REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CAINTA REALTY CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3594

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner on March 9, 1981 filed its 1980 final adjustment return which showed a net loss in the amount of ₱6,540 and a zero tax liability. However, during the same taxable year petitioner had creditable income taxes withheld consisting of 5% expanded withholding tax on rental and 15% withholding tax on savings account in the total sum of ₱7,766 paid on November 30, 1980.

On March 3, 1983, petitioner, through its auditors, filed a claim for refund of said amount of ₱7,766.

Without waiting for respondents action on the claim for refund, petitioner filed with this Court its petition for review on March 4, 1983.

The issues to be resolved are:

(1) Whether or not the petition is barred by prescription; and

(2) Whether petitioner is entitled to the refund of the sum of ₱7,766.00.

Under the law, a claim for refund of 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 no suit or proceeding for refund shall be begun after the expiration of the two-year period.

Thus, Section 292 of the National Internal Revenue Code reads:

> "SEC. 292.- 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, 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; 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 therefore, 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. x x x"

And Section 295 of the same Tax Code reads:

> "SEC. 295.- Authority of the Commissioner to comprise, abate and refund/credit taxes.- The Commissioner may -
>
> (2) x x x
>
> (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty."

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 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. 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 Section 292 must have been duly complied with (Collector of Internal Revenue vs. The Court of Tax Appeals & Home Pipe & Asbestos Co., Inc., supra). Moreover, the provision is mandatory and is not subject to any qualification, 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).

In this case, the subject corporate income tax in the amount of ₱7,766.00 was paid on November 30, 1980. The petition for review was filed on March 4, 1983, or two years, three months and four days from date of payment of the tax, which is clearly beyond the two year prescriptive period provided for under Section 243 of the Tax Code.

In view of our finding that the period to file the claim for refund has prescribed, the question of whether petitioner is entitled to the refund of the said amount of ₱7,766.00 becomes moot and academic.

WHEREFORE, the herein petition for review is hereby dismissed.

With costs against petitioner.

SO ORDERED.

Quezon City, January 22, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding 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

AMANTE FILLER
Presiding Judge
Court of Tax Appeals