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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARMI CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 3949

9/21/88

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Suit filed by petitioner Armi Corporation for recovery of the amount of P257,214.99 representing alleged excess hotel occupancy tax payments during the period from the first quarter of 1983 to the second quarter of 1983 under Section 205-A of the applicable National Internal Revenue Code. It appears that the excess payments arose on account of the error of petitioner in paying the 10% hotel occupancy tax under Section 205-A of the applicable

Tax Code, not only on its gross receipts from the hotel business but also on its receipts representing lease rentals received by it in connection with its apartment leasing business.

After this Court has admitted petitioner's evidence in support of its claim for refund, and this case was set for hearing for respondent to present his evidence, respondent Commissioner of Internal Revenue, through counsel, simply manifested during the hearing that "he finds petitioner's Exhibit "G", apartel licenses issued by the Ministry of Tourism on January 3, 1983 and January 3, 1984, showing that petitioner was duly registered and licensed as an apartel and to operate as such, irrefutable; and with the presentation of such exhibit by petitioner, he (respondent) considers this case settled. Respondent further manifested that he has no objection to the Court granting petitioner's claim for refund". (Minutes of the session held by the Court, July 5, 1988; p. 106, CTA records.)

With this manifestation of respondent, the facts as alleged in the petition for review may now be considered as not disputed. As stated in the petition:

That the petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with business address at the Gilarmi Apartments, 52 Ayala Avenue, Makati, Metro Manila;

That the petitioner operates an apartment hotel duly licensed as an apartel by the Department of Tourism;

That under such license, the petitioner is engaged in the business of leasing out apartments under duly executed contracts of leases for periods of not less than 15 days under the pertinent provisions of the "Rules & Regulations governing the business operations of apartment-hotels (apartels), Tourist Inns, Pension Houses, Motor-Hotels (Motels), Lodging Houses and other similar establishments", more specifically under Chapter II, Section 2 thereof, signed by Secretary Jose D. Aspiras of the Ministry of Tourism, on May 10, 1977;

As such lessor of apartments, the petitioner has paid the fixed real estate dealer's tax prescribed in Section 192(3)(aa) of the National Internal Revenue Code;

The petitioner also appropriates the use of some of its apartments for the occupancy of transient guests, thereby enjoying in the hotel business under the authority of Chapt. II, Section 5 of the "Rules & Regulations governing the business operations of apartment hotels (apartel) tourist Inns, Pension Houses, Motor-hotels (motels), lodging houses and other similar establishments" signed by Secretary Jose D. Aspiras of the Ministry of Tourism, Republic of the Philippines, on May 10, 1977.

That for the first quarter of 1983 to the second quarter of 1983, the petitioner erroneously paid the hotel occupancy tax under Section 205-A of the Tax Code not only on its gross receipts from the hotel bus iess, but also on the lease rentals received by it in connection with its apartment leasing business; hence, it had over paid the room occupancy tax during the said period in the amount P257,214.99.

The room occupancy tax payments made by the petitioner are evidenced by petitioner's business tax returns, payment orders and Confirmation Receipt Nos. B-2376683 and B-2345991 dated April 30, 1983 and July 22nd, 1983, respectively.

By a letter dated April 18, 1985, counsel for petitioner filed a claim for refund of taxes paid under Section 205-A of the Tax Code with the Chief, Appellate Division of the Bureau of Internal Revenue in the amount of P257,214.99, which letter was duly received by the Chief, Appellate Division on even date.

Petitioner submitted Exhibit K, which is a statement showing the segregation of the receipts from the hotel business as defined under the Rules and Regulations of the then Ministry of Tourism from the lease rentals received during the same period by petitioner under the contracts of leases executed between the long staying guests and petitioner as lessor showing that it had overpaid the amount of P257,214.99. Thus:

	Per Quarterly Tax Returns		Rentals From Long Staying Guests	Tax Claim For Refund
	Apartment Rentals	Tax Paid		
1st Quarter 1983	P3,727,339.95	P410,007.40	P1,631,269.01	P163,126.90
2nd Quarter 1983	3,768,956.16	414,585.18	940,880.88	94,088.08
T o t a l :	P7,496,295.11	P824,592.58	P2,572,149.89	P257,214.99

As basis of the claim for refund, it appears that during the period under review, petitioner operated an apartment hotel commonly known as the Gilarmi Apartments, which is duly licensed as an "apartel" by the Department of Tourism. Under such license, petitioner engaged in the business of leasing out apartments under duly executed contracts of leases for periods of not less than fifteen (15) days in accordance with the pertinent provisions of the Rules & Regulations governing the business operations of apartment-hotels (apartels), tourist inns, pension houses, motor-hotels (motels), lodging houses and other similar establishments, more specifically defined and described under Chapter II, Section 2 thereof, signed by the then Minister Jose D. Aspiras of the Ministry of Tourism, on May 10, 1977. (Exhibits F to F-4.)

As such lessor of apartments, the records show that petitioner paid the real estate dealer's tax prescribed under Section 192(3)(aa) of the applicable National Internal Revenue Code. (Exhibits H to H-3.) Independent of such business, petitioner also appropriated the use of some of its apartments for the use and occupancy of transient guests, thu engaging in the hotel business under the authority of Chapter II, Section 2 of the Rules and Regulations governing the business operations of apartment hotels (apartel), tourist inns, pension houses, motor-hotels (motels), lodging houses and other similar establishments.

As stated above, for the first quarter of 1983 to the second quarter of 1983, petitioner paid the hotel occupancy tax under Section 205-A of the Tax Code not only on its gross receipts from its hotel business, but also on its rental receipts in connection with its apartment leasing business, on which it had already paid the graduated fixed business tax as a real estate dealer. The payments of the hotel occupancy tax made by petitioner during the period are evidenced by their respective confirmation receipts, payment orders and the percentage tax returns for the period under review. (Exhibits I, I-1, I-2, I-3, J, J-1, J-2 and J-3.) And as stated earlier, petitioner also submitted Exhibit K, which is a statement showing the segregation of the receipts from the hotel business as defined under the Rules & Regulations of the Ministry of Tourism from the lease rentals received during the same period by petitioner under the contracts of leases executed between the long staying guests and petitioner, as lessor, showing that it had overpaid the amount of P257,214.99.

In a ruling of then Commissioner Ruben Ancheta, marked as Exhibit C appearing on pp. 63-65 of the BIR records, it was held that -

> "As represented, the Armi Corporation is authorized by the Ministry of Tourism to engage in the business of renting apartments and in hotel operation pursuant to the rules & regulations governing the business, operations of apartment-hotels (Apartels), your client is separately

subject to the real estate dealer's graduated annual fixed tax imposed by Section 192(3)(aa) of the Tax Code on its apartment rentals and to the 10% (now 12%) hotels room occupancy tax on gross receipts from hotel operation, under Section 205-A of the Tax Code, as amended."

After petitioner had filed the instant petition for review, the Commissioner of Internal Revenue administratively made a decision dated June 30, 1987, Exhibit D appearing on pp. 103-104 of the BIR records, that:

> "In this connection, it is believed that the Rules & Regulations promulgated by the Department of Tourism may not be invoked to support the above claim on the ground that your client was registered and granted a license as an Apartel only on January 4, 1984. In other words, during the period covered by the claim for refund, your business operations were not yet subject to the said rules and regulations." (Underscoring supplied)

Petitioner's claim for refund was thus denied.

Petitioner submitted in evidence Exhibits G and G-1, which are the apartel licenses issued by the Ministry of Tourism on January 3, 1983 and January 3, 1984, respectively, in favor of the Armi Corporation, otherwise known as the "Gilarmi Apartments", to establish that petitioner was a duly licensed apartel during the period under review. Thus, under the decision of the Commissioner of Internal Revenue dated June 30, 1987, Exhibit D, all its business operations were subject to the rules and regulations promulgated by the Department of Tourism, which segregates the apartment leasing business from the business of operating a hotel, with the corresponding obligation to pay the taxes on its separate businesses in accordance with how the respective businesses are classified and taxed under the National Internal Revenue Code. And as defined in the ruling of then Commissioner Ruben Ancheta, Exhibit C, the rental receipts of petitioner in connection with its renting-out of apartments covered by contracts of leases for periods exceeding fifteen (15) days are subject to the real estate dealer's annual graduated fixed tax imposed under Section 192(3)(aa) of the Tax Code and its gross receipts from the hotel business from guests occupying its premises for a period of less than fifteen (15) days are subject to the hotel occupancy tax of 10% (now 12%) under the provisions of Section 205-A of the Tax Code, as amended. Respondent, through counsel, filed a Manifestation dated May 4, 1988 to the effect that after a "close examination of petitioner's documentary evidence presented in the above-entitled case and contained in its "Formal Offer of its Documentary Evidence" dated April 18, 1988, respondent finds the same irrefutable, and, therefore, interposes no objection to their admission as well as to the individual purpose for which they are being offered in evidence. (p. 72, CTA records.)

With this manifestation and admission by respondent, and as adequately established by the evidence, there seems to be no more dispute that petitioner was a holder of an apartel license duly issued by the then Ministry of Tourism during the period under review and that the rules and regulations of the Ministry of Tourism relating to the treatment of licensed Apartels are applicable to petitioner herein.

Accordingly, as a duly licensed apartel, petitioner was entitled to pay its tax separately on its hotel business under Section 205-A of the Tax Code, from its rental payments received from apartment lessees, which are subject to the payment of the annual graduated fixed tax imposed under Section 192(3)(aa) of the Tax Code. The next line of inquiry is whether petitioner really over-paid the hotel occupancy tax during the period under review.

It is undisputed from the evidence that petitioner overpaid the real estate dealer's tax prescribed under Section 192(3)(aa) of the Tax Code, erroneously paid the hotel occupancy tax under the same Tax Code over its gross receipts, not only from its receipts in operating a hotel, but also on account of the lease rentals it had received as a real estate or apartment lessor. The total tax payments of the petitioner for all the said receipts are evidenced by confirmation receipts, payments orders and percentage tax returns for he period under review submitted in evidence as Exhibits I, I-1, I-2, I-3, J, J-1, J-2 and J-3.

Mr. Cesar B. Enriquez, Treasurer of the Armi Corporation, also testified and submitted in evidence Exhibit K, which is a statement showing the segregation of the receipts from the lease rentals received by petitioner as a lessor, from the receipts subject to the hotel occupancy tax under Section 205-A of the Tax Code. If petitioner is duty bound to correctly pay the hotel occupancy tax only on its hotel business, petitioner is undoubtedly entitled to a refund of P257,214.99 during the period under review.

As one of his special and affirmative defenses, however, respondent alleges in his answer that petitioner allegedly paid the tax sought to be refunded on April 30, 1983 and June 22, 1983 while the petition for review was filed on June 28, 1985. Obviously, the 2-year period prescribed for filing the judicial action for refund has lapsed; hence, the right to claim the refund is barred by prescription. (Gibbs vs. Collector, G.R. No. L-13453, February 29, 1960, 107 Phil. 223.)

As averred in the petition for review, the room occupancy tax payments by petitioner are evidenced by petitioner's business tax returns, payment orders and Confirmation Receipt Nos. B-2376683 and B-2345991 dated April 30, 1983 and July 22, 1983, respectively. And the evidence presented by petitioner clearly and adequately show that the tax sought to be refunded for the first quarter of 1983 in the amount of P163,126.90 was paid on April 20, 1983 and the tax for the second quarter of 1983 in the sum of P94,088.89 was paid on July 22, 1983. (Exhibits I, I-1, I-2, I-3, J, J-1, J-2 and J-3.) The petition for review for refund or tax credit of the aforementioned tax payments was filed with this Court on June 28, 1985. Clearly, therefore, the two-year period prescribed for filing the judicial suit for refund/credit of the amount of P163,126.90 paid on April 20, 1983 has lapsed pursuant to Section 292 (now Section 243) of the National Internal Revenue Code.

The two-year period is mandatory. It is not necessary for the taxpayer to wait for the decision of the Commissioner of Internal Revenue if he believes that such decision is not forthcoming before expiration of the two-year period. In fact, he should not wait for such decision because Section 292 (now Section 243) of the Revenue Code requires that court action for recovery of an internal revenue tax erroneously or illegally paid must be instituted within two years after payment. (Collector of Internal Revenue vs. Sweeney, 106 Phil. 59; Gibbs vs. Collector of Internal Revenue, 107 Phil. 232; Collector of Internal Revenue vs. Convention of Phil. Baptist Churches, L-11807, Jan. 28, 1981, 1 SCRA 114; Commissioner of Internal Revenue vs. Victorias Milling, L-24108; Jan. 3, 1968, 22 SCR 12.) Accordingly, only the amount of P94,088.08 paid on July 22, 1983 is refundable.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit in favor of petitioner Armi Corporation of the amount of P94,088.08 representing excess occupancy tax payment made under Section 205-A of the applicable

National Internal Revenue Code.

SO ORDERED.

Quezon City, Metro Manila, September 21, 1988.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals