Asbestos Co., Inc., supra; Underlining supplied.)

It is not necessary for the taxpayer to wait for the decision of the Commissioner of Internal Revenue denying his claim for refund before he may appeal to the Court of Tax Appeals if he believes that such decision is not forthcoming before expiration of the two-year period. In fact, he should not wait for such decision because Section 306 of the National Internal Revenue Codes requires that court action for recovery of an internal revenue tax erroneously or illegally paid must be instituted within two years after payment. (Collector of Internal Revenue vs. Sweeney, 106 Phil. 59; Gibbs vs. Collector of Internal Revenue, 107 Phil. 232; Collector of Internal Revenue vs. Convention of Philippine Baptists Churches, L-11957, January 28, 1961, 1 SCRA 114; see also Lu Do

& Lu Ym vs. Domingo, CTA No. 680, August 31, 1960; American Rubber Co. vs. Collector of Internal Revenue, CTA No. 356, 440 & 632, February 27, 1962; Koppel vs. Collector of Internal Revenue, L-10550, September 16, 1961, 3 SCRA 17; Commissioner of Internal Revenue vs. Victorias Milling, L-24108, January 3, 1968, 22 SCRA 12.)

In the case at bar, whether the two-year period for bringing the suit for refund to this Court should be reckoned from the date when the income tax in the amount of ₱6,094.87 was withheld and deducted from the retirement gratuity of petitioner in November, 1972 (as alleged by respondent University of the East), or from the date when petitioner filed his income tax return and paid his income tax on April 2, 1973 (as argued by respondent Commissioner of Internal Revenue), or when the tax fell due at the end of the tax year (1972), (see Gibbs vs. Commissioner of Internal Revenue, L-17406, Nov. 29, 1965, 15 SCRA 318.), the filing of petitioner's petition for review or suit for refund with this Court on October 27, 1976 was beyond the two-year period from payment of the tax as prescribed in Section 306 of the National Internal Revenue Code. Consequently, by virtue of prescription and/or lack of jurisdiction, this Court has neither the power nor the jurisdiction to entertain the instant petition for review, which is an action for recovery of an internal revenue tax alleged to have been erroneously or illegally withheld and collected.

It is true that if an internal revenue tax was not erroneously or illegally collected but payment became erroneous because of supervening circumstances, the taxpayer, before Section 306 of the Revenue Code was amended by Presidential Decree No. 69, must file his claim for refund with the Bureau of Internal Revenue within two years from the date he became entitled to the refund, not from the date of payment, and he must appeal the decision of the Commissioner of Internal Revenue denying his claim within thirty (30) days from the date of receipt of the decision of the Commissioner, but not later than two (2) years from said date. (Commissioner of Internal Revenue vs. Insular Lumber Co., L-24221, December 11, 1967, 21 SCRA 1237; Commissioner of Internal Revenue vs. Victorias Milling Co., L-24108, January 3, 1968, 22 SCRA 13, overruling Muller & Phipps vs. Collector of Internal Revenue, 103 Phil. 145; Commissioner of Internal Revenue vs. National Power Corp., L-18874, January 30, 1970, 31 SCRA 112.) However, as stated earlier, under Section 306 of the Revenue Code, as amended by Presidential Decfee No. 69, the claim for refund must be filed and court action instituted within two years from the date of payment <u>despite any</u>

supervening cause that may arise after payment of the tax. Undoubtedly, the amendment is intended to overrule the decisions of the Supreme Court cited above.

With this conclusion, we see no reason to pass upon the question raised by petitioner that since the alleged "supervening causes" enumerated in his memorandum and quoted earlier in this decision, which are but issues involved in this case, have not yet been resolved, the two-year prescriptive period provided for in Section 306 of the National Internal Revenue Code has not yet elapsed. Nevertheless, it may be stated by way of personal observation only that petitioner has not shown, and neither does the record of the case disclose, that after the amount of P6,094.87 was withheld and deducted from his retirement gratuity, such collection and payment was rendered erroneous or illegal by supervening causes, or events occurring after collection, so as to entitle petitioner to the refund of the amount of income tax paid by him.

Accordingly, the motion to dismiss the petition for review on the basis of the affirmative defense of prescription of respondent University of the East and on the special and affirmative defense of respondent Commissioner of Internal Revenue of lack of jurisdiction of this Court must be sustained.

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WHEREFORE, the instant petition for review is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, January 24, 1978.

Amante Filler

AMANTE FILLER
Acting Presiding Judge

I CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge