REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

OCMIS ELECTRIC SERVICE
CO., INC.,
Petitioner,

- versus -

C.T.A.
CASE NO. 635

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

D E C I S I O N

The petitioner is seeking the recovery of the sum of ₱2,660.60, representing the income tax which it erroneously paid in 1953 and 1954, the last payment having been made on May 12, 1954. The claim for refund of said amount was filed on November 20, 1956, admittedly beyond two years from the dates of payment. Respondent denied the claim for refund on the ground that said claim was filed beyond two years from the dates of payment, pursuant to Section 309 of the National Internal Revenue Code. Hence this appeal.

The facts, as narrated by counsel for petitioner, are as follows:

> "That petitioner, Ocmis Electric Service Co., Inc., is a corporation duly organized and existing by virtue of the laws of the Philippines, with principal place of business at Oroquieta, Misamis Occidental. By virtue of Acts No. 3645, approved on December 7, 1929, and Act No. 3951, approved on December 21, 1932, it has established and maintained an electric light and power plant at Oroquieta, Misamis Occidental. Since then, it has been paying its income taxes up to September 6,

1957. As petitioner filed its claim for refund for these income taxes for the first time on October 20, 1952 only, we are compiling below the different payments of petitioner's income taxes from May 15, 1951:

Official Receipt No.	Date	Amount
153098	May 15, 1951	₱ 308.00
153144	Aug. 15, 1951	308.00
339323	May 22, 1952	1,366.00
339442	May 15, 1953	686.50
339719	Aug. 12, 1953	686.50
339763	May 12, 1954	1,287.60
339888	May 10, 1955	854.00
485724	Aug. 9, 1955	854.00
485735	Aug. 15, 1955	430.15
485769	May 12, 1956	748.00
485798	Aug. 11, 1956	748.00
486000	May 14, 1957	877.00
486048	Sept. 6, 1957	877.00
		₱10,516.15

"According to the records of the respondent, petitioner has paid only the sum of ₱10,030.75 from May 15, 1951 up to September 6, 1957. For purposes of expediency, petitioner has conceded the latter amount.

"Because of the provision of Sec. 10, of Act 3636, made applicable to the herein petitioner by the provision of Sec. 17, of Act No. 3645, exempting the herein petitioner from the payment of all taxes of any kind and nature, except the so called franchise tax, it filed a claim for refund for the income taxes that it has paid. The first claim was filed on October 20, 1952, reiterated on November 12, 1956, and followed up frequently in the years 1957 and 1958.

"On September 5, 1958, respondent refunded the herein petitioner the amount of ₱7,311.03, under Treasury Warrant No. 30,-394,500, leaving a balance, per records of respondent, in the amount of ₱2,660.60. The latter sum corresponds to the total payments made on May 15, 1953, May 12, 1953, and May 12, 1954 (O. R. No. 339442, 339719, and 339763, respectively). The refund of the amount of ₱2,660.60 was refused on the strict interpretation of Sec. 309 of the National Internal Revenue Code which provides that

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> claims for refund should be filed within two years from payment of the tax. The sum disallowed is admittedly beyond the two year period previous to November 20, 1956.
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> "There is no dispute on the propriety of the refund of the sum of ₱7,311.03, as this is in accordance with Sec. 10, of Act No. 3636, made applicable under Sec. 17, of the petitioner's franchise, Act No. 3645, and further supported by the ruling of the case of Carcar Electric & Ice Plant Co., Inc. vs. Collector of Internal Revenue (G. R. No. L-9257, promulgated Oct. 17, 1956).
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> "The present case seeks refund of the amount disallowed, that is, the sum of ₱2,660.60." (Pp. 1-2, Memorandum for Petitioner.)

The sole issue presented for our consideration is whether or not respondent erred in not refunding to petitioner the sum of ₱2,660.60. Petitioner contends that, on equitable grounds, the said amount should be refunded. It is alleged that there is no reason why the amounts paid in 1951 and 1952 were refunded by respondent and yet the refund of the amounts paid in 1953 and 1954 was denied. The case of Panay Electric Co., Inc. v. Collector of Internal Revenue, G. R. No. 10574, May 28, 1958, has been cited in support of the view that the refund is in order.

There is no dispute that the sum of ₱2,660.60 was erroneously paid by petitioner. The fact is also admitted that the claim for refund of said amount was filed with the Bureau of Internal Revenue after the lapse of two years from the dates of payment. Therefore, respondent correctly denied the claim for refund, pursuant to Section 309 of the Revenue Code. And the Court may not order the refund by virtue of Section 306 which provides that no suit or proceeding may be instituted until a claim for refund has been duly filed with the Bureau of Internal Revenue in accordance with Section 309. Any action instituted for recovery of an internal revenue tax, where no claim for refund thereof has been filed within the statutory period, is subject to dismissal for lack of cause of action. (Johnston Lumber Co., Inc. v. Court of Tax Appeals, G. R. No. L-9292, April 23, 1957.)

But it is argued that petitioner is entitled to the refund on equitable grounds, citing Panay Electric Co., Inc. v. Collector of Internal Revenue, supra. In the case cited above, a claim for refund was filed within the statutory period, and the Collector (now Commissioner) of Internal Revenue at the time admitted the right of the taxpayer to the refund. However, the taxpayer was not able to institute court action for recovery of the amount claimed within two years from the dates of payment because of an agreement between the taxpayer and the Collector that they should await the result of a case pending in the Supreme Court in which the questions involved were similar to the case of Panay Electric Company. The case of herein petitioner is, therefore, entirely different from that case. No equitable ground exists in the instant case to justify the application of the doctrine laid down in the case of Panay Electric Company.

The fact that respondent allowed the claim with respect to payments made in 1951 and 1952 does not justify allowance of the claim for refund of payments made in 1953 and 1954. In the former, there was a claim for refund filed within the two-year period; in the latter there is none. That the claim for refund of the payments made in 1951 and 1952 was at first denied is immaterial. Respondent has the right to reconsider his decision.

Finding the decision appealed from in order, the same is hereby affirmed. No pronouncement as to costs.

SO ORDERED.

Manila, October 31, 1960.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge