REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WHOLESALE COMMODITY AND EXCHANGE, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3984

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

D E C I S I O N

This is a case involving a claim for refund or credit of the amount of P35,927 corporate development tax paid by petitioner. The issue, after the submission by the parties of their respective memoranda, has simmered down to whether or not petitioner is covered by Batas Pambansa Blg. 399 which abolished the 10% corporate development tax under Section 24(e) of the 1977 Tax Code.

Petitioner, a domestic corporation, filed on October 17, 1983 its annual corporate income tax return for its fiscal year ended June 30, 1983, showing a net income of P407,244 and a total tax due thereon of P168,462, distributed into P132,535 as regular corporate income tax and P35,927 as corporate development tax.

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On May 19, 1983, Batas Pambansa Blg. 399 was promulgated repealing the provisions of Section 24(e) of the 1977 Tax Code on the corporate development tax. Before its repeal, the provision of Section 24(e) states:

> Section 24(e) Corporate Development Tax - 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 a resident foreign corporation which qualifies as a closely-held corporation as defined herein: The term "closely-held corporation" means any corporation, (a) at least 50% in value of the outstanding stock or (b) at least 50% of the total combined voting power of all classes of stock entitled to vote, at any time during the taxable year, is owned directly or indirectly by or for not more than five persons, natural or judicial. xxx

The repeal of Section 24(e) was clarified by Revenue Memorandum Circular (RMC) No. 1-84:

> [Batas Pambansa Blg. 399]
>
> AN ACT ABOLISHING THE ADDITIONAL TEN PERCENT TAX ON THE 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.
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> Be it enacted by the Batasang Pambansa in session assembled:

SECTION 1. Paragraph (e) of Section twenty-four of the National Internal Revenue Code, as amended, is hereby repealed.

SECTION 2. This act will take effect upon its approval.

Approved.

Sgd. QUERUBE C. MAKALINTAL
Speaker

This Act was passed by the Batasang Pambansa on February 21, 1983.

Sgd. ANTONIO M. DE GUZMAN
Secretary-General

Approved:

May 19, 1983

Sgd. FERDINAND E. MARCOS
President of the Philippines

Features of the Batas Pambansa

Batas Pambansa Blg. 399 repealed the provisions of paragraph (e) of Section 24 of the National Internal Revenue Code which impose additional 10% tax on taxable net income of closely-held corporations.

Applicability and Effectivity

The abolition of the additional 10% tax took effect on May 19, 1983, the date of approval of Batas Pambansa Blg. 399. Since the income tax is an annual tax based on a calendar or a fiscal year depending on the taxpayer's annual accounting period, the repeal of the corporate development tax shall be

> interpreted to be effective for taxable years beginning after May 19, 1983. 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."

Petitioner alleges that it has been paying the 10% corporate development tax, under Section 24(e) of the 1977 Tax Code as early as the fiscal year ending June 30, 1979 when it submitted its first final adjustment return. The erroneous payment of the corporate development tax in the amount of P35,927 for the fiscal year ending June 30, 1983 resulted from petitioner's wrong assumption that the said tax was still existing. B.P. Blg. 399 took effect on May 19, 1983, and based on RMC 1-84, closely-held corporations whose taxable year ends after May 19, 1983 are no longer subject to the 10% corporate development tax. Since petitioner's taxable year ends on June 30, 1983 which is after May 19, 1983, it is not liable to pay the corporate development tax. The payment made was therefore a mistake and should be recovered.

Respondent, upon the other hand, does not dispute the foregoing effects of B.P. Blg. 399 but stresses that the law, as explained by RMC 1-84, applies exclusively to "closely-held corporations" as defined by Section 24(e) of the Tax Code. It appears that petitioner merely presumed itself as a "closely-held corporation" without having submitted positive and concrete evidence to substantiate the same. Without such evidence, petitioner cannot justify its assertion of coverage under B.P. Blg. 399. For the respondent, it was absolutely necessary for petitioner to present in evidence such documents as the duly registered Articles of Incorporation, corporate books and other pertinent records to prove that it is a "closely-held corporation". The determinative question then is whether without this specific kind of evidence having been presented to butress the claim of petitioner, petitioner's cause would collapse for having no leg to stand on.

As it is, petitioner has alleged facts which is proved by a preponderance of evidence. Petitioner's allegation that as early as fiscal year ended June 30, 1979, when it submitted its first final adjustment return, it has been paying the 10% corporate development tax is not contested by respondent. Further, the evidence for the petitioner shows that it filed a corporate tax return for the fiscal year ended June 30, 1983 and paid the 10% corporate development tax in the amount of P35,927 out of the total tax due. Respondent failed to realize the implication as to this fact of payment by petitioner of the 10% corporate development tax. Instead, he throws the burden on petitioner to present such kind of evidence as the articles of incorporation, corporate books, etc., as allegedly indispensable proof of being a "closely-held corporation" under the law.

We surmise that respondent cannot simply deny the allegations of petitioner and controvert the allegations made by him. The purpose of requiring the respondent to make a specific denial is to make him disclose matters which he sincerely intends to disprove together with the matters which he relies upon to support the denial *(Moran, Comments on the Rules of Court, Vol. I, 1979 ed., p. 330)*. Here, the burden of proof has shifted to respondent to establish his case after petitioner has shown facts supporting his cause *(Section 1, Rule 131, Rules of Court; Moran, supra, Vol. 6, p.2)*. It was against

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the interest of petitioner to pay the 10% development tax and, logically, would not have paid the same if it did not feel *bona fide* that it was under any obligation to do so. The tests provided for in Section 24(e) to be applied in determining whether a business entity is actually a "closely-held corporation" are relevant only for the purpose of identifying those who are liable to pay the corporate development tax. For that matter, the documents enumerated by respondent as necessary evidence for the purpose of justifying petitioner's claim for refund or credit are dwarfed in importance and virtually dispensed with by the payment of the 10% corporate development tax by petitioner. Payment of the 10% corporate development tax here means acceptance of the fact by the petitioner that it is a closely-held corporation within reach of the corresponding law, Section 24(e), NIRC, and the concomitant obligation of paying the tax imposed. Thus, We say that this act of compliance with the duty is precisely the evidence which tends to prove that petitioner is indeed a closely-held corporation.

The petitioner had complied with what it believed *bona fide* to be its duty by computing the tax it is liable for and paying the same. This act of acceptance and compliance with duty is sufficient enough to overwhelm the need, as alleged by respondent, to present evidence to the effect that petitioner is actually a "closely-held corporation" as defined by Section 24(e). Considering that internal revenue taxes (e.g. income tax) impose the burden on the taxpayer of supplying by the return, the information upon which an assessment would be based, thus the willingness on the part of the taxpayer to be bound by the exaction no matter the inconvenience which impresses devotion to duty, it would now be improper for respondent to deny the qualification of petitioner as a "closely-held corporation". Respondent denies facts to suit his convenience, yet would accept benefits from the acts arising from the erroneous belief of petitioner if not for this claim for refund or credit. The pronouncement in a United States case (***Newport v. Ringo,*** *37 Ky. 635,636; 10 S.W. 2)* cited by our Supreme Court in ***Gonzalo Puyat & Sons, Inc. v. City of Manila.*** *(L-17447, April 30, 1963, 7 SCRA 970, 974-975)*, is analogously related to this controversy.

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> "It is too well settled in this state to need the citation of authority that if money be paid through a clear mistake of law or fact, essentially affecting the rights of the parties, and which in law or conscience was not payable, and should not be retained by the party receiving it, it may be recovered. Both law and sound morality so dictate. Especially should this be the rule as to illegal taxation. The taxpayer has no voice in the imposition of the burden. He has the right to presume that the taxing power has been lawfully exercised. He should not be required to know more than those in authority over him, nor should he suffer loss by complying with what he *bona fide* believes to be his duty as a good citizen. Upon the contrary, he should be promoted to its ready performance by refunding to him any legal exaction paid by him in ignorance of its illegality; and, certainly, in such a case, if be subject to penalty for nonpayment, his compliance under belief of its legality, and without awaiting a resort to judicial proceedings should not be regarded in law as so far voluntary as to affect his right of recovery." (Underscoring supplied)

Considered from another view, the merit of respondent's argument on the need for the aforementioned documents as evidence is blotted out if the principle of *solutio indebiti* is placed into the picture. For, if We take respondent's suggestion that petitioner is not a "closely-held corporation" without said specific evidence, it would still follow that petitioner should not have been assessed the 10% corporate development tax in the first place, and therefore, the payment that has been made by the latter was a mistake and should be recovered.

> "If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises". *(Art. 2154, NCC)*

WHEREFORE, the instant petition is granted. The amount of P35,927 paid for the corporate development tax should be refunded or credited to petitioner.

No pronouncement as to costs.

SO ORDERED.

Quezon City, May 7, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

(on leave)
ALEX Z. REYES
Associate Judge

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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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals