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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ATENEO DE MANILA UNIVERSITY,
Petitioner,

- versus - C.T.A. CASE NO. 3213

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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1/28/89

D E C I S I O N

This case is submitted for decision on the question of whether or not petitioner Ateneo de Manila University is entitled to its claim for refund of the amounts of P6,760.94 and P67,123.23 representing alleged overpaid income tax for the fiscal year ended March 31, 1979 and March 31, 1980, respectively, after the parties have agreed that this Court has no jurisdiction to rule on the deficiency assessment of respondent Commissioner of Internal Revenue for the payment of deficiency income and percentage taxes by petitioner in the respective amount of P834,355.35 and P182,500.73, interposed as special and affirmative defense, among others, by respondent in his amended answer, because there is yet no decision of the Commissioner appealable to this Court.

After petitioner has offered its evidence in support of its entitlement to its claim for refund, and the same was admitted by the Court, this case was set for hearing for respondent to present his evidence. Respondent's counsel however failed to appear in the scheduled hearing for the reception of his evidence in support of his case. The Court therefore ordered this case submitted for decision on the basis of the pleadings and the records, together with the evidence presented by petitioner, which was not controverted or disputed by respondent. (pp. 189 & 190, CTA records.)

The facts as alleged in the pleadings and borne out by the evidence may thus be considered as not disputed. As narrated by petitioner:

Petitioner is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with address at Loyola Heights, Quezon City. It is a religious educational institution.

1. For fiscal year ended 31 March 1979,

petitioner filed its income tax return within the time prescribed by law and an amended income tax return on 25 October 1979 declaring therein the following pertinent data:

Gross Income	P 8,453,968.00
Total deductions	8,300,582.00
Amount subject to tax	P 153,386.00
Income tax due thereon	P 15,339.00
Income tax withheld at source	22,099.94
Amount refundable	P (6,760.94)

2. For fiscal year ended 31 March 1980, petitioner filed its income tax return on 15 July 1980 and an amended income tax return on 22 October 1980 declaring therein the following pertinent data:

Gross Income		P 8,595,862.00
Total deductions		10,353,727.00
Amount subject to tax		P none
Income tax due thereon		none
Income tax withheld		
Withheld in 1978-79	P 6,760.94	
Withheld in 1979-80	67,123.23	73,884.17
Amount refundable		P 73,884.17

3. That on 27 November 1980, petitioner filed a claim for refund with respondent for the sum of Seventy Three Thousand Eight Hundred Eighty Four Pesos and 17/100 (P73,884.17) which represents

the total amount refundable for the following periods:

Fiscal year ended 31 March 1979		₱ 6,760.94
Fiscal year ended 31 March 1980		67,123.23
	T o t a l	₱ 73,884.17

4. That respondent did not act on petitioner's claim for refund thus, this instant case for the refund of taxes paid was filed on 12 March 1981, inasmuch as the two-year period provided in Section 292 [now Sec. 203] of the National Internal Revenue Code of 1977, as amended, was about to expire.

As special and affirmative defenses, respondent in his answer alleges that:

The tax in question was collected in accordance with law;

In an action for refund, the burden of proof is upon the taxpayer to establish its right to refund and failure to sustain this burden is fatal to the action for refund;

It is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977;

Assuming but not admitting that petitioner is entitled to the tax refund, the right to claim the refund has prescribed with respect to the period prior to March 12, 1979.

Is petitioner entitled to its claim for refund for income tax withheld in excess of its income tax liability for the fiscal years ended March 31, 1979 and March 31, 1980?

On the special and affirmative defense of respondent that it is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977, the tax code applicable to this case, regarding the filing of a claim for refund with the Commissioner of Internal Revenue and commencement of the suit for refund with this Court within two years from date of payment of the tax, the rule is that a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. *(**Gibbs vs. Commissioner of Internal Revenue**, L-17406, November 20, 1965, 15 SCRA 318.)* And in this case where the tax is payable by the taxpayer in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertainable that the taxpayer either made profits or suffered losses in the operations. *(Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989.)*

In the instant case, petitioner had until July 15, 1979 and July 15, 1980, respectively, the fourth month following the close of its fiscal year, within which to file its adjustment return and make its final payment. Since the claim for refund was filed with the Commissioner of Internal Revenue on November 27, 1980, it is thus clear that it was well within the two-year period provided for in Section 292 of the applicable National Internal Revenue Code. The same is true with respect to the filing of the petition for review with this Court on March 12, 1981.

Under the first cause of action, petitioner is claiming a refund of P6,760.94 for the fiscal year ended March 31, 1979, which arose:

Income tax due	P15,339.00
Income tax withheld	22,099.94
Income tax refundable	P 6,760.94

The components of the "income tax withheld" are:

1.	Claim for refund for 1976	P 8,864.08
2.	Merill Lynch International, Inc. (Exhs. A-9, A-10, A-11)	8,807.09
3.	Metrobank (Exhs. A-3, A-4, A-5, A-6)	765.17
4.	Interbank (Exh. A-12)	42.50
5.	Population Commission (Exh. A-7)	2,041.23
6.	Planning Resources (Exh. A-8)	1,575.00
7.	Bookmark (Exh. A-13)	4.87
	Total Income Taxes Withheld	P22,099.94

Petitioner admits, and rightly as can be seen above under No. 1, that it "erroneously included a 'claim for refund for 1976' in its 'income taxes withheld' portion of its income tax return for the fiscal year ended 31 March 1979. Very clearly, the same has already prescribed, because a claim for refund must be demanded from the Commissioner within two years from payment thereof. Consequently, the same is not a proper subject of refund nor a credit to an existing tax liability. Based on the foregoing, petitioner is withdrawing the amount of P8,804.08 from its claim for refund." (p. 216, CTA records)

With this admission of petitioner that its right to claim the refund of the amount of

P8,864.08 for 1976 has already prescribed, and therefore withdrawing this amount from its claim, the total income tax withheld would only be P13,235.86 instead of P22,099.94. With an income tax due of P15,339.00 for fiscal year ended March 31, 1979, there is still an unpaid amount of P2,103.14.

Under the second cause of action, petitioner is claiming a refund of P67,123.23 representing total income tax withheld during the fiscal year ended March 31, 1980. It appears that petitioner suffered a net loss in this year, and therefpre all income tax withheld are proper subject of a claim for refund and/or tax credit. An examinaTion of the different components of the income tax withheld reveals that they consist of the following:

1.	Merill Lynch (Exhs. B-4 to B-13)	P 3,289.38
2.	Industrial Finance Corp. (Exh. 14)	18,000.00
3.	Metrobank (Exhs. B15, B16, B17, B18)	940.16
4.	Batangas Bay Carrier, Inc. (Exh. B-20)	6,125.00
5.	Filinvest Credit Corp. (Exh. B-19, B-21, B-22, B-24)	3,900.00
6.	Far East Bank & Trust Co. (Exh. B-23)	1,200.00
7.	BA Finance (Exh. B-44, B-45, B-46)	3,144.26
8.	Herdis Group, Inc. (Exh. B-27)	30.00
9.	NCR Corporation (Exh. B-30, B-31)	80.00
10.	Edna A. Penaloza (Exh. B-32)	900.00
11.	Equitable Banking Corp. (Exhs. B-25, B-26)	207.00

12.	Ministry of Agrarian Reform (Exh. B-33)	2,662.15
13.	Planning Resources, Inc. (Exh. 34)	1,125.00
14.	Interbank (Exhs. B-35, B-36)	42.50
15.	Empire Insurance Co. (Exh. B-37)	156.00
16.	Rizal Comm'l. Banking Corp. (Exh. B-38)	30.00
17.	Bacnotan (Exh. B-39)	165.00
18.	Johnson & Johnson (Exh. B-40)	2.70
19.	Capitol Industrial Construction (Exh. B-41)	245.00
20.	Central Cement Corp. (Exh. B-42)	15.45
21.	Pharma Industries, Inc. (Exh. B-42)	550.00
22.	Industrial Insurance Co., Inc. (Exh. B-47)	6.00
23.	National Irrigation Administration (Exh. B-48)	24,283.93
24.	Bookmark, Inc. (Exhs. B-28, B-29)	23.70
	Total Income taxes withheld	P67,123.23

The above items represent essentially income tax withheld from interest income from saving accounts, bonds, time deposits, etc., and creditable income tax from certain income payments, like lease of classrooms, auditoriums, seminar rooms and other facilities, professional fees, guidance counselling, psychological testing and royalties. Proof of withholding is established by copies of statements duly issued by the various payors to petitioner as evidenced by Exhibits B-4 to B-48, inclusive. And from the schedule of tax receivable for fiscal year ending March 31, 1980 (Exhibit B-2), which is attached to petitioner's income tax return (Exhibit B), it appears that the aggregate interest income on bank deposits and certain income payments to petitioner were included in the total gross income. The record makes it clear that petitioner's income tax return for the taxable year in question has shown losses. Respondent has not issued any deficiency assessment nor disputed the correctness thereof. ***(Dataprep [Phils.], Inc. vs. Commissioner of Internal Revenue,*** *CTA Case No. 3600, March 30, 1984.)*

No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was presented by respondent. And this case having been submitted for decision on the pleadings and on the face of the unrebutted evidence of petitioner showing that it is entitled to the refund of P67,123.23 under the second cause of action, respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. The circumstances obtaining in the case at bar compels us therefore to sustain the tenability of petitioner's right to the refund of P67,123.23 based on the evidence and pleadings.

We note, however, as shown above, that petitioner has still a deficiency income tax of P2,103.14 under its first cause of action for the fiscal year ended March 31, 1979. Deducting this amount of P2,103.14 from the refundable sum of P67,123.23, petitioner Ateneo De Manila University is entitled to a refund of P65,020.09. The amount refundable to the taxpayer may be applied by the Commissioner of Internal Revenue to the former's pending tax liability. *(See **Tax Service of the Philippines vs. Commissioner of Internal Revenue**, CTA Case No. 2326, Sept. 30, 1972, certiorari denied in L-36032, Jan. 8, 1973.)*

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund and/or tax credit to petitioner Ateneo de Manila University in the amount of P65,020.09 representing overpaid income tax for the fiscal year ended March 31, 1980. No costs.

SO ORDERED.

Quezon City, Metro Manila, July 28, 1989.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on leave)
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