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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIA AUSTRALIA EXPRESS, LTD.,
represented by SORIAMONT
STEAMSHIP AGENCIES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3976

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

1/8/89

D E C I S I O N

In its letter dated April 23, 1984 to respondent Commissioner of Internal Revenue, petitioner Asia Australia Express, Ltd., represented by Soriamont Steamship Agencies, Inc., requested for the refund of the amount of P35,516.00, representing alleged overpaid income tax for its taxable year ended September 30, 1983. Since no action was seasonably taken by respondent, petitioner filed the instant petition for review praying that respondent be ordered to refund to petitioner the said amount of P35,516.00.

The background facts are not disputed, respondent having submitted this case for decision on the basis of the pleadings and after petitioner has presented its evidence in support of its entitlement to its claim for refund. As can be gleaned from the pleadings and the evidence presented:

1. Petitioner is a foreign corporation engaged in the business of being a common carrier authorized to call in Philippine ports to load and unload freight in the Philippines where it is represented by the Soriamont Steamship Agencies, Inc., a domestic corporation with offices at Soriamont House, 801 United Nations Avenue, Manila; respondent is the duly appointed Commissioner of Internal Revenue with offices at the BIR National Bldg., Diliman, Quezon City where he may be served with summons.

2. For the first three quarters of its fiscal year ending September 30, 1983, petitioner

filed its quarterly income tax returns and paid the taxes due thereon, as follows:

Quarter Ended	Amount Paid	Payment Order No.	Confirmation Receipt No.
31 Dec. 1982	P 330.00	0299132	0627930
31 Mar. 1983	21,657.00	0997903	0948237
30 June 1983	13,529.00	1513167	0955299
Total	P35,516.00		

A photocopy each of the tax returns and the tax payment receipts are marked and described as follows:

Exhibit	Description
A	Income tax return for quarter ended 31 December 1982
B	Payment Order No. 0299132 dated 22 February 1983
C	Confirmation Receipt No. 0627930 dated 22 February 1983
D	Income tax return for quarter ended 31 March 1983
E	Payment Order No. 0997903 dated 25 May 1983
F	Confirmation Receipt No. 0948237 dated 25 May 1983
G	Income tax return for quarter ended 30 June 1983

H Payment Order No. 1513167 dated 26 August 1983

I Confirmation Receipt No. 0955299 dated 26 August 1983

3. Petitioner filed its final corporate annual income tax return for fiscal year ending September 30, 1983 on January 13, 1984 (Exh. J) which is before the fifteenth day of the fourth month following the close of the fiscal year as required by Section 86 of the applicable National Internal Revenue Code. Said final corporate income tax return showed a net loss of P215,399.81 and a refundable on the face of the return overpaid income tax of P35,516.00. (Exh. J-11.)

4. On April 26, 1984, petitioner filed a letter dated April 23, 1984 with respondent requesting the refund of the overpaid income tax of P35,516.00. (Exh. E.)

5. And for the judicial recovery of said overpaid income tax of P35,516.00, petitioner filed the instant petition for review on September 26, 1985.

Is petitioner entitled to the refund of alleged excess income tax paid for fiscal year ending September 30, 1983 amounting to P35,516.00?

On the special and affirmative defense of respondent that it is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the applicable National Internal Revenue Code, regarding the filing of a claim for refund with the Commissioner of Internal Revenue and commencement of the suit for refund with this Court within two years from date of payment of the tax, the rule is that a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. (Gibbs vs. Commissioner of Internal Revenue, L-17406, November 20, 1965, 15 SCRA 318.) And in this case where the tax is payable by the taxpayer in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertainable that the taxpayer either made profits or suffered losses in the operations.

(Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989.)

In the present case, petitioner had until January 15, 1984 the fifteenth day of the fourth month following the close of its fiscal year as required by Section 86 of the applicable National Internal Revenue Code, within which to file its adjustment or final return and make the final payment. Said final corporate income tax return filed on January 13, 1984 showed a net loss of P215,399.81 and refundable excess payment of income tax in the amount of P35,516.00. Petitioner in said annual return opted to claim a refund of the overpaid income tax as prescribed by Section 7 of Revenue Regulation 10-77, otherwise known as Regulations Governing the Method of Computing Corporate Quarterly Income Tax on a Cumulative Basis. Since the claim for refund in this case was filed with the Commissioner of Internal Revenue on April 26, 1984, it is thus clear that it was well within the two-year period provided for in Section

292 of the applicable Tax Code. The same is true with respect to the filing of the petition for review with this Court on September 26, 1985.

Then, too, respondent contends as special and affirmative defense that the mere averment that petitioner suffered a loss does not *ipso facto* merit a tax refund. Petitioner, it should be noted, is not claiming a tax refund on a mere averment that it suffered a loss. The claim for refund is based on the final corporate income tax return which showed a net loss of P215,399.81 and a refundable excess payment of income tax amounting to P35,516.00 as established by the evidence presented by petitioner. (Exhibits J, J-1 to J-11, inclusive, p. 10, CTA records.) No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was presented by respondent. And this case having been submitted for decision on the pleadings and on the face of the unrebutted evidence of petitioner showing that it is entitled to the refund of P35,516.00, respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. The circumstances obtaining in the case at bar compel us therefore to sustain the tenability of petitioner's right to the refund of P35,516.00 based on the evidence and pleadings on which respondent submitted this case for decision. If respondent may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears to have been erroneously paid (Sec. 292, NIRC), we see no reason why respondent cannot refund or credit the amount of P35,516.00 involved herein when the return upon which payment was made, pleadings and the evidence clearly show that it is refundable.

Petitioner's claim for refund has been pending with respondent's Bureau for examination, verification and checking since April 26, 1984. Through all the years, no action whatsoever was taken by respondent. The records make it clear that petitioner's income tax return for the taxable year in question has shown a net loss of P215,399.81 and a refundable excess payment of income tax in the amount of P35,516.00. Respondent has not issued any deficiency assessment nor disputed the correctness thereof. The requisite BIR payment orders and Central Bank confirmation receipts showing payments of the subject overpaid income tax had been presented and admitted in evidence. (Dataprep [Phils.], Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3600, March 30, 1984; Sun Insurance Office Limited vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1987.) Respondent has never placed in issue the correctness of the gross income reported, the legality of the deductions claimed, and the fact of substantiation of such deductions. And respondent having submitted this case for judgment on the pleadings and after petitioner has presented its evidence in support of its entitlement to the refund, without offering proof as to the truth of his allegations in his answer, respondent must be understood to have admitted the truth of all the material allegations of petitioner, and to rest his motion for judgment on these allegations. (Bauermann v. Casas, 10 Phil. 386.)

Not much need be said on respondent's other special and affirmative defense that the instant case does not involve illegally or erroneously collected taxes and therefore petition for review does not lie. By Section 292 of the National Internal Revenue Code (now Section 231), the taxpayer must 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, or "<u>of any sum alleged to have been excessive or in any manner wrongfully collected</u>" and that the action for recovery must be instituted in Court also within two years after payment. The applicable statute employs the term "excessive or in any manner wrongfully collected". The law is clear. We are not to indulge in statutory construction. If the overpaid income tax in the amount of P35,516.00

involved herein is not excessive, it was at least wrongfully paid or collected.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund and/or tax credit to petitioner Asia Australia Express, Ltd., represented by Soriamont Steamship Agencies, Inc., in the amount of P35,516.00 representing overpaid income tax for its taxable year ended September 30, 1983. No costs.

SO ORDERED.

Quezon City, Metro Manila, October 18, 1989.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals