REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE FLEMING (PHILIPPINES),
INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3667

THE ACTING COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

In its letter of July 12, 1983 to respondent Commissioner of Internal Revenue, petitioner Jardine Fleming (Philippines) Inc. requested for the refund of the amount of P19,798.98 representing income tax withheld and paid by various withholding agents from its professional/advisory fees for taxable years 1981 and 1982. Since no action was taken seasonably by respondent on its claim for tax refund, petitioner filed the instant petition for review for recovery of the said amount of P19,798.98.

The facts are not disputed, respondent having submitted this case for decision on the basis of the pleadings and records after petitioner has presented its evidence. As alleged in the petition for review and admitted by respondent, and borne out by the records:

1. Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines, with principal office and place of business at 222 Buendia Avenue, Makati, Metro Manila.

2. Respondent is the duly designated and incumbent Acting Commissioner of Internal Revenue of the Philippines duly authorized by law to act on claims for tax refund or credit and on other matters involving the enforcement of national internal revenue laws, with office at the BIR National Office Building, East Triangle, Quezon City, where he may be served with summons.

3. For the calendar years 1981 and 1982, petitioner received from various domestic corporations advisory/professional fees from which the corresponding tax was withheld and duly remitted to the BIR under the Expanded Withholding

Tax System. (Exhibits "B-1", "B-2", "B-3", "J", "K", "L", "M", "N", "O", "P", "Q-1", "Q-2", "Q-3", and "Y".)

4. The amount of advisory/professional fees received by petitioner and the corresponding tax withheld for the said calendar years 1981 and 1982 are as follows: ("B-1", "B-2", "B-3", "C", "C-1", "D", "D-1", "E", "E-1", "F","F-1", "G", "G-1", "H", "H-1", "I", "I-1", "J", "K", "L", "M", "N", "Q", "P", "R", "R-1", "S", "S-1", "T", "T-1", "U","U-1", "V", "V-1", "W", "W-1", "X", "X-1", and "Y".)

Year Covered	Amount	Tax Withheld and Paid
1981	P165,743.00	P11,568.00
1982	366,270.00	13,152.00
Total	P532,013.00	P24,720.00

5. The above income payments were duly declared by petitioner as part of its gross income as shown under Schedule 2 of its final annual returns for 1981 and 1982. (Exhibits "B", "B-1", "B-2", "B-3", "Q", "Q-1", "Q-2", and "Q-3".)

6. In the calendar year 1981, petitioner suffered a loss and consequently had no income tax liability against which to apply the available tax credit. For the calendar year 1982, petitioner had

a taxable income of only P1,954.00 and thus it was only able to apply the amount of P1,954.00 against its income tax liability as shown in the return for the said year, leaving a refundable amount of P22,766.00 (P24,720.00 less P1,954.00). (Exhibits "B", "B-1", "B-2", "B-3", "B-4", "B-5", "B-6", "Q", "Q-1", "Q-2", "Q-3", "Q-4", "Q-5" and "Q-6".)

7. On July 19, 1983, petitioner filed with respondent a claim for refund of the amount of P19,798.98 only out of the total refundable amount of P22,766.00 which said amount of P19,798.98 it was able to support with individual certifications issued by the withholding agents concerned and corresponding copies of revenue tax receipts, bank confirmation receipts and accompanying returns. (Exhibits "B", "B-1", "B-2", "B-3", "B-4", "B-5", "B-6", "Q", "Q-1", "Q-2", "Q-3", "Q-4","Q-5","Q-6", "Z" and "Z-1".)

8. The amount of P19,798.98, subject of the claim for refund, was never applied against petitioner's income tax liability. (Exhibits "B", "B-1", "B-2", "B-3", "B-4","B-5", "B-6", "Q","Q-1", "Q-2", "Q-3", "Q-4", "Q-5", "Q-6", "Z", and "Z-1".)

9. To date, respondent has not yet granted petitioner's claim for a refund of the said amount of P19,798.98.

Hence, this petition for review.

The lone question tendered for resolution is whether or not petitioner is entitled to a refund/tax credit of the amount of P19,798.98 representing overpaid and unapplied creditable withholding tax on income as of December 31, 1982.

It is not disputed that:

(a) During the year 1981, petitioner's corporate annual income tax return reflected a net loss and that it had a total creditable tax of P11,568.00 which was shown as refundable thereon.

(b) During the year 1982, petitioner's corporate annual income tax return reflected a net income of P5,584.00 and a tax due of P1,954.00. After petitioner credited against said tax due of P1,954.00 the total amount of P24,720.00 representing its 1982 creditable withholding taxes and the refundable amount of P11,568.00 which is shown in its 1981 income tax return, petitioner's 1982 tax return showed a refundable amount of P22,766.00.

(c) Petitioner however was only able to support with individual certifications issued by withholding agents (BIR Form 1743) and official receipts the total amount of P19,798.98.

(d) Consequently only the amount of P19,798.98 was claimed as refundable.

(e) The revenue examiner to whom this claim for refund was assigned for investigation recommended the grant of the refund.

The question involved in this case, in the light of the facts presented, is far from being one of first impression. In Dataprep (Phils.), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3600, March 30, 1984, this Court, speaking through Judge Alex Z. Reyes, sustained a taxpayer's claim for refund on the basis of tax returns and BIR Form 1743 (Agents Certification). To quote:

> "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 statement or certification of the amounts withheld and deducted by petitioner's customers thru which the respondent collected the taxes and upon which tacked the claim for refund could furnish the satisfaction of definite resolution. Respondent points to no factual error nor superfluities which need be abridged except for the non creditability of taxes on bank interest payments as earlier pointed out. As thus shown the basis of the claim is not short of specific support in terms of tractable data openly laid and fully disclosed for any legitimate analysis, doubt and objection but action thereon appears consigned in a limbo of lingering verification to date. We see no reason and none is vouchsafed why a simple case, where fact and fabrication are no longer indistinguishable, should remain curiously unperturbed. 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 four (4) 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 expeditous 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 compel us to sustain the tenability of petitioner's right to the refund based on the evidence and pleadings.

And, in Commonwealth Management and Service Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 3232, June 26, 1985, this Court held:

"To prove these excess income tax payments, petitioner presented in evidence its income tax returns for the years involved, the corresponding official receipts for its income tax payments, as well as the various withholding tax certificates issued to petitioner. No controverting evidence was presented by respondent. As a matter of fact, as stated above, respondent submitted this case for decision on the basis of the pleadings and the records after petitioner has presented and offered its evidence. 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. 386; Evangelista vs. De la Rosa, et. al., 76 Phil. 115), respondent, as pointed out by petitioner, may be considered as not questioned seriously petitioner's entitlement to its claim for refund. (p. 86, CTA records).

ACCORDINGLY, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit to petitioner Jardine Fleming (Philippines) Inc. in the amount of P19,798.98 representing petitioner's overpaid and unapplied creditable withholding tax on income as of December, 1982.

SO ORDERED.

Quezon City, Metro Manila, January 20, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals