REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3576

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

6/21/89

D E C I S I O N

In the petition for review filed with this Court on January 24, 1983 praying that judgment be rendered directing respondent Commissioner of Internal Revenue to refund or credit to petitioner Ayala Corporation the amount of P170,406.85 representing erroneous payment of the 35% tax on commercial paper transactions, it is alleged that:

> 1. Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at the Makati Stock Exchange Building, Ayala Avenue, Makati, Metro Manila; respondent is the duly appointed Commissioner of Internal Revenue with authority to act for the Government of the Philippines and may be served with

summons and other court processes at his office at the Bureau of Internal Revenue Bldg., Government Center, Diliman, Quezon City;

2. On January 23, 1981, petitioner paid to respondent the amount of P170,406.85 representing the 35% tax on interest income derived from commercial paper transactions imposed under the former Section 210(b) of the National Internal Revenue Code of 1977, as amended. The said tax was paid by petitioner on the interest due on promissory notes without recourse issued by petitioner to Philippine American Life Insurance Company, Inc. which tax under the former Section 210 was a liability of petitioner as a borrower;

3. On September 17, 1980, PD 1739 was promulgated and took effect immediately, abolishing the aforesaid 35% tax on commercial paper transactions by abrogating the provisions of Section 210(b) of the National Internal Revenue Code of 1977, as amended, and in lieu thereof imposes a 20% final tax on interest or yield paid on deposit substitutes or commercial papers;

4. At the time of payment by petitioner to respondent of the aforesaid amount of P179,406.85, the Revenue Regulations implementing the provisions of PD 1739 had not been published and, therefore, petitioner was not aware that the promissory note without recourse it issued and on which the aforesaid 35% tax was paid was not within the coverage of the imposition introduced by PD 1739. Under Revenue Regulations 12-80 implementing PD 1739, "deposit substitutes shall mean an alternative form of obtaining funds from the public, other than deposits, through the

issuance, endorsement, or acceptance of debt instruments for the borrowers on account, for purpose of relending or purchasing of receivables and other obligations. These instruments may include, but need not be limited to, promissory notes, repurchase agreements, certificates of assignment or participation, and similar instruments <u>with recourse</u> as may be authorized by the Central Bank of the Philippines for banks and non-bank financial intermediaries: Provided, however, that debt instruments issued by interbank loans, including those between or among quasi banks shall not be considered as deposit substitute debt instruments";

5. On September 30, 1981, immediately after petitioner discovered the erroneous payment to respondent of the aforesaid amount of P170,406.85, petitioner submitted with respondent a formal request for the refund of the said amount or the issuance of a tax credit memo covering the same;

6. Petitioner has followed up the aforesaid claim for refund or credit and that a sufficient time has already elapsed, and respondent has not yet made a final decision on the said claim;

7. Petitioner believes that respondent may not be able to give his final decision on the said claim in due time and in order to prevent prescription of its claim, petitioner is filing this petition for review in accordance with law.

In his answer to the petition for review, respondent admitted the allegations in paragraphs 1, 3 and 6 but specifically denied the allegation in paragraph 2 for lack of knowledge or information sufficient to form a belief as to the truth thereof. Whether the amount of P170,406.85 was actually paid to, and received by, the government, according to respondent, is subject of verification. Respondent also admitted the allegation in paragraph 4 of the petition as to the definition of "deposit substitutes" under Revenue Regulations No. 12-80, implementing Presidential Decree No. 1735, but he denied the rest of the averments in said paragraph and the allegations in paragraph 7 of the petition, for being mere opinions, arguments and conclusions on the part of petitioner, and erroneous. And while respondent admitted the allegations in paragraph 5 of the petition that petitioner, in a letter dated September 30, 1981, requested tax refund or credit of the amount of P170,406.85, he denied the grounds relied upon in support of the request and the allegation that said amount of P170,406.85 was erroneously paid, for being erroneous conclusions of fact and/or law, the truth being those stated as special and affirmative defenses of respondent, to wit:

> 5. Petitioner's right to claim the refund/credit has prescribed pursuant to Section 292 of the 1977 Tax Code. The 35% tax was allegedly paid on January 23, 1981. The petition for review was filed with this Honorable Court on January 24, 1983, or beyond 2 years from the date of payment of the tax;
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> 6. Under Section 292, Tax Code of 1977, no suit for the recovery of national internal revenue tax shall be began after the expiration of two years from date of payment of the tax;
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> 7. The 35% tax on interest income from commercial paper transaction, paid by petitioner as borrower on promissory notes issued, was collected in accordance with law and regulations; hence, it is not refundable;
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> 8. It is incumbent upon petitioner to show compliance with the provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977, as amended;
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> 9. A claim for refund is construed strictly against claimants, since a claim for refund partakes of the nature of an exemption from taxation (Comm. of Int. Rev. vs. Ledesma, G.R. No. L-17509, 31 SCRA 95 January 30, 1970).

In reply to the answer of respondent, petitioner stated that its claim for refund/credit has not prescribed pursuant to Section 292 of the applicable National Internal Revenue Code because petitioner had until January 23, 1983 within which to file its petition for review, the tax subject of the claim having been paid on January 23, 1981. Considering however that January 23, 1983 fell on a Sunday, petitioner had until January 24, 1983 (the next working day following Sunday) within which to file its petition for review.

After the issues were joined, this case was set for hearing. However, whenever this case was called for hearing petitioner simply made a manifestation that "the claim for refund is being pursued in the administrative level", and therefore requested for the resetting of the case. No objections or opposition were interposed by respondent. There were even instances when petitioner moved for a resetting of the case because petitioner intended to present its witnesses or mark before a commissioner its documentary evidence. No witness was presented by petitioner, however, and neither did petitioner offer any documentary evidence which would prove its entitlement to the refund or credit of the tax involved in this case. Then during the hearing on

October 15, 1987, petitioner manifested that "this is a claim for refund which involves purely questions of law, however, respondent's counsel is still verifying the veracity of the payment of the taxes. That they have agreed to verify based on the originals of the receipts to be submitted to respondent on October 29 (1987) after which they would file the necessary pleadings. Parties will then submit the case for decision after filing their respective memorandums x x x."

No statement of verification as to the veracity of the payment of the taxes was submitted by the parties. Neither did they file with this Court the "necessary pleadings" or their respective memorandums. So on September 22, 1988, the Court ordered that this case be submitted for decision.

It is thus clear beyond doubt that there is no ground or basis upon which this Court can issue a judgment ordering respondent to refund or credit to herein petitioner the amount involved in its claim. Settled is the rule that in an action for tax refund or credit, petitioner has the burden of proof to show that it is entitled to the refund or credit of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. Petitioner having failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund or credit of the amount involved herein, this Court could not look with approval to the grant of the refund.

And more so when it is considered that a refund of taxes undoubtedly partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.) Claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95.) As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, Sept. 12, 1967, 21 SCRA 180: "From 1906, in Catholic Church vs. Hastings to 1966, in Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*.". (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, Aug. 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180; Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975, 67 SCRA 351.)

WHEREFORE, finding the petition for review without merit, the same is dismissed and the refund/credit sought is hereby denied.

SO ORDERED.

Quezon City, Metro Manila, June 21, 1989.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

(on leave)
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