REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MENNEN PHILIPPINES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3746

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

3/19/87

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DECISION

In its letter of November 11, 1982 to the Bureau of Internal Revenue, petitioner Mennen Philippines, Inc., requested for the refund of the amount of ₱120,189 representing alleged overpaid corporate development tax for fiscal year ended November 30, 1981. Since no action was taken seasonably by respondent Commissioner of Internal Revenue on its claim for refund, petitioner filed the instant petition for review for recovery of the said amount of ₱120,189.

The material facts are not in dispute, petitioner having submitted, without objection of respondent, the case for decision on the basis of the pleadings.

Petitioner is a domestic corporation existing under and by virtue of Philippine laws with principal office located at No. 36 Main Avenue, Cubao, Quezon City.

Respondent is the duly designated Commissioner of Internal Revenue, vested with authority to act as such, including, inter alia, the power to grant refunds of erroneously or illegally collected internal revenue taxes. Respondent Commissioner holds office at the National Office Building of the Bureau of Internal Revenue, Diliman, Quezon City where he may be served with summons.

On March 15, 1982, petitioner filed its 1981 corporate annual income tax return with respondent's Bureau. In said return, it declared a net income of ₱1,375,204 and total tax due thereon in the amount of ₱600,176 consisting of ₱471,321 and ₱128,355, representing income and corporate development taxes, respectively. After it credited the amounts of ₱193 and ₱64,396 totalling ₱64,589, representing income tax payments for the first and third quarters of fiscal year ended November 30, 1981, respectively, the amounts of ₱535,587 was due and payable. Said amount of ₱535,587 which includes the corporate development tax of ₱128,855 was paid on March 15, 1982 under Central Bank Confirmation Receipt No. 9089996 and Revenue Tax Receipt No. 8725866.

In computing its corporate development tax liability for the year in question, petitioner made the following allocation of tax rates on the basis of the effectivity date of Presidential Decree No. 1773:

Prior to 1-16-81 (12-1-80 to 1-15-81)		
₱1,375,204 x 5% x 46/365	-	₱ 8,666
After 1-16-81 (1-16-81 to 11-30-81)		
₱1,375,204 x 10% x 319/365	-	120,189
Total		₱128,855

Contending that under Presidential Decree No. 1773 and BIR (Bureau of Internal Revenue) Ruling No. 92-85 dated March 30, 1982, petitioner was not liable to pay the corporate development tax on its net taxable income for the period January 16, 1981 to November 30, 1981, petitioner filed with respondent's Bureau a claim for the refund of the amount of ₱120, 189, computed as follows:

Corporate development tax paid	₱128,855
Less: Corporate development tax due for the period 12-1-80 to 1-16-81	(8,666)
Overpayment	₱120,189

Petitioner filed its petition for review with this Court on March 14, 1982 in accordance with Section 292 of the then in force National Internal Revenue Code. As stated earlier, respondent has not taken action on petitioner's claim for refund although he has denied the same through his answer filed on May 2, 1984.

The lone question tendered for resolution is whether or not petitioner is entitled to a refund of overpaid corporate development tax.

Presidential Decree No. 1773 which took effect on January 14, 1981 increased the corporate development tax from 5% to 10% of the taxable net income. Petitioner, therefore, being a closely-held corporation continued in 1981 to be subject to the corporate development tax but at the increased rate of 10% of its taxable net income.

This is not disputed by petitioner. Respondent averred it as a special and affirmative defense in his answer, and since petitioner submitted this case for judgment on the pleadings without giving respondent an opportunity to introduce evidence, petitioner must be understood to admit the truth of this material and relevant allegation of respondent. (Bauermann vs. Casas, et al., 10 Phil. 386; Evangelista vs. De la Rosa, 70 Phil. 115.)

However, in BIR Ruling No. 95-82 dated March 30, 1982, respondent's Bureau held that -

> "x x x With respect to corporations on the fiscal year basis, the said increased rate of 10% corporate development tax shall apply to their taxable year which begins on the first day of any month in the year 1981, except January 1, 1981.
>
> "In view thereof, since you are a corporation operating on a fiscal year basis and your fiscal year 1981 begins on September 1, 1981, the increased rate of 10% corporate development tax shall only apply to you beginning that date." (Emphasis ours)

Petitioner is a corporation operating on a fiscal year basis and the ruling should also apply to it. Thus, as correctly stated by petitioner in paragraph 7 of its petition for review, "inasmuch as petitioner's 1981 fiscal year begun on December 1, 1981, the increased rate of 10% corporate development tax is applicable to it on said date, and not prior thereto." (Emphasis supplied.)

Consequently, since petitioner paid the increased rate of 10% corporate development tax from January 10, 1981 to November 30, 1981, instead of starting from December 1, 1981, there is an overpayment in the amount of ₱60,095, computed as follows:

Corporate development tax paid	₱128,855
Less: Corporate development tax due for the fiscal year ended November 30, 1981 (₱1,375,204 x 5% = ₱68,760)	68,760
Amount refundable	₱ 60,095

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant petitioner Mennen Philippines, Inc., the refund/credit of the amount of ₱60,095 representing overpaid corporate development tax for fiscal year ended November 30, 1981. No costs.

SO ORDERED.

Quezon City, Metro Manila, March 19, 1987.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge