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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNIBAKE INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 3987

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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7/21/89

D E C I S I O N

The case involves a claim for refund/tax credit of alleged erroneously paid corporate development tax for the fiscal year ended June 30, 1983.

As set forth, on October 17, 1983 (October 15 and 16 being Saturday and Sunday) petitioner filed its annual income tax return for the taxable year ended June 30, 1983 declaring a net taxable income of P142,391.00 and a total tax due thereon of P52,398.00 of which amount P39,837.00 as regular corporate income tax and P12,561.00 as corporate development tax. (Exh. A) After it credited the amounts of - 1) P31,962.00, representing previous year's quarterly credits, and 2) P20,720.00 representing quarterly income tax payments for the second and third quarters of its FY 1983, petitioner's 1983 annual income tax return showed a refundable amount of P284.00 which did not then include the erroneously paid corporate development tax of P12,561.00.

In a letter dated October 15, 1985 and received by the respondent on October 16, 1985, petitioner requested for the refund or tax credit of the amount of P12,561.00 representing the corporate development tax previously paid. The basis thereof was Batas Pambansa (BP) Blg. 399, promulgated May 19, 1983, repealing the corporate development tax under Section 24(e) of the National Internal Revenue Code and implemented by Revenue Memorandum Circular No. 1-84, dated January 9, 1984. The petition for review likewise filed on October 16, 1985.

The case presents the question of whether or not 1) this court has jurisdiction and 2) petitioner is covered by BP Blg. 399 as implemented.

First, the impression precipitately broached by the respondent is that the petition is time-barred, having been filed beyond the two-year period of limitation, "In any such case, no suit or proceeding shall be begun after the expiration of two years from date of payment of the tax or penalty regardless of any supervening cause that may arise after payment." *(Sec. 292 of the Tax Code)*. The tax sought to be refunded was paid sometime during the Fiscal Year ended June 30, 1983, and the claim for refund as well as the petition for review were filed on October 16, 1985, or a lapse of two years.

This apparent contentions quibble on the computation of the 2-year prescriptive period under Section 292, *ibid*, had been squarely resolved in earlier decisions of the Supreme Court which lends settling eloquence to the precise issue in the case at bar. Thus, in a case where the tax is payable in quarterly installments the final payment is the last quarter payment at the end of the tax year when it is finally ascertained that the taxpayer either made a profit or suffered losses.

(Commissioner of Internal Revenue v. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989). And the taxpayer has until the fourth month following the close of the fiscal period within which to file a final adjustment return of the preceding fiscal year *(Sec. 87, Tax Code)*, which may well be the reckoning date for the two-year prescriptive period.

In the instant case, petitioner's annual corporate income tax return for FY ended June 30, 1983, was submitted on October 16, 1983 and the administrative claim for refund filed with the Commissioenr of Internal Revenue and the petition for review instituted with this Court, both on October 16, 1985. This should comport within the 2-year statutory proscription tolled from October 16, 1983, hence seasonably filed.

The Court takes jurisdiction.

The <u>second</u> issue bears on the valid application of Batas Pambansa Blg. 399, otherwise entitled, "AN ACT ABOLISHING THE ADDITIONAL TEN PERCENT TAX ON TAXABLE NET INCOME OF CLOSELY-HELD CORPORATIONS, REPEALING FOR THE PURPOSE PARAGRAPH

(e) OF SECTION TWENTY-FOUR OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED" approved on May 19, 1983, and implemented by Revenue Memorandum Circular No. 1-84, dated January 9, 1984, providing:

> Accordingly, corporations otherwise qualifying as "closely-held corporations" whose taxable year ends after May 19, 1983, are no longer subject to the provisions of Section 24(e) of the Tax Code. Corporations otherwise qualifying as "closely-held corporations" whose fiscal year ends before May 19, 1983, are still liable to pay the corporate development tax. (Underscoring, petitioner's)

There is nothing ambiguous nor obscure in the language of Batas Pambansa Blg. 399, *supra*, as implemented, insofar as the same is brought to bear upon the circumstances obtaining. As it appears, petitioner corporation had been subjected to and accordingly paid the 10% development corporate tax since the FY ending June 30, 1979 as imposed under Section 24(e) of the Tax Code of 1977, viz.: "In addition to the tax imposed in subsection (a) of this Section, an additional tax in an amount equivalent to 10% of the same taxable net income shall be paid by a domestic or resident foreign corporations which qualifies as a closely-held corporation as define herein x x". The corporate development tax sought to be refunded/credited was paid during the FY ended June 30, 1983, which, pursuant to the repealing BP Blg. 399 as implemented was no longer leviable, thus, "Accordingly, corporations otherwise qualifying as 'closely-held corporation' whose taxable year ends after May 19, 1983, are no longer subject to the provisions of Section 24(e) of the Tax Code." This is a more than a statement of the obvious. We uphold petitioner.

WHEREFORE, respondent is hereby ordered to grant the petitioner the tax refund/or credit sought in the amount of P12,561.00 representing erroneously paid corporate development tax for the FY ended June 30, 1983. No costs.

SO ORDERED.

Quezon City, Metro Manila, July 31, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
CONSTANTE C. ROAQUIN
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 with 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