REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PROVIDENT INSURANCE CORPORATION,
Petitioner,

-versus - **C.T.A. CASE NO. 4251**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
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D E C I S I O N

This is a claim for tax credit totalling P199,138.00 representing excess income taxes paid in 1985 and 1986.

Petitioner, Provident Insurance Corporation, is a duly organized and registered domestic corporation engaged in the business of selling insurance and investing its funds in government bonds and other securities. It also derives income from the tenants of their real estate (t.s.n., p. 13, 10/5/88). While the respondent is the Commissioner of Internal Revenue.

In its petition for review, petitioner alleges the following:

"xxx xxx xxx

4. THAT it filed its 1985 final annual income tax return on time showing a net loss of P1,466,028.00 and the sum

of P89,874.00 as tax withheld on rental income;

5. THAT in 1985 it filed its quarterly income tax returns as required by the National Internal Revenue Code, as follows:

1st quarter showing net loss of P687,355.57 and P21,219.17 as withholding tax on rental.

2nd quarter showing net loss of P819,527.50 and P45,682.52 as withholding tax on rental.

3rd quarter showing net loss of P1,638,300.96 and P71,862.20 withholding tax on rental.

6. THAT it filed its 1986 final income tax return on time, showing a net loss of P1,308,858 and a tax of P109,264.00 withheld from its rental income;

7. THAT it also filed its 1986 quarterly income tax returns on time, each showing a net loss;

8. THAT on April 13, 1988, petitioner filed a claim for tax refund in the total amount of P199,138.00 representing the total taxes withheld on rental income during the two tax years when petitioner suffered net losses and therefore had no income tax liability;

9. THAT respondent has not acted on the said claim.

xxx xxx xxx."

(CTA records, pp. 1-2.)

In answer thereto, respondent denies the above cited allegations, i.e., par. nos. 4, 5, 6, 7, 8 by petitioner for lack of knowledge or information sufficient to form a belief as to the truth thereof. He admits the allegation in paragraph 8 that petitioner filed a claim for tax refund in the amount of P199,138.00 but specifically denies the grounds alleged in support of said claim as well as the rest of the allegations in the same paragraph for being gratuitous assertions and premature conclusions of law and/or facts, considering that petitioner's claim is still under administrative investigation. (CTA records, pp. 12-13.)

By way of special and affirmative defenses respondent further alleged the following:

xxx xxx xxx

> 7. The amount sought to be refunded arose from the computation submitted by the taxpayer itself, therefore, self-serving;
>
> 8. The income tax return provides insufficient proof of refundability of the amount sought to be refunded;
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> 9. The taxes so claimed are deemed to have been paid and collected in accordance with law and regulations;
>
> 10. In a claim for refund, it is incumbent upon petitioner to show that it is entitled thereto, and petitioner's failure to prove the same is fatal to its claim for refund;
>
> 11. Claims for refund are construed strictly against the claimant for the

same partakes of the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-17509, January 20, 1970, 31 SCRA 91);

12. Well settled is the rule that one who claims to be exempted from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. The claimant must be able to point to some positive provisions of law creating the right, as the exemption sought for cannot be allowed to exist upon a mere vague implication or inference (Asiatic Petroleum vs. Llanes, 44 Phil. 466-471; Union Garment Co. Inc. vs. Court of Tax Appeals, G.R. No. L-16809, January 31, 1962, SCRA 304; Philippine Acetylene Co. Inc. vs. Commissioner of Internal Revenue, G.R. No. L-19707, August 17, 1967, 20 SCRA 1056);

13. It is, therefore, incumbent upon petitioner to show that it has complied with the provisions of Sections 243 and 246 of the Tax Code of 1986.

xxx xxx xxx.

(CTA records, pp. 13-15)

On October 7, 1988, petitioner made a formal offer of its evidence. Respondent submitted his Opposition thereto in his "Comment of Offer of Evidence" dated 6 March 1989. (CTA records, pp. 19-27) However, in a resolution dated 5 April 1989, this Court admitted all the exhibits offered as evidence by petitioner and set the case for further hearing (CTA records, pp. 37-38) on July 17, 1989, respondent manifested that he would now present his evidence in the case. He added however that the Examiner assigned to the case has not yet, as of the time of hearing submitted the report of investigation of petitioner. Upon his request the hearing was cancelled without objection from petitioner.

On the next hearing date, August 17, 1989, respondent manifested that he submitted the case for decision based on the pleadings and petitioner's evidence. Both parties requested some time within which to file their respective memoranda. Thereafter, the case was to be deemed submitted for decision.

The sole issue is whether petitioner is entitled to a refund/tax credit in the amounts of P89,874.00 and P109,264.00 as alleged overpaid income tax for the years 1985 and 1986, respectively, or a total of P199,138.00.

From the record it does appear that petitioner filed its 1985 first quarterly income tax return on May 30, 1985 which showed a net loss of P687,355.51 and tax withheld on rental income in the sum of P21,219.17. (Exh. A-1) The second quaurterly income tax return was filed on August 29, 1985 showing a zero tax liability due to operating loss of P819,527.50. That return also showed accumulated withholding taxes of P45,862.20 as tax withheld from its rental income (Exh. A-3) on April 15, 1986, petitioner filed its final income tax return for 1985 showing a net loss of P1,466,028.00 and the amount of P89,874.00 as tax withheld from its rental income (Exh. A).

It further appears that petitioner filed its first 1986 quarterly income tax return on May 30, 1986 which showed a net loss of P386,441.39 and a zero income tax liability (Exh. B-1). Similarly, its second 1986 quarterly income tax return filed on August 29, 1986 showed a net loss of P491,011.96 and a zero income tax liability (Exh. B-2). Its third quarterly income tax return filed on December 3, 1986 showed a net loss of P145,402.77 and no income tax liability (Exh. B-3). On April 14, 1986 petitioner filed its 1986 final income tax return which showed a net loss from operations of P1,308,858.00 and an income tax liability of zero. The total sum of tax withheld from petitioner's income from rental during the year is P109,264.00 (Exh. B).

Petitioner filed a claim for tax credit/refund in the sum of P89,874.00 for the year 1985 and P109,264.00 for the year 1986 or a total of P199,138.00 in April, 1988 within the two-year statute of limitations from April 15, 1986 to April 14, 1987 when the 1985 and 1986 income tax returns were filed (Exh E; t.s.n., p. 26, 10/5/88).

Moreover, it appears from the records that the aggregate sum of the income taxes withheld from the income of petitioner from rental in 1985 and 1986 were remitted to the respondent as reflected by the withholding tax statements and certifications (BIR Forms 1734 and 1743.1) furnished petitioner by its respective withholding agents. Petitioner's income taxes withheld from rentals it received are shown in the official receipts issued by the petitioner to its tenants reflecting the gross rental income earned, withholding tax, and the net amount petitioner received from he tenants (t.s.n., p. 18, 10/5/88; Exh. C, C-1 t C-13, D, D-1 to D-24).

Exh. F-1 consisting a batch of 62 pieces official receipts issued by petitioner and Exh. F-2, consisting of batch of 133 official receipts indicated the withholding taxes from rental income in 1985. Similarly, Exh. G-1, consisting of a batch of 48 pieces of official receipts issued by petitioner also indicate that taxes were withheld in 1986 by petitioner's withholding agents.

In his "Memorandum for Respondent" dated February 2, 1990, respondent contends that mere allegation of net loss does not ipso facto merit a refund. Respondent further avers that petitioner did not present any evidence to substantiate its claimed deductions in tax years 1985 and 1986.

Nowhere in the pleadings or records of the trial of this case does it reflect that the disallowance of itemized deductions was either alleged or raised as an issue in the pleadings or trial of this case. The fact is that during trial, respondent did not present any evidence to dispute the correctness of the deductions shown in the 1985 and 1986 annual income tax returns of petitioner or the correctness of the entirety of the returns filed.

In the July 17, 1989 hearing, respondent manifested that it would present its evidence, petitioner having had already presented its own. Respondent however was not able to do so and asked for a cancellation of the hearing. Later, however, instead of proceeding with the presentation of its evidence, respondent manifested that it was submitting the case for decision based on the pleadings and petitioner's evidence (17 August 1989 hearing). In other words, no evidence in contravention of those offered by petitioner was presented by respondent. "Since one who prays for judgment on the pleadings without offering proof as to the proof of the 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 the allegations taken together with such of his own as are admitted (Bauermann v. Casa, 10 Phil. 386; Evangelista v. De la Rosa, et al.; 76 Phil. 115) respondent may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidences presented which were not disputeud by respondent, sufficiently established petitioner's right to the refund." (Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue, CTA Case No. 3232, June 26, 1985.)

In the said memorandum respondent further argues that the official receipts which petitioner issued to various forms from whom it received rental payments which indicated the amount of tax withheld from said rental payments is devoid of any probative value in proving the withholding of the corresponding tax from petitioner's rental income.

On the other hand, petitioner in its "Reply Memorandum" dated August 14, 1990 argues that "When an offered evidence sufficiently answers the two requirements above mentioned (relevant and competent) it is admissible, and its probative value or weight is a question to be determined by the court. There are no iron clad rules regarding the weight which should be given certain evidence. Much of this is left to the appreciation of the individual judge or court." (Quoting Moran, Comments on the Rules of Court.)

Petitioner adds that "The aforementioned official receipts issued by petitioner indicating the amount withheld from its rental income, more than satisfy the requirements of relevance and competence and in the absence of evidence to the contrary, the same should be given its due probative value." We agree with the petitioner. To prove income tax payments, this Court in many cases has ruled that the taxpayer should present the corresponding receipts and various withholding tax certificates issued to taxpayer. It is noteworthy to state that when the Tax Code speaks of proof of payment it means official receipts evidencing payment.

We further adopt petitioner's stand that it is within respondent's competence or power and authority to verify whether or not the withheld taxes from petitioner's rental income were indeed actually remitted to the government and such fact have been presented during the trial. However, respondent failed to present any evidence to contradict the evidence presented by petitioner.

Since respondent failed to raise the issues of the correctness of deductions in the 1985 and 1986 annual income tax returns of petitioner and the issue regarding the probity of the said official receipts issued by petitioner and failed to present controverting evidence it is too late in the day for him to raise these matters now.

Under an identical situation, this Court speaking through Judge Alex Z. Reyes said:

> "It does not appear that respondent Commissioner of Internal Revenue disputes the correctness of the material facts nor has presented any evidence controverting the same. Respondent poses no objection in having the cases submitted for

decision on the basis of the pleadings and CTA records."

"All told the material facts are relatively simple and so are the issues under resolve essentially addressed to the question of whether or not petitioner has established a valid claim to the refund of excess income tax payments for the taxable years in question."

"The cases before Us hardly present a gripping question or require a tortured ratiocination. As thus shown the basis for the claims are not short of specific support in terms of tractable data openly laid and fully disclosed. Going by the records, petitioner's income tax returns for the subject taxable years have shown losses and excess income tax payments. Respondent points to no factual errors nor superfluities which need be abridged. Neither were there any deficiency assessments issued. Moreover, the records make it clear that the requisite statements or certifications of the income taxes withheld and deducted by the withholding agent through which respondent collected the income taxes, and upon which tacked the claimed refund could furnish the basis for a definitive resolve. But official action thereon appears consigned to a limbo of lingering verification, to date."

"We see no reason and none is vouch safed why these simple cases where fact and fabrication are no longer indistinguishable, should remain curiously unperturbed. It may be necessary to repeat what so plainly apply to the cases at bar that, "But as should be expected, the action could be maintained on the basis of the pleadings, admission and affidavit of the parties which neither provokes any unsettling questions nor involves material factual issues genuinely in dispute. The administrative machinery or process employed on the right to the claim seems to have moved barely at idling speed. To be relatively quiescent for some four (4) years on a claim of such a simple nature and not so considerable a stake which no longer incites controversy nor excites a queasy sense of expectation, creates but an unwarranted bureaucratic inertia of inaction. Readily a legal conclusion can be safely reached. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expeditious and competently responsive action. (Commonwealth Pacific Consultants, Ltd., v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982), cited in Dataprep (Phils.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 3600, March 30, 1984; appeal withdrawn, G.R. L-67735, September 12, 1984)."

"The circumstances obtaining in the cases at bar of the mold no different from the aforecited cases compel Us to sustain the tenability of the petitioner's right to the refund based on the pleadings and records." (Commonwealth Management and Service Corporation v. Commissioner of Internal Revenue, CTA Cases Nos. 3383 and 3578, June 30, 1987.)

This was thus the ruling in the C.T.A. cases of Commonwealth Management and Service Corporation vs. Commissioner of Internal Revenue (CTA Cases Nos. 3383 and 3587, June 30, 1987), cited above and reiterated in the later case of A. Soriano Corporation vs. Commissioner of Internal Revenue (CTA Case No. 3694, November 2, 1987), also with identical facts as this one.

Thus as this Court found no reason to depart from its conclusion in the Commonwealth Management and Service Corporation case, as expressed in the above-quoted opinion of the Court in said case of A. Soriano Corporation vs. Commissioner of Internal Revenue (CTA Case No. 3894), We likewise find no compelling reason to deviate from the findings or ruling of said case since the same should aptly resolve the similar problem brought before Us in this proceeding.

WHEREFORE, respondent is hereby ordered to issue a tax credit memorandum or refund to petitioner in the amount of P199,138.00.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 5, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals