REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CALTEX (PHILIPPINES) INC.,
Petitioner,

- versus - C.T.A. CASE NO. 2871

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

D E C I S I O N

In its petition for review filed with this Court on April 22, 1977, praying that, after hearing, this Court issue a judgment ordering respondent Commissioner of Internal Revenue to refund petitioner Caltex (Philippines) Inc. the amount of ₱352,185.00 representing alleged excess tax on interest payments, petitioner alleges that:

> 1. It is a corporation duly organized and existing under the laws of the Philippines, with principal offices at 540 Padre Faura St., Manila, while respondent is the duly appointed Commissioner of Internal Revenue of the Philippines with offices at the BIR Building, Diliman, Quezon City, where it may be served with summons. Respondent may likewise be served with summons through the Solicitor General at his official address.
>
> 2. On December 9, 1975, petitioner filed with the Office of the Commissioner of Internal Revenue, the herein respondent, a claim for refund in the amount of ₱352,185.00 representing the excess of withheld taxes on accrued interest due petitioner's suppliers for crude oil and lube/grease importations, copy of the claim

for refund is attached hereto and made an integral part hereof as Annex A.

These withheld taxes were paid to the Bureau of Internal Revenue on April 25, 1975 and July 25, 1975. Up to this time, herein respondent has not acted on the said request. Under Section 306 of the National Internal Revenue Code, herein petitioner has only two years from the date of payment of the tax within which to initiate this petition.

3. Petitioner, in processing its crude petroleum requirements from overseas, is committed to pay an interest of 12% per annum on all monies due and unpaid to its foreign suppliers which interest would commence and accrue 30 days (which later was extended to 60 days) from date of loading of the crude petroleum.

4. Petitioner, in compliance with Presidential Decree No. 131 and the pertinent BIR withholding tax regulations, has withheld from the accrued interest payments it made to its suppliers the 15% tax on interest of foreign loans.

5. During the period January 1 to September 30, 1975, petitioner accrued a total of ₱6,138,763. Of this total, ₱5,435,353 pertains to the interest due for the period January 1 to June 30, and the corresponding 15% withholding tax paid in the amount of ₱815,303.00.

6. The net remittable amount to the overseas suppliers (interest due less tax withheld) of the ₱6,138,763 was ₱5,217,949 after deducting from the former the amount of ₱920,814 00 the withheld tax. Petitioner has already paid the Bureau of Internal Revenue the sum of ₱815,303 as required by the withholding tax regulation requiring a quarterly filing and payment of income tax withheld at source for the quarter ending June 30, 1975.

7. Petitioner, under constraints of Central Bank regulations, was not able to remit in full the net remittable amount of ₱5,217,963 because of the deferred payment plan of the Central Bank. It only was able to secure the approval of the Central Bank for the amount of ₱3,222,228.00, which it remitted to its suppliers.

8. The remitted amount covers the interest due on such loans only to the extent of ₱3,790,857.00. There is therefore a balance of ₱2,347,906.00 still unremitted, with 15% tax thereon already withheld and paid to the Bureau of Internal Revenue.

9. Subsequently, however, petitioner's suppliers decided to forego the collection of the balance of interest due and not yet remitted to them in the amount of ₱2,347,906.00 and issued credit memos therefor dated September 30, 1975.

10. Meanwhile, said amount of ₱2,347,906 rather than being an expense of herein petitioner to be debited, became a credit and thus formed part of the taxable income for 1975 for which the 35% tax on the same was paid. Said amount was therefore taxed twice, to wit: (i) the tax of 15% under P.D. 131 and (ii) the tax of 35% on corporate income under the National Internal Revenue Code or a total of 50%.

11. Petitioner therefore filed with the herein respondent a claim for refund of the 15% tax withheld in the amount of ₱352,185.00 (₱2,347,906.00 x 15%) which is an excess tax on interest payments and which is part of the total withholding tax of ₱815,303.00 (₱5,435,353.00 x 15%) paid to the Bureau of Internal Revenue, which however remains unacted up to this time.

The summary of the above figures are found in Annex A of this petition.

In his answer to the petition for review, respondent admitted the allegations in paragraph 1 but specifically denied the allegations in paragraphs 3, 4, 5, 6, 7, 8, 9 and 10, for lack of knowledge or information sufficient to form a belief as to the truth thereof. While respondent admitted the allegations in paragraph 2 to the effect that in a letter dated December 9, 1975, which was received by him on December 18, 1975, petitioner requested for the refund or credit of alleged excess payments of withholding tax on interests for 1975, respondent specifically denied the rest of the averments made therein including the contents of Annex "A" of the Petition for being erroneous conclusions of fact and/or law, the truth of the matter being those stated in the special and affirmative defenses of his answer. Likewise, while respondent admitted the allegation in paragraph 11 that petitioner filed a claim for refund, he specifically denied the rest of the averments therein for being erroneous conclusions of facts and/or law, the truth of the matter being that respondent acted on petitioner's claim for refund and credit by causing the investigation thereof.

And by way of special and affirmative defenses, respondent avers that:

> 5. The taxes in question were collected in accordance with law; and

> 6. In an action for tax refund, petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter.

After the issues were joined, petitioner filed on November 9, 1977 a manifestation and motion to suspend proceedings on the ground "that there is presently a pending claim involving the same amount and subject matter by herein petitioner before the Appellate Division of the Bureau of Internal Revenue". And the petition for review at bar was "filed for purposes of arresting the two (2) year period provided by law."

The records reveal that after the above motion was granted by the Court, petitioner, with the concurrence or without objection of respondent, simply requested, whenever this case was set for hearing, for the cancellation or postponement of such hearing on the ground that its claim for refund was still being administratively processed by the appellate division of the Bureau of Internal Revenue. As a matter of fact, there were even instances when petitioner manifested in open court that its claim has already been favorably recommended and approval thereof by the Commissioner of Internal Revenue was just being awaited.

However, when this case was called for hearing on

August 7, 1985, petitioner Caltex (Philippines) Inc., without offering proof as to the truth of its own allegations, moved for its submission for decision on the basis of the pleadings. No objection was interposed by respondent. This case is therefore submitted for judgment only on the basis of the pleadings, without any Bureau of Internal Revenue records forwarded to this Court, and without petitioner offering any proof as to the truth of its own allegations which were all in effect specifically denied by respondent.

Settled is the rule that the party who prays for judgment on the pleadings without offering proof as to the truth of his own allegations and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (Bauermann vs. Casas, et. al., 10 Phil. 386; Evangelista vs. De la Rosa, 76 Phil. 115.) It follows that petitioner, as movant, must be taken to have submitted and rested its case on the material and relevant allegations of respondent taken together with such of its own as are admitted. (Evangelista vs. De la Rosa, supra.)

The only material and relevant allegations of respondent are his special and affirmative defenses that (1) the taxes in question were collected in accordance with law; and (2) in an action for tax refund, petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. And the pertinent allegations of petitioner as are admitted by respondent are that : (1) petitioner is a corporation duly organized and existing under the laws of the Philippines, with principal offices at 540 Padre Faura St., Manila; (2) in a letter dated December 9, 1975, which was received by respondent on December 18, 1975, petitioner requested for the refund or credit of alleged excess payments of withholding tax on interests for 1975; and (3) petitioner filed a claim for refund thereof although the averments therein were specifically denied for being erroneous conclusions of facts and/or law. No evidence whatsoever was offered by petitioner in support of its allegations that it is entitled to the refund of the amount of P352,185.00 representing alleged excess tax on interest payments.

It is thus clear beyond doubt that there is no ground or basis upon which this Court can issue a judgment ordering respondent to refund herein petitioner the amount involved in its claim. As correctly contended by respondent, and admitted by petitioner, in an action for tax refund, petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations on the matter. Petitioner having failed to sustain the burden placed upon it by presenting proof that it is entitled to the refund of the amount involved herein, this Court could not look with approval to the grant of the refund.

And more so when it is considered that a refund of taxes undoubtedly partakes of the nature of an exemption, and the same cannot be allowed unless granted in the most explicit and categorical language. (Resins, Inc. vs. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.) Claims for refund are construed strictly against claimants since a claim for refund is in the nature of an exemption from taxation. (Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95.) As set forth in Commissioner of Internal Revenue vs. Guerrero, L-20812, Sept. 12, 1967, 21 SCRA 180: "From 1906, in Catholic Church vs. Hastings to 1964, in Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, it has been the constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*." (Catholic Church vs. Hastings, 5 Phil. 701; Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs, L-21841, Oct. 28, 1966, 18 SCRA 488; Phil. Acetylene vs. Commissioner of Internal Revenue, L-19707, Aug. 17, 1967, 20 SCRA 1056; Commissioner of Internal Revenue vs. Guerrero, L-20942, Sept. 22, 1967, 21 SCRA 180; Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975, 67 SCRA 351.)

WHEREFORE, finding the petition for review without merit, the same is dismissed and the refund/credit sought is hereby denied.

SO ORDERED.

Quezon City, Metro Manila, January 29, 1986.

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
Associate Judge