REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS as Liquidator of PARAMOUNT ACCEPTANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4257

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

12/20/93

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D E C I S I O N

Petitioner seeks to recover an aggregate amount of P65,259.00 representing income tax alleged to have been overpaid by Paramount Acceptance Corporation for the year 1985.

Petitioner, Bank of the Philippine Islands (BPI for short) is a bank and trust corporation duly organized and existing under Philippine laws. It acts as the liquidator of Paramount Acceptance Corporation after its dissolution on March 31, 1986.

On April 2, 1986, Paramount Acceptance Corporation (Paramount for brevity) filed its Corporate Annual Income Tax Return, for calendar year ending December 31, 1985, declaring a Net Income of P3,324,802.00 (Exh. A). The income tax due thereon is P1,153,681.00. However, Paramount paid the BIR its quarterly income tax, to wit:

Qtr.	CR/ROR	Date	Bank	Amount	Exh.
1st	6817293	5-30-85	DBP	P 308,779.00	C
2nd	5613316	8-29-85	DBP	626,000.00	C-1
3rd	7720471	11-29-85	DBP	284,161.00	C-2
	TOTAL			P1,218,940.00	

After deducting Paramount's total quarterly income tax payments of P1,218,940.00 from its income tax of P1,153,681.00, the return showed a refundable amount of P65,259.00. The appropriate box in the return was marked with a cross (x) indicating "To be refunded" the amount of P65,259.00.

On April 14, 1988, petitioner BPI, as liquidator of Paramount, through counsel filed a letter dated April 12, 1988 reiterating its claim for refund of P65,259.00 as overpaid income tax for the calendar year 1985. The following day or on April 15, 1988, BPI filed the instant petition with this Court in order to toll the running of the prescriptive period for filing a claim for refund of overpaid income taxes.

In answer to the petition, respondent as a special and affirmative defenses alleged that:

(1) the petition is defective since it failed to state that a claim for refund was duly filed with the respondent's office and this case does not involve an erroneous or illegally collected tax therefore the same should be dismissed;

(2) the amount sought to be refunded is self-serving since it was computed by petitioner itself and the income tax return standing alone is not sufficient proof to be entitled to the refund claimed;

(3) granting without admitting, that petitioner is entitled to a tax refund, the claim for refund has prescribed considering the petition was filed on April 15, 1988, which is way beyond the two-year prescriptive period for filing a suit for refund, it appearing that Paramount paid its quarterly income taxes on May 20, 1985, August 29, 1985 and November 29, 1985 all payments having been made prior to April 15, 1986; and

(4) the burden of proof in claims for refund lies with the taxpayer because taxes paid are presumed to have been collected in accordance with law.

After the presentation and offer of evidence by petitioner, respondent waived her right to present any evidence instead she moved to submit this case for decision. Both parties failed to submit any memorandum in support of their cases.

The issues presented are:

1. Whether or not this Court has jurisdiction over the petition considering this case does not involve an erroneously collected tax and for failure on the part of petitioner to allege that a claim for refund was filed with the respondent;

2. Whether or not the two-year prescriptive period to claim a refund as provided for in Section 292 (now Section 230) of the National Internal Revenue Code commence to run from the date the quarterly income tax was paid or from the date of filing of the Final Adjustment Return (final payment); and

3. Whether or not the petitioner has established by competent evidence its entitlement to the refund claimed.

Focus should be made on Section 292 (now Section 230) of the National Internal Revenue Code in resolving issues one and two.

Section 292 (now Section 230) of the National Internal Revenue Code provides:

> "Sec. 292. 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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 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: x x x." (Emphasis supplied)

The filing of a claim for refund with the Commissioner of Internal Revenue, within two years from the date of payment of the tax, is a prerequisite before any court action can be commenced. Section 295(3) of the Tax Code provides:

> "SEC. 295. **Authority of the Commissioner to make compromises and to refund taxes**. - The Commissioner may:
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> (1) x x x x x x x x x.
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> (2) x x x x x x x x x.
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> (3) Credit or refund taxes erroneously or illegally received, or penalties imposed without authority; refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the <u>taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax</u> or penalty." (Underlining supplied.)

Respondent alleged that petitioner failed to state in its Petition for Review that it filed a claim for refund with the respondent. Paragraph 3 of the Petition For Review reads:

> "3. Notwithstanding such claim for refund in the return, respondent has failed to make a refund; since the prescriptive period for filing a claim and filing a suit for such refund is about to expire, <u>petitioner filed today with the respondent a written claim for refund</u>, a copy of which is hereto attached as Annex B." (Emphasis ours.)

A reading of the petition shows that petitioner stated that a written claim for refund was filed with the respondent. Attached with the Petition was Annex "B" (Exh. D) which is the letter of petitioner, asking for a refund, filed with the Bureau of Internal Revenue on April 14, 1988. It is evident that petitioner had substantially complied with the requirement that the "Petition for Review shall contain allegations showing jurisdiction in the Court, a concise statement of the ultimate facts and a summary statement of the issues involved in the case" as embodied in Section 2 of Rule 5 of the Rules of the Court of Tax Appeals in relation to Section 295 of the Tax Code, .

Now, whether the date of filing a claim for refund with the BIR on April 14, 1988 and the filing of the Petition with this Court on April 15, 1988 caused petitioner's suit to prescribe shall be dealt with taking into consideration the provisions of Sections 292 and 295 of the NIRC.

The rule is a taxpayer has two years from the date of payment of the tax to claim for refund with the Commissioner of Internal Revenue and commencement of a suit for refund with this Court. 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 ascertainable that the taxpayer either made profits or suffered losses in its operations. **(Commissioner of Internal Revenue v. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989; Ateneo De Manila University**

v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989).

In the case of a corporate taxpayer, it pays its income taxes in quarterly installments. "The income tax due on the corporate quarterly returns and the final income tax returns shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner of Internal Revenue" (Section 87(c) NIRC). Thus, the date of payment of the tax as prescribed under Section 292 of the Tax Code was construed to mean the period when the corporate income tax return is required to be filed.

The time for filing the annual corporate income tax return is on or before the 15th day of April (if on a calendar basis) or on or before the 15th day of the fourth month following the close of the fiscal year. **(Section 87(b) NIRC; Unibake Inc. v. Commissioner of Internal Revenue, CTA Case No. 3987, July 31, 1989.)** Where the law-making authority intended to impose a two-year prescriptive period from the date of payment of the tax for filing a claim for refund with the Commissioner of Internal Revenue under Section 295(3) and the same period to file a suit for the recovery of excess payment of taxes as a condition for the grant of refund under Section 292, the legislature does so expressly and clearly.

In the case of **ACCRA Investments Corporation v. The Hon. Court of Appeals, Et. Al., G.R. No. 96322, December 20, 1991,** petitioner ACCRAIN's main argument in elevating this case to the Supreme Court is precisely the reckoning date for the commencement of the two-year prescriptive period in filing a claim for refund of overpaid taxes for the taxable year 1981. The Supreme Court held:

> "The petitioner corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The petitioner corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on April 15, 1982, it reported a net loss of P2,957,142.00. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of the aforementioned codal provision which reads:
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> > 'Sec. 70(c) - <u>Time payment of the income tax.</u> - The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Sections 68 and 69 shall be paid at the time the declaration or return is filed as prescribed by the Commissioner of Internal Revenue.'
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> x x x x x x x x x.
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> The term 'return' in the case of domestic corporations like ACCRAIN refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which partly reads:
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> > 'Sec. 69. <u>Final Adjustment Return</u>. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not

equal to the total tax due on the entire taxable income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.'

Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it receive from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. <u>The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982</u>. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, <u>the petitioner corporation had until April 15, 1984 within which to file its claim for refund</u>.

x x x x x x x x x.

It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operation. The 'date of payment', therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982."

In the case at bar, petitioner adopts the calendar basis of reporting its income and expenses. For the calendar year ending December 31, 1985, petitioner filed its Income Tax Return on April 2, 1986. The Tax Code says it has on or before April 15, 1986 to file the return. It has two years to file a claim for refund with the Commissioner of Internal Revenue and with this Court counted from April 15, 1986, the date when petitioner is required to file its final adjustment return. Petitioner corporation duly complied with this requirement. Petitioner filed a written claim for refund with respondent on April 14, 1988 and subsequently the following day it filed with this Court on April 15, 1988 a Petition seeking the refund of the amount stated in the return. Petitioner has up to April 15, 1988 to file a suit for the refund of overpaid income tax. Both the claim for refund and the petition was filed within the two year period. Therefore, petitioner's claim for refund has not yet prescribed.

Respondent further alleged that this is not a case of erroneously or illegally collected tax therefore the petition should be dismissed. While this case does not involve an erroneous or illegally collected tax since the corporate quarterly tax was rightfully paid at the time it fell due still this is a case covered under Section 292 (now Section 230) of the Tax Code.

Section 292 provides that "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 excessive or in any manner wrongfully collected, until a claim 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 the case of **Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991, affirmed by the Court of Appeals on July 31, 1992 under G.R. SP No. 26839,** the Court ruled:

> "Although the title of Sec. 230 of the Tax Code is 'Recovery of Tax Erroneously or Illegally Collected', the title alone is not controlling. By the tenor of Sec. 230, the two-year limit applies to actions to recover -
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> 1. any national internal revenue tax erroneously or illegaly assessed or collected;
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> 2. any penalty claimed to have been collected without authority; or
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> 3. any sum alleged to have been excessive or in any manner wrongfully collected
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> (See Muller & Phipps v. Commissioner of Internal Revenue, 103 Phil. 145, March 20, 1958). The overpaid income taxes in this case falls under *3 for although they were legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they were nonetheless 'excessive'."

With regard to the second issue on whether or not the two-year prescriptive period to claim a refund of overpaid tax commences to run from the date the quarterly income tax was paid, the Supreme Court en banc has already resolved the same in the case of **Commissioner of Internal Revenue v. TMX Sales, Inc., and the Court of Tax Appeals, G.R. No. 83736, January 15, 1992,** when it declared:

> "Therefore, the filing of quarterly income tax returns required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, <u>the two-year prescriptive period provided in Section 292 (now Section 230 of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax</u>." (Underlining ours.)

The third issue is whether or not petitioner was able to substantiate its claim for refund.

Respondent alleged that the income tax return standing alone is not sufficient proof of entitlement to the sum sought to be refunded. Besides the computation submitted by petitioner is self-serving.

During the hearing, petitioner submitted and offered in evidence its 1985 Corporate Annual Income Tax Return (Exh. A), Quarterly Income Tax Returns for the First, Second and Third Quarters ending March 31, 1985, June 30, 1985 and September 30, 1985, respectively (Exhs. B, B-1 and B-2), BIR Payment Orders and Confirmation Receipts showing payments for the three quarters of 1985 (Exhs. C, C-1 and C-2) and the letter asking for a claim for refund filed with the respondent on April 14, 1988. Respondent did not object to the admission of these exhibits but took exception to the contents or veracity of the data contained therein. When it was respondent's turn to present her evidence, her counsel waived the presentation thereof and instead moved to submit this case based on the pleadings alone.

Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this case for decision nothing was shown during the hearing that the return was erroneous nor was there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified this Court if there was any. It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of the quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of P65,259.00.

WHEREFORE, the respondent is hereby ordered to **REFUND** in favor of petitioner, the sum of P65,259.00, representing overpaid income tax of Paramount Acceptance Corporation for the calendar year 1985.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 20, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(dissenting)
RAMON O. DE VEYRA
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**.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals