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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNIMART INCORPORATED,
Petitioner,

- versus - C.T.A. CASE NO. 3986

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

9/28/90

# D E C I S I O N

This is an action to enforce a claim for refund/tax credit of alleged erroneously paid corporate development tax imposed under Section 24(e) of the Tax Code.

Petitioner domestic corporation filed on October 17, 1983 its annual corporate income tax return for the fiscal year ended June 30, 1983 with the respondent's Makati Office declaring a net income of P4,342,966 and paying the corresponding tax due totalling P1,893,175, broken down into P1,510,038 as regular corporate income tax and P383,137 as corporate development tax.

It appears that on May 19, 1983 Batas Pambansa Blg. 399 repealed the corporate development tax prescribed in Section 24(e) of the National Internal Revenue Code which was implemented by respondent's Revenue Memorandum Circular No. 1-84 dated January 9, 1984, providing, insofar as pertinent, that -

> Accordingly, corporation otherwise qualified as "closely-held corporations" whose taxable year ends after May 19, 1983 are no longer subject to the provisions of Section 24(e) of the Tax Code. Corporation otherwise qualifying as "closely-held corporations" whose fiscal year ends before May 19, 1983 are still liable to pay the corporate development tax.

By virtue of the pronouncement petitioner filed with the respondent's office a formal claim for the refund/tax credit of the amount of P383,137 representing the alleged erroneously paid corporate development tax on October 16, 1985 simultaneously instituting the instant petition for review as a hedge against the running of the statutory period of limitations.

It does not appear that the respondent disputes the relatively simple material facts but for the interjection that petitioner must show compliance with the requirements of both Section 292 (recovery of tax erroneously or illegally collected) and Section 295 (authority of the Commissioner to compromise, abate and refund/credit taxes) likewise bear the burden of proving that the taxes paid were erroneously and illegally collected.

The question presented is whether under the circumstances petitioner has established a valid claim to the refund/tax credit of the amount of corporate development tax paid for the subject tax year.

Respondent would have it impressed that the tax sought to be refunded was paid sometime during the fiscal year ended June 30, 1983 and the claim for refund as well as the petition for review were filed on October 16, 1985 or a lapse of two years, hence, time-barred. "In any case, no suit or proceeding shall be begun after the expiration of two years from date of payment of the tax or penalty regardless of the supervening cause that may arise after payment" (*Section 292, Tax Code*).

This Court had earlier ruled on the issue raised which bears repeating, *inter alia,* that, "This apparent contentious quibble on computation of the two-year prescriptive period under Section 292, *ibid,* had been squarely resolved in earlier decisions of the Supreme Court which lends settling eloquence to the precise issue in the case at bar. Thus, in a case where the tax is payable in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertained that the taxpayer either made a profit or suffered losses. (***Commissioner of Internal Revenue v. Asia Australia Express Ltd.**, G.R. No. 85956, April 10, 1989.*) And the taxpayer has until the fourth month following the close of the fiscal period within which to file a final adjustment return of the preceding fiscal year (*Sec. 87, Tax Code*), which may well be the reckoning date for the two-year prescriptive period". (***Unibake Incorporated v. Commissioner of Internal Revenue**, CTA Case No. 3987, July 31, 1989.*)

Applied in the case at bar, petitioner's corporate income tax return for the fiscal year ended June 30, 1983 was submitted on October 17, 1983 (October 15 and 16, 1983 being Saturday and Sunday) and the administrative claim for the refund as well as the judicial petition for review were both filed on October 16, 1985 which comport with the two-year statutory proscription tolled from October 16, 1983, hence seasonably filed.

On the matter of the repeal of Section 24(e) of the National Internal Revenue Code, thereupon based the claimed refund, We find nothing ambiguous nor obscure in the language of Batas Pambansa Blg.

399 as implemented by Revenue Memorandum Circular No. 1-84 dated January 9, 1984, insofar as the same is brought to bear upon the circumstances obtaining, thus, "Accordingly, corporations otherwise qualifying as 'closely-held corporations' whose taxable year ends after May 19, 1983 are no longer subject to the provision of Section 24(e) of the Tax Code". (*Underscoring Ours.*) Petitioner corporation's FY ended on June 30, 1983. This is more than a statement of the obvious, We uphold.

**WHEREFORE, respondent is hereby ordered to grant the refund/tax credit sought in the amount of P383,137 representing the erroneously paid corporate development tax for the subject fiscal year.**

**SO ORDERED.**

Quezon City, Metro Manila, September 28, 1990.

ALEX Z. REYES
Associate Judge

**I CONCUR:**

CONSTANTE C. ROAQUIN
Associate Judge

**CERTIFICATION**

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

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals