REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6487

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 10 2002

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RESOLUTION

Before us for resolution is a Motion to Dismiss dated July 9, 2002, filed by respondent seeking the dismissal of this instant Petition for Review on ground of lack of jurisdiction of this court.

The facts leading to the filing of this Motion to Dismiss are as follows:

On April 15, 1991, the petitioner, in response to the call of President Corazon C. Aquino to generate more revenues for national development, allegedly made an advance income tax payment to the Bureau of Internal Revenue (BIR) for the 1991 operations amounting to P 180,000,000.00 under PNB Cashier's Check No. 109435 dated April 12, 1991. For the first and second quarters of 1991, the bank also paid P 6,096,150.91 and P 26,854,505.80, respectively (*Petition for Review, Annexes "A", "E-1" and "E-2"*).

On April 19 and 29, 1991 and May 14, 1991, petitioner requested the BIR for the issuance of a corresponding tax credit certificate to cover the said payments (*Petition for Review, Annexes "C", "C-1" and "C-2"*).

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Supposedly, the annual income tax liability of petitioner by the end of 1991 amounted to P 144,253,229.78 which when compared with its alleged total credits and payments of P217,552,122.38, resulted to a credit balance of P 73,298,892.60 (*Petition for Review, Annex "F"*).

Petitioner admitted that the above-mentioned credit balance or refundable amount of P73,298,892.60 was carried-over from 1992 to 1996 but was allegedly never applied against its income tax liability due to its negative tax position for the said inclusive years (*Petition for Review, Annexes "G", "H", "I", "J" and "K"*).

On July 28, 1997, petitioner again requested the respondent for the issuance of a tax credit certificate in its favor. This request was forwarded, for review and further processing, to the Deputy Commissioner for Legal and Inspection Group, Deputy Commissioner for Operations Group, the BIR's Assessment Division and finally, to the BIR's Large Taxpayer Service (*Petition for Review, Annex "L"*).

On August 14, 2001, petitioner made another request to be allowed to apply the subject amount of P 73,298,892.60 against its future gross receipts tax liability (*Petition for Review, Annex "O"*).

On May 21, 2002, the petitioner received a copy of respondent's letter dated May 3, 2002, denying the said claim on the ground of prescription (*Petition for Review, Annex "P"*).

On June 20, 2002, the petitioner appealed by way of a Petition for Review with this court. Respondent, in response, filed a Motion to Dismiss.

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Respondent, in his Motion to Dismiss, argues that the claim for refund was filed beyond the two-year prescriptive period. It is the contention of respondent that counting from April 15, 1992, the last day for filing the final adjustment return for corporate income taxes for the year 1991, petitioner's right to claim refund expired on April 15, 1994. Since the said claim was filed out of time, the court, consequently, lacks jurisdiction over the instant petition.

Petitioner, in its Opposition, counters that Section 230 (now Section 229 of the NIRC of 1997), which provides for the two-year prescriptive period for filing claims for refund and tax credit does not apply to the special circumstances that characterize its claim, on the following grounds: (1) it contemplates specifically of taxes erroneously and illegally collected, which its case is not and (2) the amount claimed partakes of the nature of deposit and not as payment for an existing income tax liability. It further argues that existing jurisprudence allows the suspension of the two-year prescriptive period on grounds of "justice and equity and other special circumstances."

After considering the attending facts, evidence, laws and jurisprudence applicable to this case, we find the petitioner's arguments bereft of merit. Accordingly, we dismiss the instant petition.

At this juncture, the court reckons it proper to cite Section 230 of the then Tax Code inasmuch as it is the focal point of contention, to wit:

> "**Section 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 excessively or in any manner wrongfully collected, until a claim

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> 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 filed after the expiration of two (2) years from the date of payment 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Emphasis supplied.)

The aforequoted provision provides a clear guideline to those directly affected by the said law, viz., the claimant must file claim for refund or tax credit two years from the date of payment irrespective of any "supervening cause" that might arise after payment.

The law could not be any clearer.

Section 230 of the National Internal Revenue Code prevents any suit or proceeding from being maintained in any court for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any sum said to have been excessive or in any manner wrongfully collected unless (1) a written claim for the refund or credit thereof has been duly filed with the Commissioner and (2) the suit or proceeding shall have been instituted within two years from the date of payment of the tax or penalty regardless of any supervening cause that might arise after such payment.

The two-year period applies not only to the requirement of submitting the written claim for refund to the Commissioner of Internal Revenue (CIR) but likewise in filing the appeal with the Court of Tax Appeals. In fact, the filing of the claim with the CIR does not suspend the running of the two-year prescriptive period. Which explains why the

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taxpayer should not wait for the decision of the Commissioner before coming to CTA. In the case of **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc.** (*22 SCRA 12*) the Supreme Court held that:

> " . . . The claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. 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 awaiting the decision of said Collector."

It is a well-established legal principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction.

As correctly pointed out by respondent, petitioner by its own admission clearly laid out the fact that it had filed its petition for review beyond the period allowed by law. The taxable period involved in this case is 1991. Petitioner filed the Petition for Review with the court only on June 20, 2002. Its right to claim refund expired on April 15, 1994, two years from April 15, 1992 which was the last day for filing the final corporate income taxes for the year 1991.

In **ACCRA Investments Corp., vs. Court of Appeals, et. al.**, *204 SCRA 957*, the Supreme Court ruled that the two-year prescriptive period starts to run from the filing of the Final Adjustment Return. Further, the High Tribunal in the case of **Commissioner of Internal Revenue vs. Court of Appeals, et. al.**, *G.R. No. 106913, May 10, 1994* declared that, "claims for refund should be made within two years from the date of payment of the tax sought to be refunded (Section 230, National Internal Revenue Code)."

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Petitioner contends that although there is no dispute that claims for refund or issuance of tax credit certificate, such as the one before us, must be filed within the two-year period, the same admits of exceptions, viz., (1) on grounds of "justice and equity" and (2) other "special circumstances", to which the claimed amount falls, as the same supposedly partakes of a deposit.

We do not agree with petitioner's position that the two-year prescriptive period does not apply to its case.

Section 230 of the Tax Code was intended to govern all kinds of refunds of internal revenue taxes – those taxes imposed and collected pursuant to the National Internal Revenue Code. Hence, it applies regardless of the conditions under which payment has been made.

Regarding petitioner's allegations that the two year period does not apply to the claimed amount because as it is in the nature of a deposit, the court has a contrary view. In the case of **Union Garment vs. Collector,** *CTA Case No. 416, February 22, 1960*, it was conceded that although admittedly the mere making of a deposit is not equivalent to payment, the two-year prescriptive period is counted from the conversion of the deposit to payment. This conversion takes place when the actual tax obligation falls due or when it is actually paid evidenced by the filing of the income tax return. In the case at bar, this occurred when petitioner was supposed to file its 1991 return not later than April 15, 1992. In other words, granting that petitioner made advance income tax payments to the Bureau of Internal Revenue for its 1991 operations, at the end of said year, petitioner's tax liability became fixed and the advance payments made became erroneous when they

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exceeded petitioner's total tax liability for the year. And even if petitioner's allegations were true that on April 19 and 29, 1991 and May 14, 1991, its request with the respondent could not be considered as a claim for refund/issuance of tax credit within the purview of Section 230 of the Tax Code. Its request on July 28, 1997, was a clear request for issuance of tax credit certificate of tax erroneously paid.

Equally important to point out is the fact that grant of judicial latitude is granted only on ground of equity in the absence of law or rules providing clear guidelines or procedure for its implementation. Equity comes in only when the law is inadequate to provide essential justice (**National Federation of Sugar Workers vs. Ovejera,** *114 SCRA 354*). In the present case, we do not believe that Section 230 is inadequate to provide protection to both the taxpayer and government alike.

To reiterate, both the claim for refund and the subsequent appeal to this court must be filed within the same two-year period. This is not subject to qualification. The court is bereft of any jurisdiction or authority to hear the instant Petition for Review, considering the fact that the above-stated action for refund was filed beyond the two-year prescriptive period as allowed under the Tax Code.

WHEREFORE, in view of all the foregoing, the respondent's Motion to Dismiss is hereby **GRANTED**. The Petition for Review is accordingly **DISMISSED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge

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