REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RORZA CARBIERO,
as represented by Virgilio A. Abogado,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5865

Promulgated:
JUL 20 1999

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RESOLUTION

Before Us for resolution is Respondent's Motion to Dismiss filed on May 13, 1999 praying for the dismissal of the instant petition for review on the ground of lack of cause of action.

On April 15, 1999, herein Petitioner as represented by Virgilio Abogado by virtue of a Special Power of Attorney, filed a petition for review with this Court for the refund in the amount of P20,553.05 allegedly representing the excess withholding taxes paid on the compensation income earned by Petitioner for the period January to December 1996.

Respondent, in his Motion to Dismiss, avers that since there was no written claim for refund duly filed with the Commissioner pursuant to Section 230 of the 1993 NIRC, the instant petition should be dismissed. He further asserts, that a claim for refund with the Commissioner is mandatory as a condition precedent to the prosecution of a suit for the recovery of taxes erroneously collected and non-compliance therewith is fatal to the action.

Petitioner, on June 3, 1999, submitted his Opposition to the Motion to Dismiss contending among others that the written claim is no longer necessary. Using as basis, Sec. 230 of the 1977 NIRC in relation to Revenue Regulations No. 2-98, Petitioner points out that by indicating in his income tax return that he has an overpaid amount of withholding tax, he is in fact filing a claim for credit with the Respondent and this overpayment shall be automatically allowed as a credit.

Furthermore, Petitioner likewise asserts that pursuant to the last proviso of Section 204 (c) of the Tax Reform Act of 1997, mere declaration in the Tax return that there was an overpayment of tax will suffice and shall be considered as a written claim for credit or refund in conformity with the requirement of Sec. 230 of the NIRC.

We find Petitioner's argument bereft of merit.

It is already well-settled that a claim for refund duly filed with the Commissioner of Internal Revenue is a condition precedent to the prosecution of a suit before this Court and failure to comply with this condition subjects the petition for dismissal for lack of cause of action **(Republic vs. Limaco and De Guzman Commercial Co., 5 SCRA 990)**. This is a positive requirement of Section 230 of the 1996 Tax Code. To this issue, this Court deems it necessary to cite the *ratio legis* which was aptly enunciated by the Supreme Court in the case of **P.J. Kiener Co., Ltd. Vs. David, 92 Phils. 945** when the Supreme Court ruled, thus:

> "To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an

> opportunity to consider his mistake, if mistake has been committed, before he is sued." (Underscoring supplied)

It is important to note that this Court makes reference to the 1996 Tax Code (specifically the Tax Code prior to the Tax Reform Act of 1997) because the compensation income subject of this petition was earned by petitioner in 1996. Section 204(c) of the Tax Reform Act of 1997 which was earlier quoted cannot apply to the instant case because this law took effect only on January 1, 1998 while this case involves income earned in 1996. Article 4 of the Civil Code of the Philippines declares that "laws shall have no retroactive effect, unless the contrary is provided" and there is no provision in the Tax Reform Act of 1997 which calls for its retroactivity. The Supreme Court in the case of **Montilla vs. La Corporacion de PP. Agustinos Calzados, 24 Phils. 220** plainly stated a basic rule in statutory construction when it ruled, thus:

> "It is a rule of statutory construction that all statutes are to be considered as having only a prospective operation, unless the purpose and intention of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used."

We also find petitioner's reliance on Section 2.58.3 of Revenue Regulations No. 2-98 and Section 5(b) of Revenue Regulations No. 12-94 to be misplaced and deserves no consideration in resolving the issues at bar.

A reading of these two provisions reveal that the "automatic crediting" mentioned therein refers to expanded withholding taxes. It must be remembered that the subject of this petition for review is the withholding tax on compensation income and it is basic that this does not fall under the category of an expanded withholding tax as enumerated under Section 2.57.2 of Revenue Regulations No. 2-98.

At its inception, this case would have been outrightly dismissed by reason of petitioner's failure to comply with certain important preconditions. Charge this to the precipitate filing of the Petition for Review filed on the very date the claim is about to prescribe, "assuming the petitioner filed its final adjustment return on April 15, 1997". A sedulous review of petitioner's initiatory pleading would readily reveal that it failed to comply with Section 2, Rule 5 of the Rules of the Court of Tax Appeals which provides, thus:

> "x x x x x x x x x
>
> **Section 2.** The Petition for Review shall contain allegations <u>showing jurisdiction in the Court</u>, a concise statement of the ultimate facts and a summary statement of the issues involved in this case, as well as the reasons relied upon for the reversal of the respondent's decision. A copy of the decision appealed from shall be attached to the Petition for Review. (Emphasis Ours)
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> x x x x x x x x x"

Apparently, there are no allegations whatsoever in petitioner's Petition for Review "*showing jurisdiction in the Court*". Petitioner should have alleged the fact that a claim for refund was filed with the Commissioner of Internal Revenue and that the latter failed to act upon the said claim. Unfortunately, even the date of the filing of the Final Adjustment Return was omitted, inadvertently or otherwise.

Prescinding from the above, there is no way by which this Court would be able to decipher with accuracy whether or not the petitioner had already exhausted administrative

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remedies thereby making the case fall within the province of this Court. In view of this, We strongly reject petitioner's theory that allegations of these matters in its petition would be a mere superfluity since absence of which would render the petition dismissible on the ground of lack of jurisdiction. It must be borne in mind that the question as to whether or not a Court has jurisdiction over the subject matter of the case is determined from the allegations stated in the complaint. Parallel to this is the fact, that a Court, in resolving a Motion to Dismiss, cannot go beyond the four corners of the complaint, thus, if the petition fails to allege material jurisdictional preconditions, this Court can dismiss a case *ex mero motu* (**Commissioner of Internal Revenue vs. Villa, 22 SCRA 3**).

WHEREFORE, in view of the foregoing, the Motion to Dismiss filed by the Respondent is **GRANTED**. Accordingly, the petition for review filed on April 15, 1999 is hereby **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge