REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRIMA BUSINESS MACHINES, INC.,
Petitioner,

- versus - C.TA. CASE NO. 2990

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

8/31/81

D E C I S I O N

It appears in this action for refund or tax credit of an alleged over-payment of income tax that, petitioner, Prima Business Machines, Inc., a domestic trading corporation, filed with respondent Commissioner of Internal Revenue on January 17, 1977 its income tax return for the fiscal year ended September 30, 1976; declaring a gross income of ₱1,668,033.00, a total deduction of ₱1,002,529.00, a taxable net income of ₱665,504.00 and a tax due thereon amounting to ₱222,926.00 which it paid in installments. Subsequently on January 24, 1978, petitioner filed an amended income tax return consequenced by its own alleged erroneous entry in its books which treated the importations of 60 units of cash registers amounting to ₱306,171.20 as "merchandise in transit" instead of classifying them as "purchases" resulting in an overstatement of net income by ₱306,171.20 as well as the management bonus which is computed on net income after taxes by ₱9,637.36. After proper adjustments to net profit and management bonus, a taxable net income of ₱368,969.91 instead of ₱665,504.00 previously reported which should have been taxed at ₱119,139.00 would result in an over-payment of income tax amounting to ₱103,787.00. A claim for the refund/credit of ₱103,787.00, representing the difference between the amounts of ₱222,926.00 and ₱119,139.00, was filed together with the amended return, which had remained unacted by respondent to date of filing this petition for review on January 15, 1979.

Petitioner shores the claim on the findings contained in the Report of Investigation dated March 5, 1979 authorized by respondent's office, which, insofar as pertinent, reads:

> "The over-payment mentioned above arose on an error of its auditors in making adjustments in the books of accounts of the claimant by debiting "merchandise in transit" and crediting the corresponding amount to "purchases" thus reducing the cost of goods sold by ₱308,171.20. Said error was verified

by the undersigned from the Letters of Credit Nos. R-1272-76 and R-1271-76 and Central Bank Release Certificates Nos. 11279-76 and 11410-76 to the effect that while the cash registers involved in the importation were already reserved by Prima Business Machines, Inc., they were treated as "Merchandise in Transit" in its books. The allegations, therefore, of claimant in its letter are true and the refund of the amount of ₱103,787.00 is in order." (Exh. F, p. 47, BIR records)

Respondent specifically assails the legal sufficiency of his examiner's report as the sole basis for the claim sans the presentation of augmenting evidences but seeks alternatively a deficiency tax liability against petitioner as recommended on the same report, thus:

> "However, in the examination of the records, it was found that there is still due from Prima Business Machines, Inc., ₱1,095.91 as deficiency advance sales tax on importations as computed in the attached working papers which should reduce the amount claimed." (Exh. 2-A, p. 47, BIR records)

Respondent further takes issue on the tenability of a part of the claimed refund in the amount of ₱25,440.00 representing three installments (Exh. 1-A, p. 28, BIR records) out of the total income tax payments of ₱222,926.00 for the fiscal year as barred by the statutory two-year period of limitation, i.e., from the time of payment to the filing of the petition on January 15, 1979, itemized as follows:

QUARTER	DATE	AMOUNT
First installment	February 12, 1976	₱ 6,853.85*
Second installment	May 26, 1976	9,127.71*
Third installment	August 18, 1976	9,458.44*
Fourth installments:	January 17, 1977	65,828.67
	April 15, 1977	68,950.72
	July 13, 1977	62,706.61
TOTAL		₱222,926.00

*Allegedly barred by prescription

(Exh. A, p. 28, Exh. B, p. 25, BIR records)

The issue centers therefore on the justification in the use of the report of findings as basis for the determination of the claim for refund or tax credit of alleged over-payment of income tax.

The records show that respondent had the petitioner's particular claim for refund or tax credit adverted to above investigated and verified. It will suffice to point out that an appropriate "examination of the books of account and other related record of the above-named firm for purposes of verifying the validity of their claim for refund/ tax credit of income tax over-payment amounting to ₱103,787.00 per its letter dated January 16, 1978" (Exh. F, supra) was conducted.

The report, itself, furnishes the best means of its own exposition. The factual findings are not short of specific support in terms of tractable pertinent data and relevant records openly laid and fully disclosed by the petitioner. As such, the report deserves the credence that should normally be accorded in the absence of contrary evidence. Respondent points to no factual errors and superfluities which need to be cured and abridged. And, not that the examiner's credentials are impeccable but to his favor must be conceded the presumption of regularity in the performance of official duties (Sec. m-5, Rule 131, Revised Rules of Court; U.S. vs. Escalante, 36 Phil. 743; 31 C.J.S. 790) which has not been disproved by any affirmative evidence of irregularity or unlawful conduct. Accordingly, we feel compelled to affirm the import and force of the report of findings which may not be suffered to petrify in futility.

Moreover, it adds no strength to respondent's position as certainly it would be an absurdity on his part to repudiate the report by squirming out of a disadvantageous situation insofar as it sustains the refund and then, on the same breath, invoking the same findings on the deficiency tax liability against petitioner. Such a fluctuating luxuriance of expediency would cast respondent in a role who does not comport with the standards of fairplay. We apprehend that the report of investigation which respondent himself had occasioned should not serve narrow purposes in construing the rights and obligations of the parties affected thereby. The interest of government is not that it shall win a case but that justice shall be done.

Turning to petitioner's objection against the deduction from its refundable claim the sum of ₱1,095.91 representing deficiency advance sales tax liability uncovered in the investigation, suffice it to state that as implied in the holding in Commissioner of Internal Revenue vs. Itugon-Suyoc case, (G.R. No. L-25299, July 29, 1969, 28 SCRA 871) allowing the taxpayer the right to apply its refundable claim from its existing tax liability, the government, in the same token and for reasons deemed hardly less imperative and important, should not be precluded in availing of the same. In the case at bar, respondent deserves no different treatment and must be extended the right to deduct petitioner's tax liability from its refundable claim.

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As to the question raised by respondent relative to the prescription of action on the three installments in the amount of ₱25,440.00 out of the total income tax payments of ₱222,926.00 the same must be answered in the negative as it was squarely met in the cases of Collector of Internal Revenue vs. Prieto, G.R. No. L-11976, August 29, 1961, 2 SCRA 1007 and Commissioner of Internal Revenue vs. Palanca, G.R. No. L-16626, October 29, 1966, 18 SCRA 496, that, where the tax account was paid by installment, the computation of the two-year prescriptive period under Section 306 (now Sec. 292) of the Tax Code should be from the date of the final payment. In the instant case, less than two years had elapsed from the time petitioner made its final income tax payment on July 13, 1977 to the time it filed the petition for review on January 15, 1979. The determination of the prescriptive period of two years for recovery of tax erroneously or illegally collected, rests on well-settled jurisprudence which application may not be tinkered by any such sort of idiosyncratic aberration.

In fine, we hold that the petitioner is entitled to the refund or tax credit of an overpaid income tax for the fiscal period ended September 30, 1976 in the amount of ₱103,787.00 with no installment payments thereon barred by prescription, but shall be subject to the deficiency advance sales tax liability in the amount of ₱1,095.91, deductible from the refundable amount.

WHEREFORE, respondent is hereby ordered to refund or credit to the petitioner the net amount of ₱102,691.09 without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1981.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge