

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*Sc. Rec. dtd.
11/12/84
denying pet. for C.A. & merit*

PACIFIC PROCON LIMITED,
Petitioner,

- versus -

C.T.A. CASE NO. 3200

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

x - - - - - x

1/25/84

7/19/78

D E C I S I O N

Suit brought by petitioner Pacific Procon Limited for recovery of the amount of ₱29,408.34 representing alleged overpaid corporate income tax for the year 1978 after no action was seasonably taken by respondent Commissioner of Internal Revenue on its claim for refund.

The facts of the case are not in controversy, petitioner having rested its case on the pleadings after marking the annexes of its petition for review as exhibits, and respondent having submitted the case for decision on the basis also of the pleadings and the records of the Bureau of Internal Revenue pertaining to this proceeding. As alleged by petitioner in its petition for review and admitted by respondent:

I

Petitioner is a foreign corporation duly authorized to engage in business in the Philippines as a contractor, with office and business address at Joaquin Cunanan & Co.,

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8th Floor, Rufino Bldg., Ayala Avenue,
Makati, Metro Manila;

II

Respondent is the Commissioner of Internal Revenue holding office at the BIR National Office Building, Diliman, Quezon City where he may be served with summons and other court processes;

III

Petitioner, in the first quarter of 1978, paid the amount of ₱29,408.34 as income tax for said quarter, said payment being evidenced by Revenue Tax Receipt No. 30460463, a copy of which is hereto attached as Annex "A" hereof;

IV

The operations of the petitioner resulted in a loss for the calendar year 1978 as shown by the final income tax return petitioner filed with the Bureau of Internal Revenue for said year, a copy of which is hereto attached as Annex "B" hereof;

V

The above amount of ₱29,408.34 was applied as tax credit in the succeeding quarters of 1979, but petitioner continued to incur losses up to the end of the taxable year as shown by the final income tax return petitioner filed with the Bureau of Internal Revenue for said year, a copy of which is hereto attached as Annex "C" hereof.

VI

Petitioner upon advice of its external auditor, filed a written claim with the respondent Commissioner of Internal Revenue for the refund of the income taxes it had paid to the government, a copy of which claim is hereto attached as Annex "D" hereof.

VII

As of the filing of this petition, respondent Commissioner has not yet acted upon the written claim for refund attached hereto as annex "D".

WHEREFORE, premises considered and after due hearing, it is most respectfully prayed of this Honorable Court that judgment be rendered ordering respondent to refund to petitioner the amount of ₱29,408.34 representing refundable income taxes.

As special and affirmative defenses, respondent in his answer alleges:

AS SPECIAL AND AFFIRMATIVE DEFENSES

Respondent respectfully alleges:

5. That in claims for refund, the burden of proof lies with the petitioner to show that he is entitled to the refund being claimed;

6. That it is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295, both of the 1977 National Internal Revenue Code;

7. That assuming that the taxes herein involved have been paid, the same are presumed to have been paid in accordance with law and no amount thereof is refundable; and

8. That claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Com. of Int. Rev. vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95) A refund partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor Gen., L-17888, Oct. 29, 1968, 25 SCRA 754) (Limpan Investment Corp. vs. Com. of Int. Rev., CTA Case No. 2424, Oct. 29, 1980)

However, in its memorandum dated December 1, 1983, respondent contends additionally that petitioner's petition for review filed on February 12, 1981 is already barred by prescription, the two-year period under Section

292 of the 1977 National Internal Revenue Code within which the suit for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally collected having already elapsed. Counting from May 30, 1978, when the subject corporate income tax in the amount of ₱29,408.34 was paid, up to February 12, 1981, when the present petition for review was instituted in this Court, two (2) years, eight (8) months and twelve (12) days have already elapsed. Since the petition was filed out of time, respondent now argues that this Court has no jurisdiction to take cognizance of the case.

Since jurisdiction can be challenged at any stage of the proceedings and for lack of it, a court can dismiss a case ex mero motu (Commissioner of Internal Revenue vs. Villa, L-23988, January 2, 1968, 22 SCRA 4, citing U.S. vs. De la Santa, 9 Phil. 22; Vda. e Hijos de Pedro Roxas vs. Rafferty, 37 Phil. 957), we shall proceed to inquire first whether or not this Court has jurisdiction to entertain the instant case.

Under Section 292 (formerly 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. (Sec.

292, National Internal Revenue Code; Collector of Internal Revenue vs. Court of Tax Appeals and Hume Pipe & Asbestos Co. Inc. 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, L-14421, April 29, 1961, 1 SCRA 1221-1226.) As a matter of fact, the said section further 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."

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 (now Section 292) of the Tax Code. (Gibbs vs. Collector of Internal Revenue, L-13453, February 29, 1960, 107 Phil. 232; Guagua 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; Panay Electric vs. Collector of Internal Revenue, 103 Phil. 819; Lu Do & Lu Ym vs. Central Bank of the Philippines, 108 Phil. 566), and in order to confer jurisdiction upon the court, it is necessary that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in

Quote {
Section 306 (now 292) must have been duly complied with.
(Collector of Internal Revenue vs. The Court of Tax Appeals,
& Hume Pipe & Asbestos Co., Inc., supra.) Moreover, the
provision is mandatory and is not subject to any qualifi-
cation, hence, it applies regardless of the conditions
under which payment may have been made. (IBM Philippines,
Inc. vs. Commissioner of Internal Revenue, CTA Case No.
2855, February 27, 1981, citing Guagua Electric Light Plant
Co., Inc. vs. Collector of Internal Revenue, 1 SCRA 1221.)

Quote {
In the case at bar, petitioner Pacific Procon Limited
paid the amount of ₱29,408.34 on May 30, 1978 as income
tax for the first quarter of 1978. This is in accordance
with Section 85 of the 1977 National Internal Revenue
Code which requires every corporation to file in duplicate
a quarterly summary declaration of its gross income and
deductions upon which the income tax, as provided in
Title II of the Code, should be levied, collected and
paid on a quarterly basis. ^{11 x x x} While the gross income and
deductions declared in one quarter are now allowed to be
cumulated with those of the succeeding quarters of the
same taxable year, and the tax paid for any one quarter
on cumulative basis is creditable against the quarterly
tax liability for each succeeding quarters of the taxable
year, the law has placed, as initiated by Presidential
Decree No. 30, all corporations on a tax withholding
system of income tax payment on a quarterly basis. (Secs.

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85, 86 & 87, National Internal Revenue Code; Manila Central University vs. Commissioner of Internal Revenue, CTA Case No. 2848, October 19, 1978.)

Nevertheless, even on the assumption that the sum of ₱29,408.34 as income tax for the first quarter of 1978 remained outstanding as a refundable amount until the incurrence of a loss at the end of the taxable year, or until the filing of the final and adjustment return, the provision of Section 292 that "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" would still foreclose this Court's jurisdiction to take cognizance of the instant case. The two-year prescriptive period for bringing the suit for refund to the Court would still be reckoned from the date of payment of the tax on May 30, 1978. ^{xxx} And considered, for the sake of argument only, as a tax withheld at source deemed to have been paid when the same falls due at the end of the tax year or December 31, 1978, when the two-year prescriptive period starts to run (Gibbs vs. Commissioner of Internal Revenue, L-17406, Nov. 20, 1965, 15 SCRA 318), the instant petition for review filed on February 12, 1981 is still time barred.

Accordingly, since the instant petition for review was filed with this Court on February 12, 1981 and the

corporate income tax in the amount of ₱29,408.34 sought to be refunded was paid on May 30, 1978, it is thus clear beyond doubt that herein petitioner's suit for judicial recovery of the tax alleged to have been erroneously or illegally paid or collected came too late, more than two years having elapsed since the income tax was paid. This Court has therefore no jurisdiction to entertain the case. With this conclusion, it becomes unnecessary to resolve the second issue brought by respondent as to whether petitioner has discharged the burden of establishing by clear and competent evidence its loss at the end of the taxable year.

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

SO ORDERED.

Quezon City, January 25, 1984.

Amante Filler
AMANTE FILLER
Presiding Judge

WE CONCUR:

Constante C. Roaquin
CONSTANTE C. ROAQUIN
Associate Judge

Alex Z. Reyes
ALEX Z. REYES
Associate Judge