REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TMX SALES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3745

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - x

4/29/88

D E C I S I O N

At bar is a simple case raising the basic issue of whether or not petitioner's appeal is time barred.

As it appears, petitioner corporation existing under and by virtue of Philippines laws, had for the first quarter ended March 31, 1981 of the taxable year 1981 paid P247,010.00 income tax on May 15, 1981 per CB Confirmation Receipt No. 7769736 and Revenue Tax Receipt No. 7010313 on an estimated income of P571,174.31 (Exhibits B, B-1, B-2, C, C-1, D-1, D-2); the second quarter ended June 30, 1981 incurred a net loss in the amount of

P741,063.29 as reported in the quarterly income tax return (Exhibits F, F-1, F-3); the third quarter ended September 30, 1981 incurred a cumulative net loss of P2,853,549.73 as reported in its quarterly return (Exhibits G, G-1, G-2, G-3); for the year ended December 31, 1981 reported an annual income of P904,122.00 and total deductions of P7,060,647.00 per Annual Income Tax Return filed with the respondent's Office on April 15, 1982 (Exhibits H, H-1, H-2, H-7) sustaining a net loss of P6,166,525.00 for the taxable year 1981 (Exhibit H-3) and leaving a creditable tax of P247,010.00 representing overpaid income tax (Exhibits H-4, H-5, H-6).

On July 9, 1982 petitioner filed a claim for the refund of the overpaid income tax amounting to P247,010.00 (Exhibits A, A-1, A-2) but until the filing of the instant suit no action had been taken by the respondent Commissioner of Internal Revenue.

Respondent specifically takes issue against the petitioner's right to enforce the claim for recovery of tax erroneously or illegally collected by invoking the statutory limitations mandated in Section 292 (formerly Sec. 306) of the Tax Code of

292, insofar as pertinent, provides, "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." The Commissioner would have it impressed that the petitioner is already barred from claiming the refund considering that more that two (2) years had already elapsed between the payment of the tax sought to be refunded on May 15, 1981 (1st quarter installment) and the filing of the claim in Court on March 14, 1984. Moreover, allegations as to the net loss sustained during the taxable year ended December 31, 1981 do not ipso facto merit a refund.

Petitioner contends that as so contemplated in Section 292, ibid., the running of the prescriptive period must have to commence upon the determination of the total income tax liability for the taxable year, and in this casé, fell due upon the filing of the Final Adjustment Return on April 15, 1982 pursuant to Section 87(b) of the Tax Code and not on any of the dates of the quarterly payments or installments which are at most interim and uncertain. The dates of the withholding or remittance of the creditable income tax are not the "date of payment of the tax".

The apparent contentions quibble on the computation of the 2-year prescriptive period under Section 292 of the Tax Code had been squarely resolved in earlier decisions of the Supreme Court which lend settling eloquence to the precise issue in the case at bar. Thus ruled, inter alia, "When a tax is paid in installments, the prescriptive period of two years provided in Section 306 (now Section 292) of the Revenue Code should be counted from the date of the final payment or last installment. xxx This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part or portion thereof, cannot operate to start the commencement of the statute of limitations. In this regard the word 'tax' or words 'the tax' in statutory provisions comparable to section 306 of our Revenue Code have been uniformly held to refer to the entire tax and not a portion thereof (Clark v. U.S. 69 F 2d 748; A. S. Kriedner Co. v. U.S. 30 F Supp. 724; Hills v. U.S. 50 F 2d 302, 55 F 2d

1001), and the vocable 'payment of tax' within statutes requiring refund claim, refer to the date when all the tax was paid, not when a portion was paid (Braun v. U.S. 8 F Supp. 860, 863; Collector of Internal Revenue v. Prieto, 2 SCRA 1007; Commissioner of Internal Revenue v. Palanca, 18 SCRA 496)." We hesitate to further fashion an issue into an otherwise satisfactorily settled legal situation.

Going by such pronouncement there can be no occasion to further speculate upon when to base the running of the statutory period of limitations otherwise there would be a random quirk of a variance in the equal treatment of cases similarly situated. In the instant case the filing of the petition for review on March 14, 1984 was well within the two year period counted from April 15, 1982, the date of submission of the final adjusted return pursuant to Section 87(b) of the Tax Code.

Hence the present action was filed seasonably within the purview of Section 292, supra.

The case before Us hardly presents a gripping question. As thus shown the basis for the claim is not short of specific support in terms of tractable data openly laid and fully disclosed. Going by the records petitioner's corporate income tax return for the taxable year ended December 31, 1981 had shown losses and an excess income tax payment. Respondent points to no factual errors nor superfluities which need be abridged. Neither was there any deficiency assessment issued. And the record makes it clear that the requisite statements and certifications of the income tax paid and remitted upon which tacked the claimed refund could furnish the basis for a definite resolve but official action thereon appears to have remained at idling speed, so to speak. Moreover, respondent poses no objection in having the case submitted for decision on the basis of the pleadings and records after the petitioner had presented and offered its evidence.

It may suffice to state that "Since one who prays for judgment on the pleadings without offering proof as to the truth of all the material allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted (Bauermann v. Casas, 10 Phil. 386; Evangelista v. De la Rosa, et al., 76 Phil. 115), respondent, as pointed out by petitioner, may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidence presented, which was not disputed by respondent, sufficiently establishes petitioner's right to the refund. (Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue, CTA Case No. 3232, June 26, 1985)." We do not think any different conclusion ought be reached in the case at bar.

WHEREFORE, finding the petition to be well taken the same is granted and the refund of the amount sought hereby ordered the respondent. No costs.

SO ORDERED.

Quezon City, Metro Manila, April 29, 1988.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals