REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. JACINTO GROUP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5508

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 07 1999

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DECISION

This is a petition for review filed by Petitioner, F. JACINTO GROUP, INC., against Respondent COMMISSIONER OF INTERNAL REVENUE for the failure of the latter to act on the former's claim for refund in the amount of ₱1,613,231.00, allegedly representing its overpaid or unutilized creditable withholding taxes for the year 1994.

As represented, Petitioner is a domestic corporation directly engaged in rendering management services to several corporations, with offices located at 4/F, F. Jacinto House, 116 Rada St., Legaspi Village, Makati City.

On April 10, 1995, Petitioner filed with Traders Royal Bank - Paseo Branch its Corporate Annual Income Tax Return for the year 1994 (Exh. A) declaring a taxable income of ₱1,760,698.04, with tax due in the amount ₱616,244.31, tax credits/payments of ₱4,348,432.03 and a

N2

tax refundable amount of ₱3,732,187.76. It was alleged by the Petitioner that for the year 1994, the total creditable withholding taxes which were withheld and remitted to the Bureau of Internal Revenue (BIR) by its payors/withholding agents, pursuant to Revenue Regulations No. 6-85, as amended, totaled ₱1,613,231.00 (page 2 & 143, docket), summarized as follows:

Withholding Agent	Amount	Exhibit
Mindanao Steel Corporation	₱ 634,344.00	B & B-1
Camara Steel Industries, Inc.	317,172.00	C & C-1
Camara Steel Industries, Inc.	158,586.00	D & D-1
Camara Steel Industries, Inc.	158,586.00	E & E-1
Australasia Cylinder Corporation	50,000.00	F & F-1
Jacinto Iron & Steel Sheets Corporation	38,247.00	G & G-1
Beatriz Marketing & Trading Corporation	256,296.00	H & H-1
	₱1,613,231.00	

In a letter, dated April 11, 1997, which was received by the Respondent's Bureau on April 14, 1997, Petitioner filed a claim for refund of the aforesaid creditable withholding taxes for 1994 in the total amount of ₱1,613,231.00 on the ground that said amount was not utilized by it in 1994; neither was it utilized in the year 1995, as its tax due was only ₱10,709.25 (Exh. I) which was paid by applying its creditable withholding tax for the same year (pages 3 & 144, docket).

On the same date, that is, April 14, 1997, Petitioner filed with this Court the instant Petition for Review.

N3

Petitioner presents the proposition that it is entitled to the refund of the amount of ₱1,613,231.00 representing its unutilized creditable withholding taxes for the year 1994 citing as its authority Section 69, taken in relation to Section 204(3), of the Tax Code, which provides:

> **Sec. 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be;
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid. The refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year.
>
> **Sec. 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may - x x x
>
> (3) Credit or refund taxes erroneously or illegally received, 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

N4

> within two years after the payment of the tax or penalty.

Respondent, by way of special and affirmative defenses, alleges that (1) the application for tax refund was filed on April 14, 1997 on the same date that this petition was filed before this Honorable Court, (2) the alleged tax withheld must be shown to have been paid and remitted to the Respondent's Bureau, the best evidence of payments and remittances of the alleged taxes withheld are the official receipts, (3) in a claim for refund, it is incumbent upon Petitioner to prove that it is entitled to it, failure to do so is fatal to its claim for refund, (4) claims for refund are construed strictly against claimant, the same being in the nature of exemption from taxes, and (5) it is incumbent upon Petitioner to show that it has complied with the provision of Section 230 of the Tax Code.

It is already settled rule that there is no legal impediment in filing the administrative claim for refund with the BIR simultaneously with the Petition for Review with this Court as long as these two acts fall within the two-year prescriptive period prescribed by Section 230 of the Tax Code (see **Gibbs vs. Collector, L-153543, February 29, 1960 and Manila Electric Company vs. The Commissioner of Internal Revenue, CTA Case No. 5091, October 2, 1997**). Thus, the focal point which is presented for our consideration is whether or not Petitioner is entitled to the refund of its unutilized creditable withholding taxes for the year 1994 in the total amount of P1,613,231.00.

We find nothing ambiguous nor obscure in the language of Section 69 of the Tax Code, insofar as the same is brought to bear upon the circumstances of the Petitioner, in the case at bar. The provision itself furnishes the best means by its own exposition that any excess of the amount of tax so withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return shall be refunded to the taxpayer. The issue before us is nothing new. The Supreme Court has already laid down the requisites needed for the grant of refund of creditable withholding taxes, to wit:

1.) that it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. CA, 204 SCRA 957);

2.) the fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (*ibid.*);

3.) that the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code.

A careful scrutiny of the evidence presented by Petitioner reveal that Petitioner successfully hurdled the second requirement above mentioned but failed to meet

152

the first and third requisites. The creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source in accordance with the requirements of Revenue Regulations No. 6-85 (Exhs. B, C, D, E, F, G and H), however Petitioner failed to show to the satisfaction of the Court that the income from which taxes were withheld was included as part of Petitioner's gross income for 1994. Petitioner merely adduced in evidence the first page of its 1994 Annual Corporate Income Tax Return (ITR) to the exclusion of the other pages of said ITR. There is no way by which the Court can determine whether the income upon which the creditable withholding taxes were paid were included in Petitioner's 1994 ITR. In other words, Petitioner failed to discharge its duty in not presenting complete documents which are indispensable to prove its case.

The Court further finds that the claim for refund was already barred by prescription. The issue as to when the two year prescriptive period provided in Section 230 (now 229) of the Tax Code in filing a claim for refund commences to run has long been settled in several cases decided by the Supreme Court.

In the case of **Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989,** the Supreme Court in a resolution said that "the two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of filing of the adjusted final tax return." (underscoring supplied)

In the case of **ACCRA Investment Corporation vs. Commissioner of Internal Revenue, 204 SCRA 957,** the Supreme Court held that "the rationale in computing the two-year prescriptive period with respect to the Petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it is only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations." (Underscoring Ours).

In the case of **Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184,** the Supreme Court held that "the most reasonable and logical application of the law would be to compute the two-year prescriptive period at the time of filing the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax." (Underscoring supplied)

Again, in **Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., 244 SCRA 446,** the Supreme Court reiterated its previous decisions on the matter, by saying that the two-year prescriptive period to claim refund commences to run only from the time the

N8

refund is ascertained, which can only be determined after a final adjustment return is accomplished.

Lastly, the Supreme Court, in the very recent case of **Commissioner of Internal Revenue vs. CA, CTA and Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation, G.R. No. 117254, January 21, 1999,** categorically declared, thus:

> "Petitioner disagrees with the foregoing decision of the Court of Appeals. He contends that the two-year prescriptive period should be computed from April 2, 1984, when the final adjustment return was actually filed, because that is the time of payment of the tax within the meaning of Section 230 of the NIRC.
>
> We agree."
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> x x x x x x x x x
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> Thus, it can be deduced from the foregoing that in the context of Section 230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. (Underscoring supplied)

It is explicitly clear from the cited rulings of the Supreme Court that the two-year prescriptive period starts to run from the time the taxpayer filed its adjusted final tax return, that is on or before the 15th day of April or of the fourth month following the close

159

of the fiscal year covering the entire taxable income of preceding calendar or fiscal year.

In the case at bar, it is undisputed that Petitioner has filed its Corporate Annual Income Tax Return for the taxable year 1994 on April 10, 1995. On this date, Petitioner had already ascertained the results of its business operations for the year 1994. Hence, it is from this date, April 10, 1995, that the two-year prescriptive period commenced to run. In other words, herein Petitioner had until April 10, 1997 to judicially file the instant claim for refund with this Court. Since the action for refund was filed with this Court only on April 14, 1997, We hold that the right to bring this case with this Court has already prescribed.

IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **DISMISSED.** No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

160

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

161