REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THERESE YUVIENGCO,
as represented by Virgilio A. Abogado,
Petitioner,

- versus -

C.T.A. CASE NO. 5867

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 27 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 jurisdiction. 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 she 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

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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 ₱23,128.16. Petitioner alleged that the said amount of tax refund/credit has not yet been used against any tax liability. Fearing that her 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 13, 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 her 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.

Upon the other hand, in an Opposition filed on June 8, 1999, Petitioner theorizes that an application for tax credit is not needed insofar as refund of withholding taxes on

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purely compensation income is concerned based on the following provisions of law and regulations; *viz*:

Revenue Regulations No. 2-98

Section 2.58.3. Claim for tax credit or refund-

x x x

(b) *Excess Credits*. - An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/taxable year shall **automatically be allowed** as a credit against his income tax due for the taxable quarter/year immediately succeeding the taxable quarter/year in which the aforesaid excess credit arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which he has not opted for a cash refund or tax credit certificate.

x x x

Section 204(c) of the Tax Reform Act of 1997, it is provided that,

> "Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty. Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." (emphasis supplied).

Relying heavily on the above provisions, Petitioner is of the conclusion that by indicating in the income tax return the overpaid amount of withholding tax, this fact by itself, already constitutes "the fact of filing a claim for credit" as contemplated by the above cited provisions of law. In other words, Petitioner's principal submission is to the

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effect that since a mere indication in the return of the fact of overpayment already constitutes the fact of filing a claim for tax credit, there is no longer a necessity to file a letter claim for refund with the Commissioner of Internal Revenue seeking for a refund of overpaid taxes. This, according to the Petitioner, is the command of Revenue Regulations No. 12-94 which considers the filing of an income tax return with an indication of overpayment as an automatic claim for credit. Buttressing her stance, Petitioner invokes the provisions of Section 204 (c) of the Tax Reform Act of 1997 which, according to her must be given retroactive effect, it being favorable to the taxpayer.

In a Reply filed on June 28, 1999, Respondent traverses Petitioner's contentions and maintains the view that the latter cannot elevate a suit to this Court without first filing a letter claim for refund with the Commissioner of Internal Revenue. Likewise, Respondent contends that Revenue Regulations No. 12-94 invoked by the Petitioner does not provide for an automatic granting of refund. Instead, what the said regulation provides is that the claim for tax credit or refund will be given due course only but it does not state that the same will automatically be granted even without filing the written claim for refund before the Commissioner of Internal Revenue as enunciated by Section 230 of the 1993 National Internal Revenue Code.

No attempt to becloud the issues can disguise the fact that forming the crux of the controversy at bar are two fold, *viz*:

1) Whether or not a mere indication in the income tax return of the fact of overpayment already constitutes the fact of filing a tax credit or refund with

the Commissioner of Internal Revenue as contemplated by Section 230 of the National Internal Revenue Code; and

2) Whether or not Section 204 (c) of the Tax Reform Act of 1997 must be given retroactive effect.

Petitioner's opposition to Respondent's Motion to Dismiss is anchored on her argument that the filing of the income tax return with an indication therein of overpayment of taxes is equivalent to filing a written claim for refund hence satisfying the requirement provided in Section 230 of the Tax Code. Petitioner's theory is based on the provisions of Revenue Regulations No. 2-98 and 12-94 which both proclaim of automatic tax crediting of a taxpayer's excess withholding taxes, thus the income tax return with an indication of overpayment can undeniably be construed as the written claim for refund contemplated by the law. And as if to block all possible defenses against the foregoing assertions, Petitioner invokes Section 204(c) of the Tax Reform Act of 1997 which, as quoted earlier, provides that a return filed showing an overpayment shall be considered a written claim for refund, hence her failure to file an actual written claim for refund can no longer be a ground for dismissal of the petition.

Petitioner's arguments are patently devoid of merit.

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

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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)

It is important to note that this Court makes reference to the 1996 Tax Code (specifically the Tax Code prior to the Tax Reform Act of 1997) because the compensation income subject of this petition was earned by petitioner in 1996. Section 204(c) of the Tax Reform Act of 1997 which was earlier quoted cannot apply to the instant case because this law took effect only on January 1, 1998 while this case involves income earned in 1996. Article 4 of the Civil Code of the Philippines declares that "laws shall have no retroactive effect, unless the contrary is provided" and there is no provision in the Tax Reform Act of 1997 which calls for its retroactivity. The Supreme Court in the case of **Montilla vs. La Corporacion de PP. Agustinos Calzados, 24 Phils. 220** plainly stated a basic rule in statutory construction when it ruled, thus:

> "It is a rule of statutory construction that all statutes are to be considered as having only a prospective operation, unless the purpose and intention of the Legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used."

We also find Petitioner's reliance on Section 2.58.3 of Revenue Regulations No. 2-98 and Section 5(b) of Revenue Regulations No. 12-94 to be misplaced and deserves no consideration in resolving the issues at bar.

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A reading of these two provisions reveal that the "automatic crediting" mentioned therein refers to expanded withholding taxes. It must be remembered that the subject of this petition for review is the withholding tax on compensation income (see No. 4 of the Petition for Review and No.1 of Petitioner's Opposition to the Motion to Dismiss) and it is basic that this does not fall under the category of an expanded withholding tax as enumerated under Section 2.57.2 of Revenue Regulations No. 2-98.

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

> **Section 2.** The Petition for Review shall contain allegations <u>showing jurisdiction in the Court,</u> 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)

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

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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 her 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**).

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

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