File

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPOUSES EMMANUEL AGUILAR
and ZENAIDA AGUILAR,
Petitioner,

- versus -

C.T.A. CASE NO. 3953

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

3/23/88

D E C I S I O N

In this suit for refund of the amount of alleged overpayment of income tax liabilities due the Government for the calendar years 1982 and 1983, the basic issue involved is whether or not the petitioners' appeal is time barred.

As borne out by ,the evidence submitted by petitioners:

It appears that the spouses Emmanuel Aguilar and Zenaida Aguilar, petitioners herein, are residents of Bacolod City; that sometime on April 15, 1983 and April 24, 1984, they filed their joint income tax returns for the calendar years 1982 and

1983 showing refundable taxes in the amounts of P9,921.54 (Annex "A", Exh. 1; Exhs. "A" and "A-3", pp. 5 & 45, CTA rec.) and P25,290.83 (Exhs. "B" & "B-3", p. 52, CTA rec.), respectively; that incorporated with Annex "A" are statements of taxes withheld at source for 1982 of petitioners; that to prove excess withholding taxes for 1982 and 1983, petitioners presented a xerox unsigned copy of an alleged summary for the said years addressed to their lawyer (Exh. "E", pp. 61-62, CTA rec.); that on September 3, 1984 and September 24, 1984 petitioners filed their claims for refund of the alleged excess taxes corresponding to 1982 (Exhs. "F", "F-1", p. 63, CTA rec.) and 1983 (Exhs. "H", "H-1" & "H-2", p. 65, CTA rec.); that Umiral P. Matic, Chief, Withholding Tax Division of the Bureau of Internal Revenue through a letter dated October 16, 1984 informed petitioners that the income tax returns are still being processed and verified assuring the latter that as soon as verification is completed, they will receive forthwith the refund notice by mail (Exhs. "G", "G-1" & "G-2", p. 64, CTA rec.); and that no further action having been taken by respondent on the claims for refund, petitioners appealed to this Court on July 2, 1985.

At this juncture, it may be mentioned that respondent denied in his answer all the above-stated material allegations of petitioners as averred in their petition for review although respondent offered no objection to the admission of petitioners' exhibits. However, respondent interposed prescription of the right of petitioners to claim for the refund/tax credit of the alleged excess taxes withheld invoking Section 292 (formerly Sec. 306) of the National Internal Revenue Code, as amended. Said law provides:

> Sec. 292. <u>Recovery of tax erroneously or illegally collected.</u> - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> 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: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The above provision requires that before any action may be instituted in court for recovery of internal revenue tax erroneously or illegally assessed or collected, or any sum alleged to have been excessive or in any manner wrongfully collected, the taxpayer must first file a claim for refund thereof with the Commissioner within two years from date of payment and the suit for refund must be filed within the same period. Thus, in the case of **Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals**, 107 Phil. 232, it has been ruled, that -

> "x x x it is clear that Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2

> years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. <u>If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.</u> (U.S. vs. Michel, 282 U.S. 656, 51 S. Ct. 284; P. J. Kiener & Co., Ltd. vs. David, 92 Phil. 945, 49 Off. Gaz. [5] 1852; College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil. 912; 54 Off. Gaz. [29] 7055. (Underscoring ours.)

As indicated earlier, petitioners' joint income tax return for 1982 was filed on April 15, 1983 and the income tax return for 1983 was filed on April 24, 1984, while the claims for refund with the Commissioner were respectively filed on September 3, 1984 and September 24, 1984. The rule has been already stated that: "A taxpayer whose income is withheld at 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 prescriptive period under Section 306 of the Revenue Code starts to run with respect to payments effected through the withholding system." (Gibbs vs. Commissioner of Internal Revenue and CTA, L-17406, November 29, 1965, 15 SCRA 325; Monte de Piédad and Savings Bank vs. Commissioner of Internal Revenue, CTA Case No. 3808, September 30, 1986). Petitioners are deemed to have paid therefore their taxes withheld for calendar years 1982 and 1983 at the end of the tax years or on December 31, 1982 and December 31, 1983, respectively. It appearing that judicial action in this case was instituted only on July 2, 1985, it is thus clear beyond doubt that the alleged excess payment of income tax corresponding to the taxable year 1982 is already time barred inasmuch as Section 292 requires that judicial action must be instituted within two years after payment. In other words, it is not enough that there be a claim for refund duly filed with the Commissioner within two years but judicial action must also be instituted within the same period; otherwise, the action for recovery would have lapsed.

On the question of the refundability of alleged excess payment of income tax withheld for 1983, petitioners presented as evidence a xerox copy of their income tax return for said year (Exh. "B") showing that they paid P42,776.83 allegedly representing amount of tax withheld (Exh. "B-2") and a total tax due of P17,486.00 (Exh. "B-1") reflecting a supposed refundable amount of P25,290.83 (Exh. "B-3"). No evidence whatsoever was presented by petitioners as to the fact of payment of the amount of P42,776.83 and the correctness thereof. The corresponding official receipts for the income tax payments and the various withholding tax certificates issued to petitioners were not attached to their 1983 income tax return or presented in court for verification.

To prove excess income tax payments, this Court has already ruled in **Commonwealth Management and Service Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 3232, June 26, 1985; **Jardine Fleming (Philippines) Inc. vs. Acting Commissioner of Internal Revenue**, CTA Case No. 3667, January 20, 1988 that taxpayer should present in evidence his income tax returns for the years involved, the corresponding official receipts evidencing his income tax payments and the various withholding tax certificates issued to the taxpayer. The bare statement in the return that petitioners paid P42,775.83, unaccompanied by adequate and sufficient evidence of payment, has no weight with this Court. We are not unaware of the provision of Section 292 (now Sec. 243), _supra_, that the Commissioner of Internal Revenue may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. However, there is absolutely nothing on the face of the 1983 income tax return of petitioners of the fact of payment of P42,776.83. As clearly and plainly required on the face of the return:

LESS TAX CREDITS:
- a. TAX WITHHELD ON COMPENSATION INCOME (Attach Form W-2)
- b. TAX WITHHELD AT SOURCE (Attach Form 1743.1)
- c. TAX CREDIT ON FOREIGN INCOME (Attach Foreign Return & Receipt)
- d. OTHERS (Specify)

It is hardly necessary to add that 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 General, L-17888, Oct. 29, 1968, 25 SCRA 754.) Claims for refund are construed strictly against claimants since a claim for refund partakes of the nature of an exception for taxation. (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95.) It is therefore incumbent upon petitioners to show that they are entitled to the refund and their failure to sustain said burden is fatal to their claim.

WHEREFORE, the Court hereby denies the petition for lack of merit and the instant case is dismissed with costs against petitioners.

SO ORDERED.

Quezon City, Metro Manila, March 23, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
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