REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus - C.T.A. CASE NO. 6230

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 22 2001

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RESOLUTION

Through a motion filed on February 28, 2001, Respondent seeks the dismissal of the instant petition on the ground of prescription. According to Respondent, Petitioner expressly admitted in its Petition for Review that the amount of P36,295,723.96 allegedly representing the total Gross Receipts Tax (GRT) for the 4th quarter of 1998 on Revaluation Gain on Foreign Currency and Foreign Currency Denominated Unit-Income on Foreign Exchange Transactions, was paid on 22 January 1999. And since the instant petition for review was filed only on January 25, 2001 or two (2) days [must be three (3) days] after the lapse of the two-year prescriptive period provided for under Section 229 of the Tax Code, the same was filed out of time and is already barred by prescription.

Petitioner filed its "Opposition" on April 6, 2001 and advanced the following arguments:

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I

THE PETITION FOR REVIEW SHOULD BE DEEMED FILED WITHIN THE PRESCRIPTIVE PERIOD OF TWO (2) YEARS AND ITS FILING SHOULD BE DEEMED SUBSTANTIAL COMPLIANCE WITH THE LAW.

II

DELAY IN FILING CAN BE EXCUSED ON GROUNDS OF EQUITY AND SUBSTANTIAL JUSTICE.

III

EVEN IF THE TWO-YEAR PERIOD HAD ALREADY LAPSED, THE SAME IS NOT JURISDICTIONAL AND MAY BE SUSPENDED FOR REASONS OF EQUITY.

THE HARSH EFFECT OF AN ABSURD PROCEDURE SHOULD BE TEMPERED BY JUDICIAL RESTRAINT IN THE STRICT APPLICATION OF THE PRESCRIPTIVE PERIOD.

STATUES SHOULD RECEIVE A SENSIBLE CONSTRUCTION, SUCH AS WILL GIVE EFFECT TO THE LEGISLATIVE INTENTION AND SO AS TO AVOID AN UNJUST OR AN ABSURD CONCLUSION.

IV

CLAIMS FOR REFUND INVOLVE THE PRINCIPLE OF *SOLUTIO INDEBITI* OR *UNJUST ENRICHMENT*; HENCE, THERE ARE COMPELLING REASONS TO WARRANT THE SETTING ASIDE OF TECHNICALITIES TO ALLOW PETITIONER TO PROVE THE MERIT OF ITS CLAIM BASED ON EVIDENCE, IN ORDER TO SERVE THE ENDS OF JUSTICE.

GOVERNMENT IS NOT EXEMPT FROM THE APPLICATION OF THE PRINCIPLE OF UNJUST ENRICHMENT.

V

STRICT INTERPRETATION AND ADHERENCE TO TECHNICALITIES SHOULD BE TEMPERED BY THE REQUIREMENT OF SUBSTANTIAL JUSTICE AND EQUITY.

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VI

THE COURT OF TAX APPEALS IS VESTED WITH BROAD POWERS AND DISCRETION IN THE EXERCISE OF ITS EQUITY JURISDICTION TO RENDER SUBSTANTIAL JUSTICE AND SET ASIDE TECHNICALITIES PARTICULARLY IN THE CASE OF CLAIMS FOR TAX REFUND.

THE COURTS HAVE WIDE LATITUDE IN THE EXERCISE OF ITS EQUITY JURISDICTION TO RATIONALIZE AN ABSURD LEGAL PROCEDURE TO PREVENT INJUSTICE ARISING FROM TECHNICALITIES SPAWNED BY A BADLY CRAFTED LAW.
COURTS SHOULD EXERCISE JUDICIAL RESTRAINT IN APPLYING THE PRESCRIPTIVE PERIOD.

VII

PETITIONER'S CLAIM IS HIGHLY MERITORIOUS WHICH CAN ONLY BE RESOLVED IN AN APPROPRIATE TRIAL ON THE MERITS BASED ON EVIDENCE, NOT ON THE BASIS OF TECHNICALITY.

VIII

THERE IS A PATENT ABSURDITY AND INCONSISTENCY IN THE RULES FOR FILING CLAIMS FOR REFUND AND FILING OF PETITION FOR REVIEW UNDER THE TAX CODE AND THE PROCEDURE UNDER THE LAW CREATING THE CTA WHICH JUSTIFIES A LIBERAL APPLICATION OF THE PRESCRIPTIVE PERIOD.

We find for the Respondent.

The provisions of Section 229 of the Tax Code are clear, "In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax x x x". Since the gross receipts tax subject of this claim for refund was paid on January 22, 1999, Petitioner, therefore, had only until January 22, 2001 to file suit to recover its alleged erroneously paid GRT.

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We cannot agree with Petitioner that a different rule would be tantamount to penalizing a taxpayer who pays his taxes promptly or ahead of the prescribed deadline, while favoring a taxpayer who waits for the very last day to pay his taxes. This is because in both instances the taxpayers pay within the specified period and both are given two years from the date of payment of the tax to file a claim for refund. How then can a favor exist? What Petitioner seeks in this case is for it to be allowed to file a claim for refund for a period longer than what is provided by law for the simple reason that it paid its taxes before the last day.

Furthermore, to support its claim, Petitioner cited the cases of **Commissioner of Internal Revenue vs. Bank of the Philippine Islands (BPI case), G.R. No. 117254, January 21, 1999 and ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991.** Petitioner contends that in the BPI case, the BPI, as liquidator, filed a Petition for Review on 15 April 1988, or two (2) years and three (3) days after the actual payment of the income tax on April 12, 1986. Notwithstanding such late filing, this Honorable Court held that it was on April 15, when the previous year's income tax became due and payable, that the two-year period should start and that the taxpayer had until April 15, 1986 within which to make amendments on its return, without penalty. According to Petitioner, the said CTA decision was elevated to the Court of Appeals which upheld the decision of the Court of Tax Appeals on 19 September 1994. Petitioner, however, failed to mention, deliberately or otherwise, that this Court's decision in the BPI case was reversed by the Supreme Court which ruled that the two-year prescriptive period should be computed when the final adjustment return

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was actually filed, because that is the time of payment of the tax within the meaning of Section 230 (now 229) of the NIRC. Thus:

> "The conclusions reached by the appellate court are contrary to the very rulings cited by it. In Commissioner of Internal Revenue v. TMX Sales, Inc., this Court, in rejecting the contention that the period of prescription should be counted from the date of payment of the quarterly tax, held:
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> > "...(T)he filing of a quarterly income tax return required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 (now Section 230 of the Tax Code) should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax."
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> On the other hand, in ACCRA Investments Corporation v. Court of Appeals, where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:
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> > "Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence,

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> the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982."

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> Thus, it can be deduced from the foregoing that, in the context of Section 230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under Section 49(a) of the NIRC, payment is made at the time the return is filed."

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Finally, while We agree with Petitioner that even if the two-year period had already lapsed, the same is not jurisdictional and may be suspended for reasons of equity and other special circumstances, a cursory reading of its "Opposition" would show the absence of circumstances which may warrant the suspension of the two-year period, unlike in the case of **Panay Electric Co., Inc. vs. Collector of Internal Revenue and Court of Appeals (cited in the case of Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., 244 SCRA 446).** In the said case, the

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Supreme Court, after considering the peculiar circumstances involved, tempered the rigors of the law with fairness and equity, thus:

> "In the case at bar, however, because of his erroneous interpretation of the law on franchise taxes, the Collector had illegally collected franchise taxes from petitioner. While petitioner was to blame in part for supposedly sleeping on its right and in not filing the claim for refund on time, there is evidence to the effect that if petitioner did not file its suit for refund earlier, it was because of an agreement with an agent of the Collector that they should await the result of the case of Philippine Railway vs. Collector of Internal Revenue, then pending in this Court in order that the parties may act correctly. On moral and equitable grounds, therefore, petitioner is entitled to refund from the date of the claim for refund. Moreover, under Section 309 of the Tax Code, the Collector of Internal Revenue is authorized to credit or refund taxes erroneously or illegally received, for a period of two years from the date of the claim for refund. In the case at bar, the Collector not only offered to credit but took steps to credit petitioner with overpayment for a period of two years from the date of the claim for refund. In so doing, he waived the prescriptive period of two years from the date of the actual filing of the suit."

WHEREFORE, in the light of all the foregoing, the Motion to Dismiss filed by Respondent is hereby **GRANTED**. The instant Petition for Review is hereby **DISMISSED** on the ground of prescription.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge

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