REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GAGAYAN ELECTRIC POWER &
LIGHT CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 3761

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

D E C I S I O N

Submitted for decision in this case is the issue of jurisdiction, which has been raised as one of respondent's affirmative defenses incorporated in his answer, filed on October 24, 1984.

From the records, it appears that petitioner is a corporation duly organized and existing under the laws. It has its principal office at Suite A, 8th floor, Strata 100 Bldg., Emerald Avenue, Ortigas Complex, Pasig, Metro Manila, and that said petitioner is a holder of a legislative franchise granted by Republic Act No. 3247, as amended by Republic Act Nos. 3570 and 6020, by virtue of which it is engaged in the distribution of electric power in certain municipalities in the Province of Misamis Oriental and Cagayan de Oro City. (Pars. 1 and 3, Petition for Review, admitted in Paragraph 1, Answer, pp. 1 and 52, CTA rec.)

In a letter of petitioner dated June 25, 1981, it requested respondent Commissioner of Internal Revenue for a ruling or certification to the effect that petitioner's income from time deposits and deposit substitutes are exempt from the 20% withholding tax under Revenue Regulation No. 112-80, implementing P.D. No. 1739. (pp. 10-11, CTA rec.) In reply to the aforesaid letter, respondent on September 3, 1981 informed petitioner that exemption from all taxes and assessments under a legislative franchise is limited only to those income derived from its business covered by the franchise, and all income derived from any activity or business not specified by the franchise is subject to income tax. (Annex "C", pp. 13-14 CTA rec.) In a letter of petitioner dated December 14, 1981, it requested respondent to clarify his stand on this matter since there were several occasions wherein petitioner was exempted on the same issue raised by it. (Annex "D", pp. 15-17, CTA rec.)

In answer to the clarification letter, respondent wrote petitioner a letter dated October 11, 1983, and received by the latter on March 9, 1984, informing petitioner that the interest yield from deposit substitutes (money market placements) are not subject to franchise tax but to 20% withholding income tax under Section 24(cc) of the Tax Code. (Annex "E" pp. 18-19, CTA rec;

also see paragraph 11, petition for review admitted in paragraph answer, pages 1 and 52, CTA rec.)

On April 6, 1984, petitioner interposed its appeal to the Court and respondent, on October 24, 1984, filed his answer raising the following special and affirmative defenses:

> 4. Petitioner has not filed a claim for refund or credit with respondent Commissioner of Internal Revenue; therefore, this Honorable Court acquires no jurisdiction over the case;
>
> 5. The petition states no cause of action. It fails to allege the date when the tax was paid;
>
> 6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute. As held by the Supreme Court in the case of Commissioner of Internal Revenue vs. Guerrero, 21 SCRA 183;
>
>> "x x x The rule applied with undeviating rigidity in the Philippines is that for a tax exemption to exist, it must be so categorically declared in words that admit no doubt. x x x."
>
> 7. Exemption from all taxes and assessments under a legislative franchise is limited to income derived from business covered by the franchise. Interest income which accrues on petitioner's time deposit substitutes is an extraneous income derived from business not specified in the franchise;
>
> 8. Petitioner's interest income/yield from money market placements is subject to income tax; consequently, it is subject to the 20% withholding tax imposed by Section 24(cc) of the Tax Code, as amended by P.D. No. 1739;
>
> 9. Any amount claimed to have been withheld must be shown to have been paid to, and received by, the Bureau of Internal Revenue;

> 10. The collection of the tax was made in accordance with law and regulations on the matter and, therefore, the same is not refundable;
>
> 11. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the Tax Code. (pp. 52-54 CTA rec.)

Did petitioner file a written claim for refund or tax credit before the Commissioner of Internal Revenue pursuant to Section 292 of the Tax Code?

Petitioner contends that the two letters' dated June 25, 1981 and December 14, 1981, specifically asking for a ruling or certification of whether it is exempt from the 20% withholding tax on its income from time deposit or deposit substitutes points only to one purpose, viz: that the taxes withheld by respondent be refunded to the petitioner, because the said letters intended clearly to recover the amount withheld by respondent, and, therefore, it has complied with the requirement of Section 292 of the Tax Code, and this court has jurisdiction over the instant case.

We cannot subscribe to petitioner's view. Section 292 of the National Internal Revenue Code provides:

> Sec. 292. <u>Recovery of tax erroneously or illegally collected</u>. 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, of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in

> 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 two years from the date of payment of the tax 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 fact of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The law is clear and explicit. The above law requires a taxpayer to file a written claim for refund before the Commissioner of Internal Revenue within the period of two years from the date the tax was erroneously or illegally collected. The aforesaid two letters of petitioner addressed to the Commissioner of Internal Revenue are not claims for refund or tax credit as contemplated under said Section 292 of the Tax Code. A close scrutiny of the aforesaid letters show that petitioner merely requested for a ruling or a certification on the question as to whether it is exempt from the 20% tax withheld from its time deposit and deposit substitutes. Surely, petitioner may have the view of having the said withheld taxes refunded to it. But this intention was never clearly or expressly manifested by petitioner by means of the filing of a written claim seeking clearly the refund of erroneous or illegally collected taxes with the Commissioner of Internal Revenue as required under Section 292 of the Tax Code.

Settled is the rule that a claim for refund as contemplated in the above quoted provision of law, has been defined as a document filed within the statutory period in which the taxpayer has indicated with reasonable clarity that he is demanding a return of overpaid taxes and the grounds upon which he is making his demand. (Julia V. Forhan, 45 BTA 799). Nowhere in the said letters of petitioner which show, with definiteness, a demand for the refund of the amount of taxes alleged to have been erroneously or illegally paid, and which ultimately gives notice to the Government that such collection of taxes are questioned or sought to be refunded; and if the taxes are truly erroneously or illegally paid, then the collection thereof be corrected, or the taxes otherwise refunded. (Bermejo or Coll. GR L-3029, July 29, 1950.)

WHEREFORE, petitioner having failed to file a proper written claim for refund for erroneously or illegally paid taxes before the Commissioner of Internal Revenue as mandatorily required under Section 292 of the Tax Code, this Court hereby dismisses this case for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, October 30, 1985.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge