REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GREAT PACIFIC LIFE ASSURANCE CORPORATION,
Petitioner,

- versus - C.T.A. CASE No. 2026

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

Petitioner, a domestic life insurance corporation, is seeking the refund of ₱10,435.00, representing alleged overpaid income tax for the taxable year 1966.

On April 15, 1967, petitioner filed its income tax return for the year 1966 showing a net (investment) income of ₱606,127.96, on which it paid income tax in the amount of ₱39,398.00. In said return, petitioner declared in full the dividends received by it in 1966 from various corporations amounting to ₱286,740.57. Realizing that only 25% of said dividends is taxable, petitioner filed an amended income tax return for said year on June 13, 1968, declaring therein as taxable dividends the sum of ₱72,023.86, which is 25% of ₱286,-740.57, resulting in a net (investment) income of ₱445,-593.09 and an income tax of only ₱28,963.00 as against ₱39,398.00, which was paid on the basis of the original return, or an overpayment of ₱10,435.00. Together with the amended return, petitioner filed a written request for refund of said overpayment. No decision having been

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rendered by respondent on its claim for refund, on July 11, 1969, petitioner filed a petition for review with this Court to compel respondent to refund the alleged overpayment of its income tax for the taxable year 1966.

In his answer, respondent merely denied in general terms that petitioner made an overpayment of its 1966 income tax, and claims that, assuming, without conceding, "that there has been an overpayment of the same, the taxes paid prior to July 11, 1967 are not refundable pursuant to the provisions of Sections 306 and 309 of the Tax Code."

The claim for refund of petitioner is based on Section 24 of the National Internal Revenue Code which provides that "in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax . . . only twenty-five _per centum_ thereof shall be returnable for purposes of the tax imposed by this section." It is not controverted that petitioner is a domestic corporation and that the dividends in question were received by it from other domestic corporations subject to tax under the Income Tax Law. Therefore, the dividends received by petitioner from other domestic corporations as declared in its original and amended income tax returns are taxable only to the extent of 25% of such dividends, and its claim of having made an overpayment must be sustained. (See Filipinas Life Assurance Co. v. The Court of Tax Appeals, G.R. No. L-21258, October 31, 1967.)

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It is alleged on behalf of respondent that in case the claim of petitioner as to the overpayment is sustained, the amount overpaid corresponding to the period prior to July 11, 1967, is not refundable apparently for the reason that the herein petition for review having been filed with this Court on July 11, 1969, any overpayment made beyond two years prior to the commencement of this action is barred under Section 306 of the Revenue Code.

The records show that the 1966 income tax of petitioner was paid in two installments, the first installment when it filed its income tax return on April 15, 1967, and the second and final installment, on July 13, 1967. The claim for refund was filed by petitioner with respondent on June 13, 1968. Obviously the claim for refund was filed within the two-year period provided in Sections 306 and 309 of the Revenue Code.

As regards the period within which appeals in cases involving refunds of internal revenue taxes may be instituted in this Court, it is now well settled that such appeals must be filed within thirty days from the date of receipt of the decision of the Commissioner of Internal Revenue denying the claim for refund, but not beyond two years from the date of payment. (Collector v. Sweeney, 106 Phil. 59; Gibbs v. Coll., 107 Phil. 232; Comm. v. National Power Corporation, G.R. No. L-18874, Jan. 30, 1970.) However, where the two-year period is about to lapse and the Commissioner is not expected to render a decision on the taxpayer's claim for refund before expiration of said period, the taxpayer must appeal to the Court of Tax Appeals without waiting for a formal decision of the Commissioner, otherwise, the taxpayer's right to the refund would be barred. (Collector v. Sweeney, supra; Gibbs v. Coll., supra; Collector v. Convention of Phil. Baptist Churches, G.R. No. L-11807, Jan. 28, 1961; Koppel v. Coll., G.R. No. L-10550, Sept. 16, 1961.)

The two-year period for filing a claim for refund or for instituting judicial action for recovery of internal revenue taxes erroneously or illegally paid commences to run from the date of payment. Where the tax was paid by installment, the date of payment refers to the date when the last installment was paid, and the two-year period starts to run from that date. (Collector v. Prieto, G.R. No. L-11976, Aug. 29, 1961; Commissioner v. Palanca, G.R. No. L-16626, Oct. 29, 1966.) In this case, the second and final installment of petitioner's 1966 income tax was paid on July 13, 1967, and the appeal was filed with this Court on July 11, 1969, which is within the two-year period provided in Section 306 of the Revenue Code.

Finding the claim for refund of petitioner in accordance with law, respondent is hereby ordered to refund to petitioner the sum of ₱10,435.00. Without pronouncement as to costs.

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SO ORDERED.

Quezon City, September 29, 1971.

ROMAN M. UMALI
Presiding Judge

I CONCUR:

RAMON L. AVANCEÑA
Associate Judge

Associate Judge Estanislao R. Alvarez
did not take part