REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MONTE DE PIEDAD AND
SAVINGS BANK,
Petitioner,

- versus - C.T.A. CASE NO. 3808

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

9/30/86

D E C I S I O N

At bar is a simple case raising the basic issue of whether or not the petitioner's appeal is time barred.

It appears that the petitioner, a domestic corporation organized and existing under Philippine laws is engaged in the business of banking; that on April 15, 1982, filed its income tax return for the taxable year 1981 showing a refundable tax in the sum of ₱194,742.57 after having incurred losses (Annex "A"); that on August 18, 1982, in compliance with Section 292 (formerly Sec. 306) of the National Internal Revenue Code, filed a claim for the refund of the tax withheld on incomes from rental and interest payments on bonds or similar indebtedness for the year 1981 with the respondent Commissioner of Internal Revenue (Annex "B"); that the respondent thru its Regional Director (Manila) per letter dated September 6, 1983 required the petitioner for additional documents (Annex "C") which were accordingly submitted (Annexes "D-1" to "D-10") under petitioner's letter dated November 28, 1983 (Annex "D"); but up to date of the filing of this petition with this Court on July 16, 1984 no action as yet has been taken by the respondent Commissioner of Internal Revenue on the sought for refund.

Respondent Commissioner of Internal Revenue has interposed prescription on the right of the petitioner to the claim with respect to taxes withheld on rental and interest incomes prior to July 16, 1982, invoking the caveat in Section 292 (formerly Section 306) of the Tax Code of 1977, as amended, providing, insofar as pertinent, that, "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."

All told, petitioner's income tax return for the year 1981 was filed on April 15, 1982 which may well be deemed the reckoning date in lieu of the "date of payment" for the commencement of the two-year period of limitation. "A taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 of the Revenue Code starts to run with respect to payments effected through the withholding system." (Gibbs v. Commissioner of Internal Revenue and CTA, L-17406, November 29, 1965, 15 SCRA 325).

Verily the action brought by the petitioner with this Court on July 16, 1984 has already prescribed under the above-cited legal provision.

It may be necessary to repeat what the Supreme Court said in the earlier case of Gibbs v. Collector of Internal Revenue, G.R. L-13453, February 29, 1960, which so plainly apply to the case at bar, that -

> "x x x Section 306 of the National Internal Revenue Code should be construed together with Section 11 of Republic Act No. 1125. In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirement of both sections, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by Section 306 of the National Internal Revenue Code, and appeal to The Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by Section 11 of Republic Act No. 1125., If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the

> Collector in rendering decision does not extend the peremptory period fixed by the statute. (U.S. v. Michel 282 U.S. 656, 51 S. Ct. 284; P.J. Kiener & Co., Ltd., v. David, L-5163, April 22, 1953; College of Oral and Dental Surgery v. CTA, G.R. No. L-10446, Jan. 28, 1958. Italics supplied).

Suffice it to state that the two-year limitation within which to enforce such an action for a refund like petitioner's is no niggling barrier for this Court's effective exercise of jurisdiction over the suit.

WHEREFORE, the instant petition for review is hereby dismissed, with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge