REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

P.F. COLLIER, INC.
(Philippine Branch),
Petitioner,

- versus -

C.T.A. CASE NO. 4355

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated : NOV 09 1995

x - x

DECISION

The case at bar involves a claim for refund of P.F. Collier, Inc. (Phil. Branch) in the total amount of P217,014.00 allegedly representing erroneously paid income taxes for the taxable years 1986 and 1987.

The antecedent facts are as hereby narrated.

Petitioner is a resident foreign corporation duly licensed to do business in the Philippines. It is a branch of P.F. Collier, U.S.A., engaged in the selling and distributing of Collier's Encyclopedia in the Philippines. However, for the taxable years 1986 and 1987, the sales were effected directly by the head office to the independent local distributors upon specific orders placed by the latter to the former. Payments for the direct orders were in U.S. dollars tendered to the New York head office. Allegedly, petitioner recorded these direct sales, and erroneously paid income taxes in the respective amounts of P71,512.00 for the year 1986, and P145,502.00 for the year 1987, totalling P217,014.00, on the resulting net taxable income for the said years.

As a consequence, on April 14, 1989 petitioner filed with respondent a written claim for refund of the total amount of P217,014.00. On the same given date, it filed with this Court the instant petition to toll the running of the two-year prescriptive period.

Questions that need to be resolved in this case are:

1. Is petitioner entitled to the refund of the total amount of P217,014.00?

2. Is petitioner's claim within the two-year prescriptive period?

We give affirmative answers for both questions.

The entire amount of P217,014.00 must be refunded to petitioner. It was an erroneous income tax payment for sales which did not take place in the Philippines. Petitioner is a resident foreign corporation doing business in the Philippines and being so, it must be taxed only on income realized from sources within the Philippines. This finds support in Section 24(b)(2) of the 1986 Tax Code, the pertinent portion of which runs as follows:

> "Section 24. *Rates of Tax on corporations.*-
>
> (a) Tax on domestic corporations xxx
>
> (b) Tax on foreign corporations -
>
> (1) xxx
>
> (2) Resident corporations - (i) In general - A corporation organized, authorized, or existing under the laws of any foreign country engaged in trade or business within the Philippines, shall be taxable as provided in subsection (a) of this section upon the total <u>net income derived</u> in the preceding taxable year <u>from all sources within the Philippines</u>. xxx (Underscoring suppled)

To prove its contention that all the subject sales took place in the U.S. petitioner submitted in open court all the covering invoices of said sales and they were marked as Exhibits "G-3" to "G-22", inclusive, for petitioner. Although they were merely xerox copies, a certification, consisting of 3 pages, duly authenticated by a Consul in New York, was also submitted and marked as Exhibit "G" (page 1), Exhibit "G-1" (page 2), and Exhibit "G-2" (page 3). This certification clearly states that the invoices are true and correct copies of the originals. The invoices showed that they were all issued in the U.S. by P.F. Collier, Inc..

Respondent controverted petitioner's stance, by citing a portion of Section 37(e) of the 1986 Tax Code, thus:

> "**Section 37.** ***Income from sources within the Philippines*** -
>
> (a) xxx
>
> (b) xxx
>
> (c) xxx
>
> (d) xxx
>
> (e) Income from sources partly within and partly without. - xxx Gains, profits, and income derived from the purchase of personal property within and its sale without the Philippines or from the purchase of personal property without and its sale within the Philippines, shall be treated as derived entirely from sources within the country in which sold:
> Provided, xxx

The above provision, as its caption states, applies to income from sources partly within and partly without. It is patently inapplicable to the instant case which involves income from sources wholly without the Philippines. Nevertheless, to the Court's mind, the above-quoted provision expounds more profoundly the theory that the situs of sale of personal property for taxation purposes is the place where the sale is consummated and perfected. Thus:

> "Income derived from the purchase and sale of personal property shall be treated as

> derived entirely from the <u>country in which it is sold,</u> the place where the personal property is marketed. Hence, for income tax purposes, the proceeds derived from the sale of shares of stocks which are intangible personal properties shall be considered taxable income to the vendor in the <u>place where the sale is consummated and perfected.</u> A contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. Likewise, a contract of sale is considered consummated upon delivery, actual or constructive, of the object of said contract. In other words, when and where the property in the goods passes, when and where the incidents of ownership vest in the vendee." (p. 244, Jose P. Alejandro, <u>Law on Taxation,</u> 1970 second edition; Underscoring supplied)

Applying the foregoing to the case at bar, the subject sales in 1986 and 1987 were indeed perfected and consummated in the U.S.. When the local distributors placed and/or sent their specific orders to P.F. Collier, U.S., they already knew the price of the Collier's encyclopedia/books. Such orders were shipped by the vendor in the U.S. direct to the different vendees in the Philippines. This fact is clearly reflected in all the authenticated invoices submitted as evidence for petitioner.

Anent the second issue of prescription, the governing law is Section 230 of the Tax Code, pertinent portion of which states:

> "Section 230. ***Recovery of tax erroneously or illegally collected.*** — 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, xxx until a claim for refund or credit has been duly filed with the Commissioner; xxx
>
> 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 xxx" (Underscoring supplied)

The above-quoted provision requires the filing of a written claim for refund with the B.I.R. and the filing of a judicial claim within two years from the date of payment. To prove compliance with this provision, petitioner presented in court the following documentary evidence, to wit:

Exhibit	Description
"A"	Claim for refund filed with BIR on April 14, 1989
"D"	Income Tax Return for 1986 filed on April 15, 1987
"E"	Income Tax Return for 1987 filed on April 15, 1988
"F"	Confirmation Receipt No. 11255216 in the amount of P71,512.00 dated April 15, 1987
"G"	Confirmation Receipt No. 15005159 in the amount of P145,502.00 dated April 15, 1988

As can be gleaned from the above-mentioned documents, petitioner filed its annual income tax return for 1986 and paid the income tax amounting to P71,512.00 on April 15, 1987, the last day for filing corporate annual income tax return. The two-year prescriptive period began from April 15, 1987 and ended on April 15, 1989. The claim for refund was filed with the B.I.R. and with this Court on April 14, 1989, which was still a day away from the deadline.

For taxable year 1987, petitioner filed its annual income tax return and paid on April 15, 1988, the corresponding income tax in the amount of P145,502.00. The two year prescriptive period commenced from April 15, 1988 and expired on April 15, 1990. The claim for refund was filed with the B.I.R. and with this Court on April 14, 1989 which was a year before the expiry date of the prescriptive period.

All the foregoing established beyond question, the fact that the subject claims for refund for the years 1986 and 1987 did not prescribe.

At this juncture, it is worth mentioning that the issue of prescription was resolved by this Court in the light of the Supreme Court decision in the case of **Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.,** G.R. No. 105208, which was promulgated on May 29, 1995. The pertinent portion of the decision reads as follows:

> "xxx It may be observed that although quarterly taxes due are required to be paid within sixty days from the close of each quarter, the fact that the amount shall be deducted from the tax due for the succeeding quarter shows that until a final adjustment return shall have been filed, the taxes paid in the preceding quarter are merely partial taxes due from a corporation. Neither amount can serve as the final figure to quantify what is due the government nor what should be refunded to the corporation.
>
> xxx xxx xxx
>
> Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. xxx Private respondent being a corporation, Section 292 (now Section 230) cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier said in the TMX Sales case, Sections 68, 69 and 70 on Quarterly Corporate Income tax Payment and Section 321 should be considered in conjunction with it.
>
> Moreover, even if the two-year prescriptive period had already lapsed, the same is not jurisdictional[4] and may be suspended for reasons of equity and other special circumstances.[5]" (Underscoring supplied)

Summing up on the issue of prescription, although Section 230 of the Tax Code expressly provides, that the two-year prescriptive period should be counted from the

---

[4]**Oral and Dental College vs. CTA,** 102 Phil. 912
[5]**Panay Electric Co. vs. Collector,** 103 Phil. 819

date of payment of the tax being refunded/tax credited, if the taxpayer involved is a corporation and pays quarterly income tax, the prescriptive period is reckoned not from the date of payment of the quarterly income taxes, but rather from the date of filing the corporate annual income tax return. The reason, as given in a line of Supreme Court decisions previously cited and quoted herein, is that, it is only at the time of filing the corporate annual or final income tax return, that a corporate taxpayer is able to determine whether it has a refund or it has still a tax due payable.

More in point of prescription, is the SC ruling in the case of **Panay Electric Co. vs. CIR and CA** which was cited in the aforequoted Philamlife decision. The Panay ruling held that:

> "xxx While petitioner was to blame in part for supposedly sleeping on its right and in <u>not filing the claim for refund and the suit to enforce said refund on time</u>, there is evidence to the effect that if petitioner did not file its suit for refund earlier, <u>it was because of an agreement with an agent of the Collector that they should await the result of the case of Philippine Railway vs. Collector of Internal Revenue</u>, then pending in this Court in order that the parties may act correctly. <u>On moral and equitable grounds</u>, therefore, <u>petitioner is entitled to refund from the date of the claim for refund</u>. xxx" (Underscoring supplied)

Another important case cited in the Philamlife decision, was the case of **College of Oral and Dental**

Surgery vs. CTA and The Collector of Internal Revenue, which laid down the ruling that if the taxpayer's claim for refund was denied by the B.I.R. and the taxpayer failed to appeal said denial to this Court within thirty (30) days from the receipt of such denial, the appeal or claim for refund can no longer be taken cognizance of by this Court, for lack of jurisdiction. This case involved a scenario wherein two important periods expired: (1) the two-year prescriptive period from the date of payment of tax, and (2) the thirty (30) day period to appeal to this Court, the B.I.R.'s denial of the refund. Lapse of the first period is not jurisdictional, while expiration of the second period is fatal to a claim for refund as it cannot be adjudicated by this Court for want of jurisdiction.

Adding more clarity to this issue on prescription is Associate Justice Jose C. Vitug's <u>concurring opinion</u> to the aforementioned Supreme Court decision in the case of **"CIR vs. The Philippine American Life Insurance Co., et al.,"** which states that:

> "The two-year period, in the case of the quarterly income tax payment system for corporations, should be deemed to start only from the time the final adjustment tax is due and payable. In **Gibbs vs. Commissioner** (16 SCRA, 318), the Court said that if the tax is withheld at source, a concept similar to, <u>albeit</u> not on all fours with, the corporate tax

payment scheme, the two year period starts when the tax falls due at the end of the taxable year. In fine, corporate income tax payments for the first three quarters of the taxable year should, for purposes of the two-year prescriptive period, be deemed to have been paid on the 15^{th} day of April or of the fourth month following the close of the fiscal year covering the entire taxable income of the preceding calendar or fiscal year.*

xxx" (Underscoring supplied)

Aside from the two main issues just discussed, respondent by way of special and affirmative defenses in his answer raised other side issues, to wit:

1. Petition states no cause of action as it does not allege with exactitude the date when the tax sought to be refunded was paid;

2. Petitioner has the burden of proof to show that taxes were erroneously or illegally paid and failure to do so on its part is fatal to its claim;

3. Petitioner, being a resident foreign corporation, is subject to income tax upon its total net income from all sources within the Philippines; and

4. The situs of the source of payments was the Philippines and such flow of wealth should share the burden of supporting the Government.

Although the petition did not show the exact dates when the taxes sought to be refunded were paid, the claim for refund, and xerox copies of the returns as well as the receipts of the taxes paid, were all attached as

*(See Sections 75-77, NIRC)

annexes to the petition filed with this Court. The instant petition states a cause of action as the dates of payment wanting in the petition were clearly indicated on the attached invoices. Thus, in one case this Court ruled that:

> "In the case at bar, the corporate quarterly and annual income tax return for the fiscal year ending October 31, 1989 as well as the confirmation receipts and payment orders showing the amount of taxes paid, <u>were all attached to the petition.</u> If examined closely, <u>the annexes of the petition clearly shows the date when said taxes in question were paid</u>. <u>The petition therefore, states a cause of action</u>. " (<u>CTA Decision</u>, CTA Case No. 4592, "Armco-Marsteel Alloy Corp. vs. CIR," July 1, 1993, p. 7; Underscoring supplied)

As borne by the records of the case, it cannot be denied that petitioner has assumed the burden of proving to the satisfaction of this Court that the income taxes it paid for the years 1986 and 1987 were erroneous and/or illegal.

The third side issue is not disputable. It is expressly provided under Section 24(b)(2), as quoted hereinbefore, that resident foreign corporation doing business in the Philippines is taxable on its total net income from all sources within the Philippines. Precisely, this provision was even used by petitioner as basis for its claim that it made erroneous payments of taxes as the subject income was realized from sources without the Philippines.

The last side issue which refers to the situs of the flow of wealth, is immaterial to the instant case. What is controlling here, for taxation purposes, is the situs of the sale of personal property.

WHEREFORE, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to refund in favor of petitioner the total amount of P217,014.00 as erroneously paid income tax for the years 1986 and 1987.

No pronouncement as to cost.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals