REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK, N.A.
PHILIPPINE BRANCHES,
Petitioner,

- versus -

C.T.A. CASE NO. 3378

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

8/30/91

D E C I S I O N

The action is about a claim for refund of an alleged overpaid income tax in the total amount of P568,989.85 representing the 5% withheld tax on rental income for the taxable years 1979 and 1980.

As it appears, petitioner, a resident foreign corporation engaged in business in the Philippines, leased office building as well as parking spaces located at Makati, Metro Manila. For the taxable years 1979 and 1980 petitioner's tenants withheld and paid to the respondent the corresponding taxes from the rentals due the petitioner pursuant to Section 1(c) of the Expanded Withholding Tax Regulations (BIR Revenue Regulations No. 13-78, as amended), summarized as follows:

1979

First quarter	P 60,690.97
Second quarter	69,897.08
Third quarter	69,160.89
Fourth quarter	70,160.56
	P270,160.56

1980

First quarter	P 78,370.22
Second quarter	69,049.37
Third quarter	79,139.60
Fourth quarter	72,270.10
	P298,829.29

It likewise appears that petitioner filed its corporate annual income tax return for the calendar year ended December 31, 1979 on April 15, 1980 (Exh. "E"); *that it showed a net loss of P74,854,916.00 and its available tax credits totalled P6,257,780.00 - even without including the amounts withheld on rental income under the Expanded Withholding Tax System - were unutilized or unapplied for the reason that the year's operation resulted in a loss* (Exhs. "E-1" & "E-2"); *that the tax withheld by the tenants of the petitioner against rentals paid during 1979 were not included in the tax credits, although such rental income (P7,796,811.00) was included in its income declared for said calendar year ended December 31, 1979* (Exhs. "E-3" & "E-4").

Again, for the year ended December 31, 1980, petitioner's corporate annual income tax return (Exh. "BC") *filed on April 15, 1981, showed net loss of P77,071,790.00 for income tax purposes; that its available tax credit (refundable) at the end of 1980 in the amount of P11,532,855.00* (Exhs. "BC-1" & "BC-2") *was unutilized or unapplied as tax credit; that said available tax credits do not include the amounts withheld by petitioner's tenants against their rental payments during 1980 but said income payment has been declared as part of the gross income and included in the annual income tax return* (Exh. "BC-3").

Petitioner filed a claim for refund of the amounts of P270,160.56 and P298,829.29 or a total of P568,989.85 on August 13, 1981 and the present petition for review on October 12, 1981.

The case presents no dispute as to the relatively simple material facts except for what respondent would have it impressed that the right to the recovery of the taxes withheld and paid on or before October 12, 1979 have already prescribed, invoking the statutory limitations mandated in Section 292 of the Tax Code, inter alia, *"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." The questioned withheld taxes on the rental income for the first and second quarters of 1979 subject of the claim fell due and were paid on or before April 15, 1979 and July 20, 1979 respectively, or more than two years prior to the filing of the instant petition on October 12, 1981. Hence barred.*

It may suffice to state however that the legal moorings of this apparent contentious quibble on the commencement of the two year prescriptive period contemplated in Section 292, ibid.*, have been set in place in a number of rulings. Thus held, "when a tax is paid in installments, 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. And, the `final payment´ is the last quarter payment at the end of the calendar or fiscal year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its business operations."* (**Commissioner of Internal Revenue v. Asia Australia Express Ltd.**, G.R. No. 85956, **April 10, 1989;** citing **Collector of Internal Revenue v. Prieto,** 2 SCRA 1007 and **Commissioner of Internal Revenue v.**

Palanca, Jr., 18 SCRA 496). *This lends settling eloquence to the focusing question raised in the case at bar.*

By such pronouncement there can be no occasion to further speculate upon when to base the running of the statutory period of limitations otherwise there would be a random quirk of a variance in the treatment of cases similarly situated. Brought to bear upon the circumstances obtaining, the petition for review was filed on October 12, 1981 well within the two year period counted from April 15, 1980, the date of the filing of the final adjustment return for the calendar year ended December 1979, pursuant to Section 87(b) of the Tax Code. Respondent's objection which would bar petitioner's claim for the first two quarter tax payments is of no moment.

All told, the case before Us hardly presents a gripping question. As thus shown the basis for the claim is not short of specific support in terms of tractable data openly laid and fully disclosed. The records make it clear that petitioner's income tax returns for the taxable years in question have shown losses and excess creditable income tax payments. Respondent points to no factual errors nor superfluities which need be abridged. The *requisite statements and certifications of income tax withheld and remitted upon which tacked the claimed refund could furnish the basis for a definite resolve but official action appears to have remained at idling speed, so to speak. Moreover, respondent poses no objection in having the case submitted for decision on the basis of the pleadings, records and the evidence by petitioner.*

It may suffice to state that "Since one who prays for judgment on the pleadings without offering proof as to the truth of all the material allegations, must be understood to have admitted the truth of all 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 v. Casas**, 10 Phil. 386; **Evangelista v. De la Rosa, et al.**, 76 Phil. 115), *respondent, as pointed out by petitioner, may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidence presented, which was not disputed by respondent, sufficiently establishes petitioner's right to the refund.* (**Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue**, CTA Case No. 3232, June 26, 1985.)"

We do not think any different conclusion ought be reached in the case at bar.

***WHEREFORE**, respondent is hereby ordered to grant the refund of the amount sought by the petitioner. No costs.*

SO ORDERED.

Quezon City, Metro Manila, August 30, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals