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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AQUATIC FARMS LTD.,
Petitioner,

- versus -

C.T.A CASE NO. 4518

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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6/8/94

DECISION

This is a claim for judicial refund of overpaid withholding tax payments at source in the amount of P166,456.⁸⁴ for the calendar years 1988 and 1989.

The record shows that petitioner **AQUATIC FARMS, LTD.**, is a resident foreign corporation duly organized under the laws of the State of Hawaii U.S.A..

On April 3, 1987, petitioner was granted authority by the Board of Investments under the provisions of Omnibus Investments Code (P.D. No. 1789) as amended by Batas Pambansa Bilang 391 to provide Technology Transfer and Consultancy services in the design, construction, operation and management of Hatcheries and grow-out facilities.

In 1988 and 1989, petitioner generated income of ₱3,334,529.^{08} in the form of consulting services from Hawaiian Hatcheries, Inc. (HHI) for which the latter withheld and remitted to the Bureau of Internal Revenue the 5% withholding tax broken down as follows:

Year	Withholding Agent	Consultancy Fees	5% Tax Withheld
1988	HHI	₱ 2,184,736.^{00}	₱ 109,236.^{80}
	JHI	400,000.^{00}	20,000.^{00}
1989	HHI	650,589.^{09}	32,529.^{44}
	JHI	99,200.^{00}	4,960.^{00}
Total		₱ 3,334,525.^{09}	₱ 166,456.^{24}

However, petitioner claimed that since it started its Philippine Operations, it sustained continued annual losses from 1987 up to December 1989. The fact is, petitioner temporarily stopped its operation in January 1990 because of continuous operating losses arising from the absence of contract job projects.

On April 17, 1988 petitioner filed its corporate income returns with the Bureau of Internal Revenue for the year ending December 31, 1988 (Exh. "C") and for the year 1989 on April 16, 1990 indicating a refundable amount for both years in the total amount of ₱166,456.^{04}.

On December 3, 1990 petitioner filed with respondent a claim for tax refund in the amount of ₱166,456.^{24} for the years 1988 and 1989 (exh. "G"), on the ground that it suffered losses in its operations for said years thereby it had no liability against which the creditable withholding taxes could be applied. Said claim was not acted upon by respondent, hence, this appeal was filed on December 7, 1990 in order to interrupt the running of the prescriptive period of two years

In respondent answer to the instant petition he admitted the fact of petitioner's filing its claim for refund but denies petitioner's allegation pertaining to its claim for being a mere opinion and erroneous conclusions of facts and law.

As special and affirmative defenses, respondent stated among others:

> a. That the petition does not state a cause of motion;
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> b. that petitioner has the burden of proving that it is entitled to tax refund, has not shown that it had complied with the mandatory provisions of Section 230 of the Tax Code;
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> c. Granting that the amount of tax sought to be refunded had actually been paid by petitioner the claim for refund has already prescribed with respect to the tax paid two(2) years prior to December 7, 1990, pursuant to Section 230 of the tax Code;
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> d. That the tax amount sought to be refunded is in the nature of a <u>creditable</u> income tax withheld at course. Since the certificate does not specify a <u>refundable</u> income tax withheld, the same is deemed to be lost when the petitioner does not have any income tax due against which the creditable income tax withheld at source could be applied;

> e. The claims for the refund being in the nature of an exemption from taxation, cannot be made to rest on vague implications and must be construed strictly against petitioner.

The question submitted for decision is whether or not petitioner is entitled to the refund of P166,456.[24] as alleged overpaid withholding income tax for the years 1988 and 1989.

The allegation of respondent in her answer that the Petitioner does not state a cause of action was a last ditch attempt on the part of respondent to mislead the court, contrary to respondent's claim. Respondent was furnished pertinent returns and other related papers both in the administrative levels and Judicial trials. We find the allegation of petitioner which respondent is denying for lack of knowledge or information to be within the competence of respondent to determine and the means of information concerning the same is readily accessible to him. Respondent's allegation of lack of knowledge or information cannot therefore be considered as a specific denial (**Standard Chartered Bank vs. Commissioner of Internal Revenue**, CTA CASE NO. 4272, March 17, 1992, see also the cases of **J.P. Juan and Sons, Inc., vs. Leanga Industries Inc.**, 28 SCRA 807; **Philippines Advertising Counselors Inc., vs. Revilla**, 62 SCRA 246.)

The allegation of respondent that "the claim for refund has already prescribed" is unavailing and the same has no basis in law as ruled by the Supreme Court in the Case of **ACCRA Investments Corporation vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals**, G.R. No. L-96322, December 20, 1991, 204 SCRA 957, pertinent portion of which is quoted belows:

> "**SEC. 70(b)** *Time of filing the income return*-The corporate quarterly declaration shall be filed within sixty(60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be."
>
> The petitioner corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The petitioner corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on 15, April 1982, it reported a net loss of P2,957,142.^{00}. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of the aforementioned codal provision which reads:
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> **SEC. 70(c)** - *Time of payment of the income tax*-The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Section 68 and 69 shall be paid at the time the

declaration or return is filed as prescribed by the Commissioner of Internal Revenue.

If we were to uphold the respondent appellate court in making the "date of payment" coincide with the "end of the taxable year," the petitioner corporation at the end of the 1981 taxable year was in no position then to determine whether it was liable or not for the payment of its 1981 income tax.

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It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund form the time it filed its final adjustment return is the fact that it was only that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 19982."

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The "term" in the case of domestic corporation like ACCRAIN refers to the final adjustments returns as mentioned in Section 69 of the Tax Code of 1986 as amended which partly reads:

"**SEC. 69.** *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:

(a) Pay the excess tax still due; or
(b) Be refunded the excess amount paid, as the case may be."

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd.** (G.R. No. 85956), we ruled that the two(2) year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund."

Following the doctrine laid down in the case of **Asia Australia Express Ltd., vs. Commissioner of Internal Revenue,** CTA Case No. 3695, September 29, 1988 (affirmed on Appeal by the Supreme Court in G.R. No. L 85956 April 10, 1989.) it was held that "the two(2) year prescriptive period within which to claim a refund commences to run at the earliest on the date of filing of the adjusted final tax return, petitioner's claim is timely. In the case at bar petitioner filed its final adjustment returns for its 1988 taxable year on April 17, 1989, hence petitioner had until April 15, 1991, within which to file its claim for refund, With respect to taxable year 1989 petitioner filed its formal adjustment returns on April 15, 1992, so petitioner has until April 15, 1994 within which to file its claim for refund.

As to respondent argument "that since the certificate does not specify a refundable income tax withheld, the same is deemed to be lost when the petitioner does not have any income tax due against which income tax withheld at source could be applied," is to our mind unavailing.

We are of the persuasion that it is no longer necessary for petitioner to do so. The records show that the petitioner submitted the following documentary evidences particularly exhs. "C-2", "E-2", "H", "I", "L", "L-1" and "M" wherein specific refundable tax withheld at source were clearly indicated.

Moreover, petitioner has submitted as evidence certificates of creditable income tax withheld at source (BIR Form 1743); Annual Return of Creditable Income tax withheld (Expanded withholding tax system (BIR Form 1743-B); and petitioner's Corporate Income tax return for the year in question. (Exhibits "H", "I", "K", "M", "J", "L", and exhs. "C", "E"), to support its claims for refund.

We agree with respondent that claim for refund being in the nature of tax exemption must be strictly construed against the claimant. However, where the law is clear and unambiguous the law must be taken as it is devoid of judicial addition or subtractions (**Acting Commissioner of Customs vs. Manila Electric Company,** 77 SCRA 469). In the case at bar we believe that petitioner has ably presented and defended its claim for refund with valid support leaving no room for any other interpretation but to grant the same.

It must also be stressed that after petitioner submitted its evidence which were all admitted by this court, respondent submitted her case on the basis of records and pleadings, without offering proof as to the truth of her own allegation in her answer. Respondent failed to present her evidence, oral or otherwise in support of his case. (**Warner-Lambert Philippine, Inc. vs. Commissioner of Internal Revenue,** CTA CASE No. 3925, April 21, 1992) Respondent, therefore, may be considered to have no serious objection or opposition to petitioner entitlement to the refund (**Dataprep [Phil], Inc, vs. Commissioner of Internal Revenue,** CTA CASE NO. 3600 March 20, 1984.

Well settled is the rule that one who prays for judgment on the pleadings without offering proof as to the truth of his pleading 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 Judgement on the allegation taken together with such of his own as admitted (**Bauerman vs. CASA,** 10 Phil. 386; **Evangelista vs. De La Rosa,** Et Al., 76 Phil. 115)

The fact that petitioner suffered losses from 1987 up to December 1989 remained uncontroverted and as it appears, Jamandie Hatcheries, Inc., withheld from the petitioner the amount of P166,456.^{24} and remitted to the Bureau of Internal Revenue. Hence, nothing is left for this court to do but to grant to petitioner the amount claimed. In fact, we believe that cases of this nature should have been already resolved in the administrative level.

WHEREFORE, Judgement is hereby rendered directing respondent Commissioner of Internal Revenue to refund to petitioner Aquatic Farms, Ltd. the amount of P166,456.^{24} representing overpaid withholding taxes.

SO ORDERED.

Quezon City Metro Manila, 8 June 1994.

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