REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SUN INSURANCE OFFICE LIMITED,
Petitioner,

- versus - C.T.A. CASE NO. 3205

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

6/23/89

D E C I S I O N

Petitioner Sun Insurance Office Limited, in its petition for review, asks that respondent Commissioner of Internal Revenue be ordered to refund the amounts of P27,952.00 and P56,103.00 representing alleged excess payments of income tax for the years 1978 and 1979. In its memorandum filed in support of its case, petitioner however avers that since the sum of P56,103.00 already includes the amount of P27,952.00 carried forward to 1979 from 1978, the correct amount refundable is only P56,103.00.

After this Court has admitted petitioner's evidence in support of its claim for refund, and this case was set for hearing for respondent to present his evidence, respondent Commissioner of

Internal Revenue, through counsel, simply manifested that he is submitting the case for decision on the basis of the pleadings. (p. 81, CTA records.) No evidence controverting or disputing petitioner's entitlement to its claim for refund was presented by respondent. Since one who prays for judgment on the pleadings without offering proof as to the truth of his 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 vs. Casas**, 10 Phil. 380; **Evangelista vs. Dela Rosa, et al.**, 76 Phil. 115), the facts as alleged in the pleadings and borne by the evidence may therefore be considered as not disputed. As narrated by petitioner:

Petitioner is a resident foreign corporation duly licensed to engage in insurance business in the Philippines with offices at 3C Torre de Salcedo, Salcedo Street, Legaspi Village, Makati, Metro Manila (para. 1, Petition; admitted, para. 1, Answer).

On April 30, 1979 petitioner filed with

Revenue District Office No. 32, Bureau of Internal Revenue, its annual income tax return for the year ended December 31, 1978, showing a net loss of P11,845,603.00 (Exhibits A, A-1). During said year, it had tax credits on account of creditable withholding tax on interest on bank deposits in the total amount of P27,952.00 which amount appeared as refundable as of December 31. 1978 (Exhibits A-2, A-3).

On June 16, 1980 petitioner filed with respondent's Bureau its amended income tax return for the year ended December 31, 1979, showing a net loss of P4,118,141.00 (Exhibits B and B-1). As of the end of 1979, petitioner had to its credit a refundable amount of P56,103.00 (Exhibit B-2) consisting of P27,952.00 (Exhibits B-2, E, F, H, J, K, L, M) representing 15% withholding tax carried forward from 1978 as a tax credit, and P28,151.00 (Exhibits B-2, E, G, I, N, O, P) representing withholding tax on interest on savings account accrued during the year 1979.

In letters dated September 26. 1979 (Exh. C, p. 4, Court Record) and February 20, 1981 (Exh. D, p. 5, Court Record), petitioner through its auditors, filed with the respondent's Bureau on September 27, 1979 and February 23, 1981, respectively, claims for refund of the respective amounts of P27,952.00 and P56,103.00, representing excess payments of income tax for the calendar years 1978 and 1979 (para. 7, Petition; admitted, para. 3, Answer).

On February 25, 1981 petitioner filed its petition for review with this Court, claiming P84,055.00 as refundable which purports to cover the amounts of P27,952.00 (1978) and P56,103.00 (1979). Since the latter amount of P56,103.00 already includes the amount of P27,952.00 carried forward to 1979 from 1978 (Exhibits B and B-2), the correct amount refundable is only P56,103.00.

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

This Honorable Court has no jurisdiction to take cognizance of this case;

The instant petition states no cause of action as said petition for refund does not allege the date when the said tax was paid; (**Manufacturer's Bank and Trust Co. as trustee for Gem Trust Plans vs. The Commissioner of Internal Revenue**, CTA Case No. 1659, November 29, 1965);

Taxes are presumed to have been paid and collected in accordance with law;

In claims for refund or tax credit, the burden is upon the taxpayer to prove that it is legally entitled thereto, otherwise, failure to substantiate the same is fatal to the action; and

A claim for refund is construed strictly against the claimant as such claim is in the nature of an exemption from taxation (**Manila Electric Co. vs. Commissioner of Internal Revenue**, G.R. No. L-29987, October 22, 1975, 67 SCRA 351);

Assuming, but not admitting that petitioner is entitled to tax refund, the right to claim the refund has prescribed with respect to the period prior to February 25, 1979.

On the allegation that this Court has no jurisdiction to take cognizance of this case, respondent has not stated the facts and the law on which he based his conclusion that this Court has no jurisdiction. As a matter of fact, as stated above, respondent submitted this case for decision on the pleadings (p. 81, CTA records) after petitioner has presented its evidence, oral and documentary, and without interposing this affirmative defense of lack of jurisdiction while the case was being heard and tried by the Court. While respondent submitted a memorandum in support of his case, nothing there is said of this Court's lack of jurisdiction. Accordingly, we find this affirmative defense without merit and hold that this Court has jurisdiction to take cognizance of this case.

As to the allegation that the petition states no cause of action as said petition for refund does not allege the date when said tax was paid, the claims for refund filed with respondent which are integral parts of the petition for review mention the years when the withholdings were made. Thus:

> "7. In a letter dated September 26, 1979 and another letter dated February 20, 1981, filed with the respondent's office on September 27, 1979 and February 23, 1981, respectively, petitioner, through its auditors, requested for the refund of the amount of P27,952.00 and P56,103.00, respectively, representing excess payments of income tax for the calendar years 1978 and 1979. Copies of said letters are hereto attached as Annexes "A" and "B" and made an integral part hereof;"

We take it that petitioner from whom withholdings were made would not be able to state the exact date when the withholding agent paid the withholding tax to the Bureau of Internal Revenue. Nevertheless, the rule is 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. (**Gibbs vs. Commissioner of Internal Revenue**, L-17406, November 20, 1965, 15 SCRA 318.) And in this case where the tax is payable by the taxpayer in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertaina e that the taxpayer either made profits or suffered losses in its operations. (**Commissioner of Internal Revenue vs. Asia Australia Express Ltd.**, G.R. No. 85956, April 10, 1989.) It is thus clear that the petition for review states a/cause of action.

Coming to the question of prescription alleged in paragraph 9 of respondent's answer, it will be noted that petitioner has abandoned its claim for 1976 and 1977. The amount claimed per petition for review is P27,952.00 for 1978 and P56,103.00 for 1979 (Pars. 3, 7 and the prayer of the Petition for Review.) With the qualification that petitioner made an error in claiming the P27,952.00 twice first as the refundable amount for 1978, and secondly as part of the amount claimed for 1979 (carried forward from 1978), petitioner's claim for refund as found on Exhibits B-2 and B-3 1979 income tax return involved herein is:

"B-2" 'Less: Tax Credits Others:

15% withholding tax on interest savings on savings account	P28,151.00	
15% withholding tax on interest on savings - 1978	27,952.00	56,103.00'

"B-3" 'Total Amount Refundable P56,103.00"

Only two years' withholding tax are thus involved. With respect to the 1979 withholdings, applying the **Gibbs case** or the recent **Asia Australia Express Ltd. case**, there is no dispute as to the timely filing of both the claim for refund and the petition for review. The records show that the petition for review was filed on February 25, 1981 and the claim for refund on September 27, 1979. Since the prescriptive period of two years provided in Section 306 (now Section 292) of the National Internal Revenue Code should be counted from the date of the "final payment" which is the last quarter payment at the end of the taxable year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its business operations, it is clear that the 1979 claim is not time-barred. The last quarter payment fell due on April 15, 1980.

As to the 1978 withholding tax on interest on bank deposits, the last quarter payment at the end of the taxable year when it is finally ascertainable that petitioner suffered losses on its business operations is due on April 15, 1979. Between April 15, 1979 and February 25, 1981, when the petition for review was filed with this Court, less than two years have elapsed. The corresponding claim for refund was filed on September 27, 1979.

Consequently, there is no part of the P56,103.00 which is barred by prescription.

The next question therefore is whether or not petitioner is entitled to the refund of P56,103.00 representing overpaid income tax for the years 1978 and 1979.

At the outset, as stated above, respondent submitted this case for decision on the basis of the pleadings, after petitioner has presented its evidence in support of its entitlement to its claim for refund. Evidence was introduced showing that for 1978 petitioner had a net loss of P11,845,603.00 (Exhibits A, A-1); and during said year, petitioner had tax credits on account of creditable withholding tax on interest on bank deposits in the amount of P27,952.00 which amount appeared as refundable as of December 31, 1978 (Exhibits A-2, A-3). The evidence further shows that this refundable amount was carried forward to 1979 as allowed under Section 87 of the applicable National Internal Revenue Code (Exhibit B), and that for that year with a net loss of P4,118,141.00 (Exhibits B, B-1), petitioner had to its credit a refundable amount of P56,103.00 (Exhibit B-2) consisting of P27,952.00 (Exhibits B-2, E, F, H, J, K, L, M) representing 15% withholding tax carried forward from 1978 as a tax credit, and P28,151.00 (Exhibit B-2, E, G, I, N, O, P) representing withholding tax on interest on savings account accrued during the year 1979.

No controverting evidence was presented by respondent, and having submitted this case on the pleadings on the face of the unrebutted evidence of petitioner showing that it is entitled to the refund of ₱57,131.00 and ₱23,151.00, respondent maybe considered to have admitted petitioner's entitlement to the refund.

It may be stated that during the hearing of this case on February 11, 1986, respondent, while cross examining petitioner's witness, asked questions which went into the details of the income of and deductions claimed by petitioner in its returns under consideration. However, petitioner's claim for refund has been pending with respondent's Bureau for examination, verification and checking since September 27, 1979. Through all the years, no action whatsoever was taken by respondent. The records make it clear that petitioner's income tax returns for the taxable years in question have shown losses. Respondent has not issued any deficiency assessment nor disputed the correctness thereof. The requisite statements or certifications from the banks that withheld on the interest payments had been presented and admitted in evidence. (Dataprep [Phils.], Inc. vs. Com-

missioner of Internal Revenue, CTA Case No. 3600, March 30, 1984.) Respondent has never placed in issue the correctness of the gross income reported, the legality of the deductions claimed, and the fact of substantiation of such deductions. For respondent to require petitioner to justify and support its claimed deductions for the first time in the judicial level would be to sanction a procedure whereby this Court would be asked to determine whether a taxpayer should be assessed internal revenue taxes. To our mind, this cannot be permitted for the reason that that is a duty which under the law pertains to the Bureau of Internal Revenue. (See **Section 3, National Internal Revenue Code.**)

It may be necessary to repeat what this Court said in what so plainly apply to the case at bar that, "But as should be expected, the action could be maintained on the basis of the pleadings, admission and affidavit of the parties which neither provokes any unsettling questions nor involves material factual issues genuinely in dispute. The administrative machinery or process employed on the right to the claim seems to have moved barely at idling speed. To be relatively quiescent for some seven (7) years on a claim of such a simple nature and not so considerable a stake which no longer incites controversy nor excites a queasy sense of expectation, creates but an unwarranted bureaucratic inertia of inaction. Readily a legal conclusion can be safely reached. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expeditious and competently responsive action." (Commonwealth Pacific Consultants, Ltd., v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982). The circumstances obtaining in the case at bar compels Us to sustain the tenability of petitioner's right to the refund based on the evidence and pleadings. (Dataprep [Phils.], Inc. vs. Commissioner of Internal Revenue, *supra*.)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund and/or tax credit to petitioner Sun Insurance Office Limited in the amount of P56,103.00 representing overpaid income tax for the years 1978 and 1979. No costs.

SO ORDERED.

Quezon City, Metro Manila, June 23, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on leave)
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