REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROBINSON'S COMMERCIAL COMPLEX, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4198

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

3/22/93

D E C I S I O N

Petitioner seeks the refund/credit of the amounts of P50,000.00 and P45,950.00 representing graduated annual fixed taxes alleged to have been erroneously paid to respondent.

The factual antecedents may be briefly stated as follows:

1. Petitioner is a domestic corporation engaged in retail merchandising and is the owner and operator of department stores with branches located in Ermita, Manila and Alabang, Muntinlupa, Metro Manila;

2. Operating under a fiscal period of accounting which commences October 1 of a given year and ends September 30 of the following year, petitioner filed Business (Fixed) Tax Returns and paid to the Bureau of Internal Revenue on October 30, 1985 the amount of P50,000.00 for its Ermita Branch

3. On December 14, 1987, petitioner claiming that it noted a typographical error on the Business (Fixed) Tax Returns which indicate that the same were "For Taxable year ending September 30, 1985", filed an Amended Returns showing that they were for the "Taxable year ending September 30, 1986" (Exhs. J, K & L, pp. 41-44, CTA rec.);

4. On October 31, 1985, P.D. 1991, otherwise known as The Sales Tax Reform Decree of 1985, was promulgated which imposed a tax of 3% on gross monthly sales of articles sold, payable within 10 days after the end of each month. This provision on the second sale was made effective on November 1, 1985, in addition to the imposed annual fixed tax of P200.00;

5. P.D. 1991 was further amended by P.D. 2006 which took effect on January 1, 1986. This

law changes the provision on "second sale" to "subsequent sale" and lower the rate from 3% to 1 1/2 percent of the gross monthly sale. In implementing this law, the Bureau of Internal Revenue promulgated Revenue Memorandum Circular No. 4-86, as well as Revenue Memorandum Order No. 4-86;

6. Invoking P.D. 1991 and the provisions of Revenue Memorandum Circular No. 2-26 in relation to Revenue Memorandum Order No. 4-86, petitioner asserts that it overpaid the annual graduated fixed taxes for its Ermita and Alabang Branches. Consequently, it filed two applications for tax credit both dated July 16, 1986, one for P50,000.00 covering its alleged overpaid graduated fixed for its Ermita Branch and P49,950.00 for its Alabang Branch. (Exhs. D, p. 36 and H, p. 39, CTA rec.);

7. Respondent has not acted upon petitioner's application for tax credit, hence, the instant petition for review filed with this Court on October 30, 1987.

The only issue presented before us in this case is whether or not petitioner has a valid claim to the amount sought to be credited.

Petitioner in its appeal insists that when the Sales Tax Reform of 1985 was implemented on

November 1, 1985, it had already paid the P200.00 fixed tax and the percentage tax of 1.5% on subsequent sales. Hence, it should no longer be subjected to the graduated annual fixed tax.

Respondent on the other hand, maintains that persons or entities engaged in subsequent sale become subject to the privilege tax of P200.00 and to the 1 1/12 percent tax beginning 1986, pursuant to P.D. 2006 which took effect on January 1, 1986. Consequently, for the fiscal year ending September 30, 1985 of petitioner, P.D. 2006 was then, not yet in effect. The law in effect at that time was Section 161 (2) of the National Internal Revenue Code, on the imposition of the graduated annual fixed tax.

After due consideration of the facts and the applicable statutory provisions, this Court finds no sufficient legal basis to grant the tax credits sought by petitioner.

Firstly, petitioner is admittedly operating under a fiscal period of accounting which starts on October 1 of a given year and ends on September 30 of the following year, hence, it correctly paid on October 30, 1985 the corresponding percentage tax under the law then prevailing, corresponding to its gross annual sales for the fiscal year ending September 30, 1985. Under Section 190 of the Tax Code, it is mandated that "all fixed taxes shall be payable annually, on or before the last day of the first month of the taxable year adopted by the taxpayer."

Secondly, the evidence clearly shows that petitioner's Business (Fixed) Tax Returns were filed on the dates indicated therein and for the period they should cover. (Exhs. A, B, C, E, F & G, supra.) It is noted that the declaration of the gross annual sales of petitioner for the preceding fiscal year as appearing in the returns clearly cover the period from March 20 to September 30, 1985. All the Central Bank Confirmation receipts and BIR Payment Orders show that the payment were made on October 30, 1985.

Thirdly, this Court is not convinced that petitioner filed its Amended Returns to merely correct the alleged typographical error that the taxes paid were intended for the fiscal year ending September 30, 1986, because as aforementioned, the returns were filed on the dates indicated therein and not for the period they should cover. To our mind, the amendments were resorted to by petitioner in order to take refuge under the effectivity clauses of P.D's Nos. 1991 and 2006, which obviously could not be allowed. The laws were not given retroactive effect but were specifically made effective on a definite future date.

Accordingly, P.D. 1991 & P.D. 2006 which took effect on November 1, 1985 and January 1, 1986, respectively as well as the implementing regulations, imposing the percentage tax of 1 1/2 percent on subsequent sales and retaining the fixed tax of P200.00, were not then in force, and could not possibly apply to petitioner for the period in question.

Furthermore, Petitioner presented Exhibits "O to P-19" to show the filing and payment of percentage tax on subsequent sale, also known as "turnover tax" for the period October 1, 1985 to September 30, 1986. This filing and payment of "turn-over tax" for the aforestated period was again correctly done by the Petitioner. Consequently, this court believes that Petitioner knew the correct laws effective as of the date of the filing its various business tax return. We see no reason therefore why Petitioner has to amend its

Annual Business (fixed) Tax Return to reflect that it should pertain to taxable year ending September 30, 1986 but its desire to obtain this subject refund. This actuation of the petitioner reflects fraudulent intent to secure a refund but this Court would like to give Petitioner the benefit of the doubt that it might have been due to an erroneous interpretation of the laws.

In view of the foregoing, this Court admonishes Petitioner to be more careful in filing future claims for refund and hereby orders the denial of its claim for refund.

WHEREFORE, petitioner's claim for tax credits are hereby DENIED and the petition for review is dismissed, with cost against the Petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 22, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals