REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMONWEALTH MANAGEMENT
AND SERVICE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3232

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x 6/26/85

D E C I S I O N

Before the Court is petitioner Commonwealth Management and Service Corporation's claim for refund of alleged excess income tax payments in the total amount of ₱84,839.24 for the years 1979, 1978, 1977 and 1976 after no action was seasonably taken on it by respondent Commissioner of Internal Revenue.

The facts are not disputed, respondent having submitted this appeal for decision based on the pleadings and the records of the case, after petitioner has presented, and the Court has admitted, its evidence as to the truth of its allegations in its petition for review. As alleged in the petition for review and borne out by the records, including the evidence presented by petitioner:

Petitioner is a corporation organized and existing under Philippine law with office at Philamlife Building, U.N. Avenue, Ermita, Manila.

For the year 1979, the amount of ₱73,256.29 was withheld from the service fees and interests on the savings deposits of petitioner, as withholding income tax. However, for the year 1979, petitioner sustained a net loss of ₱25,087.00 as shown by its income tax return.

For the year 1978, the amount of ₱8,040.91 was withheld from the service fees and interests on savings deposit of petitioner as withholding income tax. However, for the year 1978, petitioner sustained a net loss of ₱22,228.00, as shown by the income tax return.

For the year 1977, the amount of ₱449.04 was withheld from petitioner's interest on its savings deposit, as withholding income tax. Additionally, petitioner paid the amount of ₱1,040.00 as income tax. However, for the year 1977, the income tax due from petitioner was only ₱145.00 as shown by its return.

For the year 1976, petitioner paid income tax of ₱3,778.00. However, for the year 1976, the income tax due from petitioner was only ₱1,580.00 as shown by its income tax return.

Petitioner has brought its claim for refund of the foregoing overpayments of taxes to the attention of the Bureau of Internal Revenue Direct Taxes Division several times but no action was ever taken by the latter.

So on 10 April 1981, petitioner was constrained to send a formal claim for refund with respondent Commissioner of Internal Revenue.

Petitioner's claim for refund of excess income tax payments in the total amount of ₱84,839.24, as can be gleaned from above, represents:

1. ₱73,256.29 for the year 1979;
2. ₱8,040.91 for the year 1978;
3. ₱1,040.00 and ₱449.04 for 1977 minus ₱145.00, income tax due for that year; and
4. ₱3,778.00 for 1976 minus ₱1,580.00 income tax due for that year.

To prove these excess income tax payments, petitioner presented in evidence its income tax returns for the years involved, the corresponding official receipts for its income tax payments, as well as the various withholding tax certificates issued to petitioner. No controverting evidence was presented by respondent. As a matter of fact, as stated above, respondent submitted this case for decision on the basis of the pleadings and the records after petitioner has presented and offered its evidence. Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations taken together with such of his own as are admitted (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et al., 76 Phil. 115), respondent, as pointed out by petitioner, maybe considered as not questioning seriously petitioner's entitlement to its claim for refund. (p. 86, CTA records.) More so when the evidence presented, which was not disputed by respondent, sufficiently establishes petitioner's right to the refund.

In fact, as the records show, respondent voluntarily refunded to petitioner, during the pendency of this appeal in this Court, the amount of ₱895.00 under Treasury Warrant No. B-04820554 dated 20 July 1982 representing excess payment for 1977. (See pp. 86-87, CTA records.) Under Section 292 of the 1977 National Internal Revenue Code, refund or credit of any tax may be made, even without a written claim therefor, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. As shown on the face of the income tax returns involved herein upon which payments by petitioner were made, such excess income tax payments in the amount of ₱84,839.24

appear clearly to have been erroneously paid.

We agree with respondent, however, that petitioner's claim for tax refund for the period prior to April 15, 1979 has prescribed. (Special and affirmative defenses, p. 13, CTA records.) Section 295 of the 1977 National Internal Revenue Code requires that the taxpayer should file a written claim for refund with the Bureau of Internal Revenue within two years after payment of an internal revenue tax alleged to have been erroneously or illegally paid and that the action for recovery must be instituted in this Court also within two years after payment pursuant to Section 292 of the same Code. The written claim for refund of excess income tax payments in the total amount of ₱84,839.24, stating the ground upon which it is based, was filed with the Bureau of Internal Revenue on April 10, 1981 (Exhibits "A" & "A-1", p. 3, CTA records), and the petition for review for the recovery of said overpayments was instituted with this Court on April 15, 1981 (p. 1, CTA records). Since the suit for recovery was instituted on April 15, 1981, it follows that petitioner's claim for tax refund for the period prior to April 15, 1979 has prescribed. Accordingly, petitioner is entitled to a refund of ₱69,297.79, as evidenced by its Exhibits "E-1" to "E-10", inclusive, found on pages 58 to 63, Court of Tax Appeals records.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax credit to petitioner Commonwealth Management and Service Corporation in the amount of ₱69,297.79 representing erroneously paid income tax involved in this case. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 26, 1985.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge