REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ERIC AGUILAR,
as represented by Virgilio A. Abogado,
Petitioner,

- versus -

C.T.A. CASE NO. 5836

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 30 1999

x - x

RESOLUTION

Before Us for resolution is a Motion to Dismiss filed by the herein Respondent praying for the dismissal of the above captioned case on the ground of lack of cause of action. Respondent's main theory lies on the alleged failure of the Petitioner to comply with the 1993 Tax Code which mandates that a written claim for refund must be filed first with the Commissioner of Internal Revenue prior to its elevation to the Court of Tax Appeals via Petition for Review.

Petitioner is an employee of Intel Manufacturing Philippines, Inc. (Intel) with business address at 1321 Apolinario Street, Bangkal Makati.

As alleged in the petition, Petitioner earned compensation income for the period January to December 1996. During the period covered in this case, Petitioner was assigned to a foreign country where he remained an employee of Intel, thus, earning compensation income partially paid in Philippine Pesos and in US dollars. Accordingly, taxes due on said compensation income of Petitioner were allegedly withheld and remitted to the Bureau of Internal Revenue by Intel. However, upon computation of the annual tax due on the gross compensation income, Petitioner found out that the taxes allegedly withheld and paid by Intel exceed the tax due in the amount of ₱55,832.65. Petitioner alleged that the said amount of tax refund/credit has not yet been used against any tax liability. Fearing that his claim for refund would be barred by the two-year period of prescription, Petitioner filed the instant Petition for Review with this Court on April 15, 1999.

Unable to accept Petitioner's assertions, Respondent filed a Motion to Dismiss on May 11, 1999 where he ascribes to Us Petitioner's failure to state a cause of action.

Respondent's protestation hinges mainly on the failure of the Petitioner to file a written claim for refund with the Commissioner of Internal Revenue before elevating his grievance to this Court. This, according to the Respondent, is a condition *sine qua non* explicitly and categorically mandated under Section 230 of the 1996 Tax Code which provides thus:

x x x x x x x x x

> "No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax hereafter alleged to have been erroneously or illegally assessed or 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; x x x." (*Emphasis ours*)

Thus, the petition wanting in material respect, Respondent is of the view that the instant Petition for Review must be outrightly dismissed.

The sole issue that confronts this Court is whether or not the filing by Petitioner of a tax credit or refund with the Commissioner of Internal Revenue is a condition precedent to the prosecution of a suit before this Court..

16

We rule in the affirmative.

It is already well-settled that a claim for refund duly filed with the Commissioner of Internal Revenue is a condition precedent to the prosecution of a suit before this Court and failure to comply with this condition subjects the petition for dismissal for lack of cause of action **(Republic vs. Limaco and De Guzman Commercial Co., 5 SCRA 990)**. This is a positive requirement of Section 230 of the 1996 Tax Code. To this issue, this Court deems it necessary to cite the *ratio legis* which was aptly enunciated by the Supreme Court in the case of **P.J. Kiener Co., Ltd. Vs. David, 92 Phils. 945** when the Supreme Court ruled, thus:

> "To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued." (Underscoring supplied)

At its inception, this case would have been outrightly dismissed by reason of Petitioner's failure to comply with certain important preconditions. Charge this to the precipitate filing of the Petition for Review filed on the very date the claim is about to prescribe, "assuming the Petitioner filed its final adjustment return on April 15, 1997". A sedulous review of Petitioner's initiatory pleading would readily reveal that it failed to comply with Section 2, Rule 5 of the Rules of the Court of Tax Appeals which provides, thus:

"x x x   x x x   x x x

17

> **Section 2.** The Petition for Review shall contain allegations showing jurisdiction in the Court, a concise statement of the ultimate facts and a summary statement of the issues involved in this case, as well as the reasons relied upon for the reversal of the respondent's decision. A copy of the decision appealed from shall be attached to the Petition for Review. (Emphasis Ours)
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> x x x x x x x x x"

Apparently, there are no allegations whatsoever in petitioner's Petition for Review "*showing jurisdiction in the Court*". Petitioner should have alleged the fact that a claim for refund was filed with the Commissioner of Internal Revenue and that the latter failed to act upon the said claim. Unfortunately, even the date of the filing of the Final Adjustment Return was omitted, inadvertently or otherwise.

Prescinding from the above, there is no way by which this Court would be able to decipher with accuracy whether or not the Petitioner had already exhausted administrative remedies thereby making the case fall within the province of this Court. In view of this, We strongly reject Petitioner's theory that allegations of these matters in its petition would be a mere superfluity since absence of which would render the petition dismissible on the ground of lack of jurisdiction. It must be borne in mind that the question as to whether or not a Court has jurisdiction over the subject matter of the case is determined from the allegations stated in the complaint. Parallel to this is the fact, that a Court, in resolving a Motion to Dismiss, cannot go beyond the four corners of the complaint, thus, if the petition fails to allege material jurisdictional preconditions, this Court can dismiss a case *ex mero motu* (**Commissioner of Internal Revenue vs. Villa, 22 SCRA 3**).

18

WHEREFORE, in view of all the foregoing, Respondent's Motion to Dismiss is **GRANTED.** Accordingly the Petition for Review is hereby **DISMISSED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge