REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GEODETIC AND CONSTRUCTION SURVEY,
LTD. (Philippine Branch),
Petitioner,

- versus -

C.T.A. CASE NO. 4526

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

6/2/93

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D E C I S I O N

This case is a claim for refund of overpaid expanded creditable withholding tax for the year ended December 31, 1988 in the total amount of P490,000.00.

Petitioner is a resident foreign corporation organized and existing under the laws of Switzerland and is duly authorized to engage in business in the Philippines as an international specialized surveyor. As such, it entered into a service contract with the Philippine Long Distance

Telephone Company for the years 1987 and 1988 and derived revenues therefrom in the total amount of P9,800,000.00.

For calendar year ended December 31, 1987, petitioner suffered a net loss of P30,960.00 computed as follows:

Service Fees	P1,046,250.00
Less: Cost of Service	856,069.00
Gross Profit	P 190,181.00
Less: Deductions	221,141.00
Net Loss for 1987	(P 30,960.00)
(See Exhibit A, p. 40, CTA records)	

and declared as prior year's tax credit, the amount of P52,839.00 (ibid) indicating in its return that said amount was to be applied as tax credit for the succeeding taxable year.

It must be noted that the amount of P1,046,250.00 was merely accrued as income by petitioner. No actual payment was made by PLDT to petitioner. Consequently, no 5% expanded withholding tax was withheld at source by PLDT.

For calendar year ended December 31, 1988, petitioner was paid by PLDT the total contract price of P9,800,000.00 and the corresponding 5% creditable withholding tax was appropriately withheld. Inasmuch as a portion of the contract price (i.e., P1,046,250.00) has already been declared by petitioner as accrued income for the year ended 1987, its 1988 income tax return reflected only the balance of the total contract price less deductions resulted to a net loss of P93,787.00 and a refundable amount of P542,839.00, computed as follows:

Service Income		P8,753,750.00
Less: Cost of Service		6,014,065.00
Gross Income		P2,739,685.00
Less: Deductions		2,833,472.00
Net Income (Loss)		(P 93,787.00)
Tax Rate		35%
Income Tax Due		NIL
Less: Prior Year's Excess Credit	P 52,839.00	
5% Expanded Withholding Tax	490,000.00	542,839.00
Total Amount (Refundable)		(P 542,839.00)

Although it appears from the petitioner's 1988 Corporate Annual Income Tax Return that the total amount refundable is P542,839.00, yet the petitioner believes that it is lawfully entitled to a refund of only P490,000.00 as the right to claim refund or tax credit for the amount of P52,839.00 representing prior year's excess credit has already prescribed in accordance with Section 230 of the Tax Code.

The issues to be resolved are as follows:

1. Whether or not petitioner's right to claim for refund or tax credit has prescribed.

2. Considering that petitioner filed its claim for refund simultaneously with the filing of the petition for review, an inevitable question arises on whether or not petitioner has a cause of action in bringing the suit to this Court considering that the exhaustion of administrative remedies has not been complied with.

3. Whether or not petitioner is entitled to a refund or tax credit of the amount of P490,000.00 in allegedly unutilized creditable withholding tax at source.

Confident of the favorable ruling in the case of **Gibbs v. Commissioner**, G.R. L-17406, Nov. 29, 1965, which states that:

> "A taxpayer who contributes to the withholding tax system does so not really to deposit an amount to the

> Commissioner of Internal Revenue, but in truth to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax obligation for that year. Consequently, a taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then or when the tax liability falls due that the two year period in Section 292 (now Section 230) of the Revenue Code starts to run with respect to payments affected through the withholding tax system." (Underscoring petitioner's; See petition for review, p. 4.)

Petitioner alleged that it was well within the prescriptive period when it filed the petition for review on December 28, 1990, the very same date he filed an administrative claim for refund.

There is no dispute as to whether the petitioner filed the petition for review within the prescriptive period, for indeed, it complied with the law.

The seemingly controversial issue, however, was whether or not petitioner has cause of action in bringing the suit when it simultaneously filed the claim for refund. In justifying the filing of the suit, petitioner even had the temerity to allege that "To date, respondent has not yet acted upon said claim for refund or tax credit to the prejudice of the petitioner" (see petition, page 3). Of course, how can the respondent act on its claim when it did not even give him the opportunity to act in the first place? The taxpayer is given two years prescriptive period before appealing to the Court of Tax Appeals to precisely give the respondent opportunity to decide on the claim in order for him to correct the action of subordinate officers; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure. (**Bermejo** v. **Collector**, L-3028, July 29, 1950). This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies. The doctrine rests upon the presumption that the administrative body, board or officer, if given the chance to correct its mistake or error, may amend its decision on a given matter and decide it properly. (Sec. 42 Am. Jur. 579.) It is elementary therefore that before resort to the courts can be obtained, all administrative remedies available should first be exhausted. (**Sampaguita Shoe Factory** vs. **Court of Tax Appeals**, G.R. No. L-10285, Jan. 1958.) And non-compliance thereof is proper ground for dismissal of court action (**Cruz** v. **Del Rosario**, L-17444, Dec. 26, 1963, 9 SCRA 755) for lack of cause of action (ibid) and is a flaw which is fatal to a court review (**Walstrom** v. **Mapa, Jr.**, 181 SCRA 431).

In the case at bar, the petitioner filed its claim for refund on the same date he filed the petition for review which is tantamount to not having filed such claim at all. Such action is frowned upon by this Court for being pro-forma and was done merely to comply with the letter of the law and yet disregarded the spirit or the very substance of the law. What the petitioner had done was a mockery of the doctrine of exhaustion of administrative remedies. In doing so, the petitioner had clipped the power of the Commissioner of Internal Revenue to act on claims for refund as mandated by law virtually depriving him of this important function. The taxpayer, therefore, should have filed his claim for refund at the earliest instance it was brought before him and should have not waited on the last day required of him by law because by then it would be too late for the respondent to act on its claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies.

Jurisdictionally, this Court can entertain only decisions of the Commissioner of Internal Revenue in cases involving, among others, refunds of internal revenue taxes, fees or other charges. In this particular case, there was no such decision of the Commissioner of Internal Revenue because he was not even given such opportunity to do so. Herein petitioner cannot seek refuge under the cloak of having filed the action (although pro-forma) within the two-year prescriptive period since 'to date, respondent has not yet acted upon said claim for refund or tax credit to the prejudice of the petitioner' (see Petition, p. 3). Such allegation is bereft of honesty and candor on the part of the petitioner. If indeed there was "prejudice" suffered by the petitioner, certainly, the respondent has not contributed thereto. **The third issue is thereby purely academic.**

Additionally, a more pragmatic purpose of the doctrine of exhaustion of administrative remedies is that it will help prevent the clogging of our court dockets. To allow the petitioner to file his claim for refund simultaneously with the filing of the petition for review on the last day before the period prescribes, We will be creating a dangerous precedent. It would not be long that this Court will be dealing with the monstrous clogging of dockets which could have been otherwise solved in the administrative level had they (taxpayer) filed their claim for refund at the earliest opportunity.

WHEREFORE, in all the foregoing, this Court hereby RESOLVES to DISMISS the petition for review for lack of cause of action - the petitioner having failed to comply with the doctrine of exhaustion of administrative remedies as above discussed.

SO ORDERED.

Quezon City, Metro Manila, June 2, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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