REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN LIFE INSURANCE COMPANY,
Petitioner,

- versus - **C.T.A. CASE NO. 4018**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

9/16/91

D E C I S I O N

This case involves a claim for refund of overpaid corporate quarterly income tax and withholding taxes on rental income for the calendar year ending December 31, 1983 totalling P3,858,757.00.

The relative material facts of this case are not disputed.

Petitioner is a corporation organized and existing under Philippine laws, with principal office at the Philamlife Building, United Nations Avenue, Ermita, Manila.

On May 30, 1983, petitioner paid with the Bureau of Internal Revenue its first quarterly corporate income tax for the calendar year 1983 amounting to P3,246,141.00 (Exhibits A, B and C). For the second quarter of 1983, it paid the Bureau

P396,874.00 on August 29, 1983 (Exhibits D, E, and F). *For the third quarter of 1983, petitioner declared a net taxable income of P2,515,671.00 and a tax due thereon of P705,464.00. After crediting the amount of P3,863,525.00 it declared a refundable amount of P3,158,061.00* (Exhibit G).

For its fourth and final quarter ending December 31, 1983, petitioner suffered a loss and thereby had no income tax liability. An income tax refund totalling P3,991,841.00 as indicated in the return represented the first and second quarterly income tax payments of P3,246,141.00 and P396,874.00, respectively; P215,742.00 as withholding taxes on rental income for 1983; and the 1982 income tax refund applied as a tax credit for 1983 amounting to P133,084.00 (Exhibit H).

In 1984, petitioner again suffered a loss and declared no income tax liability. However, petitioner applied as a tax credit for 1984, the amount of P3,991,841.00, representing its 1983 and 1982 overpaid income tax and P250,867.00 as withholding tax on rental income for 1984, or a total of P4,242,708.00 corporate income tax refundable for 1984 (Exhibit I).

On September 26, 1984, petitioner filed a claim for refund with respondent's Appellate

Division for its 1982 income tax refund of P133,084.00. Two months later or on November 22, 1984, petitioner filed with this Court a petition for review (C.T.A. Case No. 3868) with respect to its 1982 claim for refund of P133,084.00.

On December 16, 1985, petitioner filed another claim for refund with respondent's Appellate Division in the aggregate amount of P4,109,624.00 computed as follows (Exhibits J and J-1):

1982 income tax refundable applied as tax credit	P	133,084.00
1983 income tax refundable applied as tax credit		3,858,757.00
1984 tax credit on rental income		250,867.00
Total	P	4,242,708.00
Less: 1982 claim for refund already filed with the BIR and the CTA (Case No. 3868)............		133,084.00
Net Amount Refundable	P	4,109,624.00

Without waiting for respondent's decision, petitioner filed the instant petition for review on January 2, 1986 regarding its 1983 and 1984 claims for refund amounting to P4,109,624.00.

After an answer has been filed by respondent, petitioner manifested that it filed with the Bureau an amended 1984 corporate income tax return on

April 15, 1986. An Additional tax credit of P2,467,125.00 equivalent to taxes withheld on interest income for 1984 was added to its 1984 income tax return. With this amendment, the total income tax refund allegedly due for 1984 amounted to P6,709,833.00 (P4,242,708.00 plus P2,467,125.00) [Exhibit K]. *Likewise, on the same date (April 15, 1986), petitioner filed its 1985 income tax return crediting its prior year's excess tax credit of P2,717,992.00 representing 1984 withholding taxes on rental income of P250,867.00 and 1984 withholding tax on interest income of P2,467,125.00* (1985 ITR, p. 42, CTA rec.) *The amendment of petitioner's 1984 corporate income tax return and the application of it's 1984 withholding taxes on rental and interest income as a tax credit in its 1985 income tax return triggered petitioner to file a motion to admit amended petition for review on May 30, 1986. Petitioner sought the amendment of its petition for review in order to conform to the evidence presented changing its original cause of action. Without any objection from respondent the Court granted petitioner's motion.*

The amended petition now limits petitioner's claim for refund to P3,858,757.00 representing overpaid income tax for the year 1983 carried over to its 1984 income tax return, computed as follows:

Calendar Year Ending 12-31-83	Date Paid	C.R. No.	Amount Paid
First Quarter	5-30-83	B2269337	P3,246,141.00
Second Quarter	8-29-83	B1938178	396,874.00
1983 Withholding Taxes on rental income			215,742.00
1983 Income Tax Refundable			P3,858,757.00

This case has been submitted for decision based on the pleadings and the evidence presented by petitioner.

The issue posed is whether or not petitioner is entitled to the refund sought.

Respondent in his special and affirmative defenses alleged that petitioner's claim for refund of its first and second quarterly income tax payments made on May 30, 1983 and August 28, 1983, respectively, have already prescribed pursuant to Section 292 of the Tax Code.

In determining the 2-year prescriptive period in claiming a refund of excess quarterly income tax payment the reckoning period should be counted from the date of final payment, i.e. the last quarter payment at the end of the fiscal year when it is finally ascertainable that the taxpayer either made *profits or suffered loses in its business operation.* (**Commissioner of Internal Revenue v. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals**, G.R. No. 81956, April 10, 1989, citing **Collector of Internal Revenue v. Prieto**, 2 SCRA 1007; **Commissioner of Internal Revenue v. Palanca, Jr.**, 18 SCRA 496).

Petitioner's final income tax return for 1983 was filed on April 16, 1984 (April 15, 1984 being a Sunday). It is from this date (April 16, 1984) when we count the 2 year prescriptive period for judicially claiming a refund. Therefore, petitioner has up to April 15, 1986 within which to file his claim for refund.

Petitioner filed its claim for refund with the Bureau of Internal Revenue on December 16, 1985. Immediately thereafter, petitioner filed a petition for review on January 2, 1986. Clearly, petitioner's claim for the refund of P3,246,141.00 and P396,874.00 as excess income tax payments for the first and second quarters of 1983 have not yet prescribed.

Respondent further maintains that petitioner need not file the instant petition for review for it may still recover excess income tax payments under Section 86 of the Tax Code within 10 years from date of payment pursuant to Article 1144 of the Civil Code.

Taking cue from the Citytrust Banking Corporation case, we have occasion to rule that excess payments of quarterly corporate income tax falls under the provision of now Section 230 (then Section 292) of the National Internal Revenue Code. As emphasized the title of Section 230 "Recovery of tax erroneously or illegally collected" standing alone is not controlling. (C.T.A. Case No. 4099, May 28, 1991)

The governing provision of Section 230 of the National Internal Revenue Code, insofar as pertinent, provides:

> "Sec. 230. Recovery of tax erroneously or illegally collected. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of

> *payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.*
>
> xxx xxx xxx."
>
> *(Underscoring supplied.)*

It is crystal clear from the aforecited provision that any judicial claim for refund or tax credit of ***excess*** *internal revenue tax must be filed within two years from the date of payment. "To opine therefore that there is no need to file a petition for review to preserve the right to claim for a refund or tax credit is to go against the positive mandate of Section 230."* (**Citytrust Banking Corporation v. Commissioner of Internal Revenue**, supra.)

Respondent further stressed petitioner's allegation that it suffered a loss does not ipso facto merit a refund and as a usual token of a defense he demurs that taxes are presumed to have been paid and collected in accordance with law. The burden of proof rests upon petitioner to show entitlement to the refund sought. Petitioner must also show compliance with the requisites prescribed *under Sections 292 and 295 of the National Internal Revenue Code relative to the recovery of erroneously or illegally collected taxes.*

As earlier discussed there is no question that petitioner has complied with the statutory requirements of Sections 292 and 295. Having filed a written claim for refund with the respondent and a suit (petition for review) with this Court on January 2, 1986 is well within the two-year prescriptive period to appeal counted from the date of final payment (on April 15, 1984) as prescribed by Section 292.

Petitioner has overcome the burden of proof insofar as the excess 1983 quarterly corporate income tax payments of P3,246,141.00 for the first quarter and P396,874.00 for the second quarter are concerned. Its presentation of various documentary evidence such as its income tax returns (Exhibits A, D, G, H, H-1 to H-7, I, I-1 to I-7, and K)*; the corresponding confirmation receipts and payment orders for income taxes paid for the first and second quarters of 1983* (Exhibits B, C, E, and F)*; and voluminous invoices and vouchers showing its expenses paid and incurred for the year 1983 subject matter of this case* (Exhibits M to Z, and

AA to AY, inclusive) have all established the propriety of its claim for refund for excess 1983 quarterly income tax payments.

When it was respondent's turn to present evidence, he failed to present any documentary or testimonial evidence in support of his case. Instead he opted to postpone the hearings for several times and later chose to submit the case for decision on the basis of the records and the pleadings of this case.

Respondent has not issued any deficiency assessment nor disputed the correctness of petitioner's 1983 income tax return to date. Although respondent forwarded the BIR records relative to the above-entitled case, the same was not timely filed. It was only after the Court has ordered the submission of the case for decision due to respondent's failure to file the BIR records did he subsequently as an afterthought submitted the records to the Court (see Order of the Court dated July 21, 1990). Even then the memorandum report of his revenue intelligence officers and special investigator merely states that a proposed assessment will be finalized only after hearing taxpayer's side of the case (see Memorandum letter dated January 12, 1990 p. 6, BIR rec.).

What seems similar in many or so in tenor as in the case at bar, there it may be necessary to repeat once more Our ruling, thus:

> *"But as should be expected, the decision could be attained on the basis of the pleadings, stipulation and affidavit of the parties which neither provokes any unsettling questions nor involves material factual issue 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 safely be reached. Petitioner or any similarly circumstanced taxpayer for that matter deserves a measure of fair dealing in a more expedient and competently responsive action."* (**Commonwealth Pacific Consultants, Ltd., v. The Commissioner of Internal Revenue**, C.T.A. Case No. 2853, May 15, 1982.)

As to the refund of withholding taxes on rental income for [illegible], petitioner failed to present proof of withholding on rental income (BIR Form 1743-A) for remittance purposes. Section 10 of Revenue Regulations No. 13-78 (as amended by Revenue Regulations No. 6-79 which changes apply to income payments shall be given due course only when it is shown on the return that the income payment *received was declared [illegible] of the gross income and, the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom."*

Petitioner failed to satisfy the Court that the amount of P115,[illegible].00 has actually been withheld and paid by its various withholding agents. No other data was presented to prove that rental income was received less withholding taxes. Proper proof of this would be the official receipts of petitioner issued to its tenants reflecting the gross income earned for the period, the withholding tax, and the net amount received by petitioner from its tenants. Again no such evidence was presented. Thus, petitioner has failed to overcome the burden of proof with respect to its claim for the refund of its 1983 withholding taxes on rental income is concerned.

WHEREFORE, petitioner's claim for refund of P3,246,141.00 and P396,874.00 representing excess corporate income tax payments for the first and second quarters of 1983, respectively, or a total of P3,643,015.00 is hereby GRANTED. Accordingly, respondent Commissioner of Internal Revenue, is hereby ordered to refund to petitioner **Philippine** American Life Insurance Company the total **amount of** ₱3,643,015.00.

With respect to petitioner's claim for refund of ₱215,742.00 representing 1983 withholding taxes on rental income the same is **hereby DENIED for** failure to present proof of actual **withholding and** payment with the Bureau of Internal **Revenue. No** costs.

SO ORDERED.

Quezon City, Metro Manila September 16, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ERNESTO D. ACOSTA
Associate Judge

DECISION
CTA CASE NO. 4018

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