Republic of the Philippines
COURT OF TAX APPEALS
MANILA

MAYA TRADING COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 897

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

On February 26, 1958, the petitioner filed its income tax return for the year 1957 wherein it reported a net income of ₱14,270.42, and paid an income tax in the sum of ₱2,854.00. Among the incomes included in petitioner's return were the sums of ₱5,610.00 and ₱1,872.50 received as dividends from Palawan Quicksilver Mines and Palawan Consolidated Mining Company, respectively, or a total of ₱7,482.50. On May 15, 1959, it filed a written claim for refund of ₱1,122.37, representing alleged overpayment of its income tax for 1957 resulting from the erroneous treatment of ₱7,482.50, dividends received from Palawan Quicksilver Mines and Palawan Consolidated Mining Company, as fully taxable when the same was allegedly taxable only to the extent of 25%, pursuant to Section 24(A) of the National Internal Revenue Code, as amended by Republic Act No. 1148. Not receiving a decision from respondent on its claim for refund, and fearing that the case might not be decided within two years from the date of payment, petitioner filed a "PETITION FOR REVIEW" with this Court

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praying for the refund of said amount.

Except for the facts that the sum of ₱7,482.50 was included in petitioner's income tax return for 1957 and that it paid income tax in the sum of ₱2,854.00, all the other facts alleged in the petition for review are denied by respondent for lack of knowledge or information as to the truth thereof. By way of special defense, respondent claims that the appeal is premature as no decision has as yet been rendered on the claim for refund.

In connection with respondent's special defense that the appeal is premature and should be dismissed as no decision has as yet been rendered on petitioner's claim for refund, it has been held that in cases involving refunds of internal revenue taxes claimed to have been erroneously or illegally paid, a taxpayer need not wait for the decision of the Commissioner of Internal Revenue before instituting in the Court of Tax Appeals judicial action for their recovery. (Gibbs v. Collector, G. R. No. L-13453, February 29, 1960; Collector v. C.T.A., G. R. No. L-11494, Jan. 28, 1961.) This is so notwithstanding that Section 7 of Republic Act No. 1125 requires that there be a decision of the Commissioner of Internal Revenue and that the decision denying the refund must be filed with this Court within thirty days from the date of receipt of such decision, pursuant to Section 11 of said Act, which requirements are in conflict with Section 306 of the Revenue Code. It has been suggested, however, that "the legislative branch of the Government should take notice of such apparent conflicts in our statute books and start the elimination of the same by corresponding legislation." (College of Oral & Dental Surgery v. C.T.A., G. R. No. L-10446, Jan. 28, 1958.) Accordingly, the claim that the herein "petition for review" is premature must be dismissed as untenable.

Coming now to the merits of the case, we find that the sum of ₱5,610.00 was received by petitioner as dividend from Palawan Quicksilver Mines, a new and necessary industry, while the sum of ₱1,872.50 was received as dividend from Palawan Consolidated Mining Company, which is not a new and necessary industry but nonetheless exempt from income tax as a "new mine" under Republic Act No. 909.

Section 24(A) of the Revenue Code, as amended by Republic Act No. 1148, provides

> "That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new and necessary industry, as defined under Republic Act Numbered Nine hundred and one, only twenty-five _per centum_ thereof shall be returnable for purposes of the tax imposed by this section."

The law provides that dividends received by a domestic corporation from another domestic corporation are taxable only to the extent of 25% of such dividends if the distributing corporation is liable to the income tax or is exempt from such tax because it is a new and necessary industry under Republic Act No. 901.

As the sum of ₱5,610.00 was received by petitioner as dividend from Palawan Quicksilver Mines, a new and necessary industry exempt from income tax under Republic Act No. 901, only 25% of such amount was taxable in 1957. With respect to the sum of ₱1,872.50, which was received as dividend from Palawan Consolidated Mining Company, the evidence shows that said company is not a new and necessary industry, although exempt from income tax as a "new mine" under Republic Act No. 909. Therefore, the said amount is taxable in full. Dividends received from new mines, as provided in Republic Act No. 909, do not qualify for partial exemption under Section 24(A) of the Revenue Code, as amended by Republic Act No. 1148.

IN VIEW OF THE FOREGOING, petitioner made an overpayment of its income tax for 1957 in the sum of ₱842.00, computed as follows:

Net income reported -------	₱14,270.42
Deduct: 75% of ₱5,610.00 ---------	4,207.50
Net taxable income ---------	₱10,062.92
Income tax due on ₱10,062 at 20% ----------	₱ 2,012.00
Income tax paid ------------	2,854.00
Overpayment --------------	₱ 842.00

Respondent is, therefore, hereby ordered to refund to petitioner the sum of ₱842.00, without pronouncement as to costs.

SO ORDERED.

Manila, November 6, 1961.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge

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