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July 7, 1960

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus - C.T.A. CASE NO. 559

JOSE P. TRINIDAD, Acting
Commissioner of Internal
Revenue,
Respondent.

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D E C I S I O N

This is an appeal from the decision of respondent Commissioner of Internal Revenue dated March 28, 1958 denying the claim for refund or credit of petitioner Philippine National Bank in the amount of ₱76,075.36.

The facts are stipulated and/or gathered from the records of the case. Petitioner filed its income tax return for the calendar year 1952 and declared therein a net income of ₱6,116,671.53 (BIR rec. p. 157; Par. 1, Stipulation of Facts, CTA rec. p. 21). On the basis of the declared net income, petitioner paid an income tax of ₱1,704,668.03, in equal installments of ₱852,334.00 on May 12 and August 7, 1953. (BIR rec. pp. 125-126; Par. 2, Stipulation of Facts, CTA rec. p. 21.)

During the verification sometime in 1956 of petitioner's tax returns for the calendar years 1952, 1953 and 1954, BIR Examiner Inocencia A. Saldaña, in a report of examinations, recommended that deficiency income taxes in the respective amounts of ₱627,691.66

and ₱88.00 be assessed against petitioner for the calendar years 1953 and 1954, and the amount of ₱76,075.36 be refunded to it as excess payment of income tax in the year 1952. (BIR rec. pp. 110, 68, 160; Par. 3, Stipulation of Facts.) On March 28, 1956, petitioner received a copy of "Notice to Taxpayer", advising that for 1952 the sum of ₱76,075.36 was refundable to it. (Par. 4, Stipulation of Facts, CTA rec. p. 21.)

In a letter dated November 26, 1956, petitioner enclosed Cashier's Check No. 160574 for ₱551,704.30 in payment of the total deficiency income taxes, less ₱76,075.36 (amount refundable for 1952) which it requested to be credited against its deficiency income taxes for the years 1953 and 1954 (BIR rec. p. 116).

Respondent, in a letter dated March 28, 1958, denied petitioner's claim for tax credit on the ground that said claim was filed beyond the two-year period prescribed by Sections 306 and 309 of the Revenue Code (BIR rec. pp. 292-293). In view of the denial (BIR rec. p. 299) of its request for reconsideration (BIR rec. p. 294), petitioner instituted this appeal before this Court on July 16, 1958, praying that the amount of ₱76,075.36 be refunded to it or applied to the balance of its income tax liability for the years 1953 and 1954.

Whether or not petitioner may be legally credited or refunded the amount of ₱76,075.36 representing excess payment of income tax for 1952 is the only question at issue.

Respondent maintains that the claim for the refund or tax credit of ₱76,075.36 was filed beyond the two-year period prescribed in Section 309 of the Revenue Code for the reason that the tax in question was paid on May 12, 1953 and August 7, 1953 while the claim for the refund or credit thereof was filed only on November 27, 1956. Consequently, as urged upon us, respondent has no authority to grant the refund or tax credit.

Upon the other hand, petitioner contends that the claim for tax refund or tax credit was filed seasonably because the statutory period of two years did not commence until the Commissioner of Internal Revenue rejected on June 23, 1958 the claim for refund or tax credit.

Section 309 of the Revenue Code states:

> "SEC. 309. Authority of Collector to make compromises and to refund taxes. - The Collector of Internal Revenue may compromise any civil or other case arising under this Code or other law or part of law administered by the Bureau of Internal Revenue, may credit or refund taxes erroneously, or illegally received or penalties imposed without authority, and may remit before payment any tax that appears to be unjustly assessed or excessive.
>
> "He shall refund the value of internal revenue stamps when the same are returned in good condition by the purchaser, and may, in his discretion, redeem or exchange unused stamps that have been rendered unfit for use, and may refund their value upon proof of destruction.

"The authority of the Collector of Internal Revenue to credit or refund taxes or penalties under this section can only be exercised if the claim for credit or refund is made in writing and filed with him within two years after the payment of the tax or penalty." (Emphasis supplied.)

For the valid exercise of the authority conferred by the above-quoted codal provision on the Collector, two essential elements must concur, namely: (1) A claim for refund or credit must be made in writing and (2) filed with the Commissioner within two years after the payment of the tax or penalty.

We shall now determine if these two elements exist and concur in the instant claim for refund or tax credit.

As afore-stated, petitioner paid its income tax liability for the calendar year 1952 on May 12, 1953 and August 7, 1953. Pursuant to the "Notice to Taxpayer", petitioner, on March 28, 1958, filed with respondent a claim for tax credit. From August 7, 1953, the date when the tax was fully paid, to March 28, 1958, the date when the claim for tax credit was filed, four years, seven months and twenty-one days have elapsed. Consequently, respondent has no authority to make the credit or refund of the sum of ₱76,075.36.

The pretense that it would be impossible for petitioner to claim refund of the amount of ₱76,075.36 within the period required under Section 309 because it became aware of the refundable amount due it only on March 28, 1956, more than two years after the tax has been paid, is not tenable. A taxpayer who filed an income tax return is supposed to know, at the time of filing the return, how much income tax he should pay the government.

Petitioner further asserts that the amount of ₱76,075.36 found to be refundable to it does not come within the purview of "taxes erroneously or illegally received or penalties imposed without authority", as contemplated in Section 309 of the Revenue Code, for the reason that said amount arose not from erroneous or illegal assessment or penalties imposed without authority, but from adjustment and compromise. Hence, it is suggested that Section 309 of the Revenue Code is not applicable to this case. We do not agree to the suggestion. The amount of ₱76,075.36 represents excess payment of income tax for the year 1952. In simple parlance, petitioner paid ₱76,075.36 more than it ought to pay. The said amount was, therefore, not due at the time it was paid, and petitioner was not aware of it. Thus, we can say that the amount of ₱76,075.36 was erroneously paid by petitioner to and erroneously received by the Commissioner of Internal Revenue. This case, which involves an income tax erroneously received by the Commissioner, clearly, comes within the provisions of Section 309 of the Revenue Code.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the decision of respondent Commissioner of Internal Revenue dated March 28, 1958, is affirmed and the petition for review dismissed. Petitioner Philippine National Bank is hereby ordered to pay to the Commissioner of Internal Revenue or his duly authorized representative the amount of ₱76,075.36 representing balance of petitioner's deficiency income taxes for the calendar years 1953 and 1954, plus 5% surcharge for late payment and 1% monthly interest from December 3, 1956 up to the date of actual payment. No pronouncement as to costs.

SO ORDERED.

Manila, July 2, 1960.

MARIANO NABLE
Presiding Judge

I CONCUR:

ROMAN M. UMALI
Associate Judge

Associate Judge AUGUSTO M. LUCIANO is on leave.