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Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

VAN MELLE (Phils.), INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 4783**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 08 1995

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D E C I S I O N

This case involves a claim for refund of overpaid income tax for the calendar year ending December 31, 1989 in the amount of ₱1,017,465.00.

Petitioner is a domestic corporation, engaged in the business as a confectioner. On April 7, 1990, petitioner filed its annual income tax return for the year ended December 31, 1989 which shows a taxable income of ₱3,167,666.00 and an income tax due of ₱1,108,683.00.

In its quarterly income tax return for the first quarter, petitioner paid its income tax liability in the amount of ₱2,126,148.00 which is computed as follows:

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Quarter	O.R. No.	DATE	AMOUNT
1st	B17570203	05-31-89	₱ 655,711.00
2nd	B17395984	08-31-89	678,423.00
3rd	B17493960	11-29-89	792,014.00
TOTAL INCOME TAX PAID FOR 1989			**₱ 2,126,148.00**

Petitioner averred that it overpaid its income tax liability for the year 1989 in the amount of ₱1,017,465.00, instead of its actual liability which is ₱1,108,683.00.

On April 7, 1991, petitioner filed its annual income tax return for its calendar year ended December 31, 1990 showing a net loss of ₱5,352,455.00.

Petitioner alleged that since he was not able to utilize its excess tax payments made in 1989 during the taxable year 1990 and 1991, it is entitled to the refund pursuant to Section 69, in relation to Section 230 of the National Internal Revenue Code.

On March 22, 1991, petitioner filed its written claim for refund of overpaid income tax for 1989 in the amount of ₱1,017,465.00.

To this date, respondent has not yet acted upon petitioner's claim for refund. Hence, this petition for review inorder to toll the running of the two year prescriptive period prescribed in Section 230 of the Tax Code.

Upon these facts, respondent raised as special and affirmative defenses lack of cause of action under Section 204 of the Tax Code, wherein the Commissioner of Internal Revenue may refund or credit taxes erroneously or illegally received. Furthermore, respondent assert that petitioner failed to establish that the tax liability in the amount of ₱1,017,465.00 was erroneously and illegally collected. Tax refund are construed strictly against the taxpayer as they are in the nature of tax exemption.

The sole issue raised in this petition is whether or not petitioner is entitled to the refund of overpaid income tax for the year 1989.

Petitioner presented the following documents in support of its claim:

(1) Exhs. "A" and "E" - 1989 and 1990 Annual Income Tax Returns.

(2) Exhs. "B", "B-1", "C", "C-1", "D" and "D-1" - Payments orders and Confirmation Receipts for the first three quarters of 1989.

(3) Exh. "I" - Claim for refund dated March 21, 1991, filed with the BIR on March 22, 1991.

Clearly, petitioner proved its proper entitlement to its claim for refund.

Records reveal that, in a resolution dated October 27, 1992, respondent was declared in default for failure to file his answer within 30 days, from April 30, 1992 to May 30, 1992. It was only on September 22, 1992, or a period of more than three months, when respondent filed his answer.

Again, in an Order dated August 9, 1993, respondent failed to file her comment on petitioner's formal offer of evidence within the time given by the Court.

On the hearing held on October 20, 1993, respondent failed to appear prompting petitioner to ask the Court to declare respondent's absence as a waiver on her part to present evidence.

It can be seen that there was no clear attempt on the part of respondent to contest and challenge the veracity of petitioner's evidence and neither did the former submit her own evidence. In summary, respondent slept on her rights in defending this case to the prejudice of the interest of the government of which she is primarily bound to protect, while petitioner showed to the full satisfaction of the Court its clear entitlement to the relief sought for.

Petitioners 1989 Corporate Income Tax filed on April 7, 1990 with Revenue District Office No. 31, clearly shows its refundable amount and marked as Exhibit "A" with the following computations:

Gross income:	
From operations (Sch.1)	₱ 45,058,366.00
Loss from sales or exchange of property other than capital assets (Sch.2)	(21,500.00)
Other sources	2,162,585.00
Total gross income	₱ 47,199,451.00
Less: deductions	44,031,785.00
Net income	₱ 3,167,666.00
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Amount of tax due	₱ 1,108,683.00
Deduct: quarterly tax payments	

Qtr.	O.R. No.	Date	Amount	
1st	B17570203	05-31-89	₱ 655,711.00[1]	
2nd	B17395984	08-31-89	678,423.00[2]	
3rd	B17493960	11-29-89	792,014.00[3]	2,126,148.00

Total amount of tax refundable	₱ 1,017,465.00
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Respondent may be considered as not questioning seriously petitioner's entitlement to its claim for refund. Moreso, when the evidence presented were not disputed by respondent, sufficiently established petitioner's right to the refund (*Sanitary Wares Mfg. vs. Commissioner of Internal Revenue, CTA Case No. 4150, August 21, 1992, Sun Life Insurance Office Ltd. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989.*)

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[1] Exh. "B".
[2] Exh. "C".
[3] Exh. [illegible]

WHEREFORE, in view of the foregoing circumstances, respondent is hereby ordered to REFUND or issue tax credit in favor of the petitioner the amount of ₱1,017,465.00 representing its overpaid income tax for the year 1989.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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