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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PNOC SHIPPING AND TRANSPORT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4349

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/30/89

x - - - - - - - - - - - - - - - -x

D E C I S I O N

Respondent Commissioner of Internal Revenue, in a motion filed on June 28, 1989, seeks the dismissal of the petition for review in the above-entitled case on the ground that the appeal is already time barred. Consequently, this Court has no jurisdiction to take cognizance thereof as contemplated in Section 230 of the National Internal Revenue Code, as amended.

We agree with respondent.

The pertinent facts as alleged in the petition for review disclose that:

Petitioner PNOC Shipping and Transport Corporation is a government-owned and controlled corporation duly organized and existing in accordance with Philippine laws with principal offices at 7901 Makati Avenue, Makati, Metro Manila; in 1982, petitioner purchased a vessel using the proceeds of a foreign loan from the International Bank of Japan; in 1985, petitioner paid two regular amortizations which were deposited with the Central Bank of the Philippines; on April 15, 1986, petitioner filed its corporate income tax return for 1985 and paid the amount of P17,245,131.00 under BIR Payment Order No. B7731259 dated April 15, 1986 and CB Confirmation Receipt No. B378167; on April 14, 1988, petitioner filed a claim for refund or tax credit in the amount of P947,088.00 as alleged overpayment of income tax for the year 1985; on February 20, 1989, petitioner received respondent's decision denying petitioner's claim for refund/tax credit of the aforesaid sum of P947,088.00; and on March 22, 1989, petitioner appealed to this Court.

At this juncture, it may be mentioned that instead of an answer, respondent filed the instant motion wherein he interposed prescription of the right of petitioner to claim for the refund/tax credit of the income tax alleged to have been excessively paid, invoking Section 230 (formerly Sec. 306) of the National Internal Revenue Code, as amended. Said law pertinently provides:

> Sec. 230. Recovery of Tax Erroneously or Illegally Collected.- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x (Underscoring ours.)

The foregoing provision requires that before any action may be instituted in court for recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any sum alleged to have been excessive or in any manner wrongfully collected, the taxpayer must first file a claim for refund thereof with the Commissioner of Internal Revenue within two years from date of payment and the suit for refund must be filed in court within the same period. Thus, in the case of Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil. 232, it has been held:

> "x x x it is clear that Section 306 (now Section 230) of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, <u>he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code</u>, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125. <u>If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute</u>. (U.S. vs. Michael, 282 U.S. 656, 51 S.

> Ct. 284; P.J. Kiener & Co., Ltd. vs. David, 92 Phil. 945, 49 Off. Gaz. [5] 1852; College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil. 912; 54 Off. Gaz. [29] 7055. (Underscoring ours.)

In the case at bar, it appears that the tax sought to be refunded or credited was paid on April 15, 1986. While the claim for refund was filed with the Commissioner on April 14, 1988, within two years from the date of payment, the judicial action for recovery was instituted with this Court only on March 22, 1989. It is thus clear beyond doubt that court action for recovery of the alleged excess payment of income tax corresponding to the taxable year 1985 is already time barred inasmuch as Section 230 requires that judicial action must be instituted within two years from date of payment. In other words, the taxpayer must file a written claim for refund with the Commissioner of Internal Revenue within two years after payment of an internal revenue tax alleged to have been erroneously or illegally paid and the action for recovery must be instituted in court also within two years after payment pursuant to Section 230 of the National Internal Revenue Code.

WHEREFORE, the petition for review filed in this case is hereby dismissed for lack of jurisdiction at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, August 30, 1989.

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