REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COMMONWEALTH MANAGEMENT &
SERVICES CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3973

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

7/14/87

D E C I S I O N

This is a judicial claim for refund of erroneously paid withholding tax in the sum of ₱94,872.00 for the year 1984.

Petitioner filed its 4th and final quarter corporate income tax for 1984 showing a loss of ₱6,336.00. In said year 1984, petitioner had allegedly paid withholding tax in the sum of ₱94,872.00 which amount represents asserted excess income tax payments, which is herein sought to be refunded in this case.

On April 29, 1985, petitioner filed a claim for refund with the Commissioner of Internal Revenue of the said excess income tax payment of ₱94,872.00.

From the time of the filing of the aforesaid claim for refund, the Commissioner of Internal Revenue failed to act on petitioner's claim.

Without waiting for a decision on its claim for refund, petitioner filed its Petition for Review or judicial claim for refund with this Court on September 12, 1985.

On January 25, 1986, respondent filed his Answer thereto, which asserted, among others, that it has no knowledge of the veracity of the contents of petitioner's income tax return showing a loss of ₱6,336.00 and for which it is not liable for corporate income tax, and a refundable excess payment of withholding tax in the sum of ₱94,872.00 in Annex A (Exh. D, p. 3, CTA rec.); and asserted in its special and affirmative defenses that this case does not involve illegally or erroneously collected taxes and, hence, a petition for review does not lie in this case; that under BIR Memo. Circular No. 10-77, any excess of the total quarterly payments over the actual tax computed per adjusted or final corporate income tax return shall be refunded to the taxpayer, or be credited against the estimated quarterly income tax liabilities for the quarter of the succeeding taxable year; that in the case corporate annual income tax returns showing refundable amounts arising from overpaid quarterly income tax, under the authority of Revenue Memorandum Order No. 52-76 dated June 11, 1976, the returns are then pre-audited and the refund or tax credit is granted; and that, consequently, there is no need of the petition for review to preserve the right to claim for refund or tax credit within the 2-year period from date of payment of the tax. Respondent Commissioner of Internal Revenue finally asserts reassuringly, in his affirmative defense against herein petitioner's claim for refund, that a taxpayer may recover from the BIR excess income tax paid under Section 86 of the Tax Code, being an obligation created by law, within ten (10) years from date of payment pursuant to Article 1144 of the Civil Code.

Ten days after the filing of the Answer by the respondent Commissioner of Internal Revenue to the instant judicial claim for refund, said respondent has not complied with Section 2, Rule 7 of the Rules of the Court of Tax Appeals, which categorically requires that he shall certify and forward to this Court all the records of this case in his possession, with pages duly numbered and if in separate folders, then the folders shall be duly numbered. Until the present writing no records on the claim for refund was ever certified and forwarded as directed, which is in direct contempt to the lawful summons of this Court.

Nevertheless, during the hearing, it was only the petitioner who had presented its evidence, both documentary and testimonial, showing that a claim for refund was filed with the Commissioner of Internal Revenue in the amount of ₱94,872.00 as overpaid or excess income tax payment for 1984; that it had presented documentary evidence of the.withholding tax payments (Exhs. E to E-7) which represents the total overpaid income tax in the said sum of ₱94,872.00.

The only issue presented to Us for determination is whether or not the sum of ₱94,872.00 is an overpayment of income tax for 1984 and whether or not the petitioner is entitled to the refund thereof.

The evidence presented by petitioner consisting of the withholding income tax payments (Exhs. E to E-7), were withheld on incomes due for services rendered by petitioner to various companies (American International Underwriters (Phils.) Inc.; American International Group Services Corp.; AIC Data Center

Manila, Inc.; Manila Adjusters & Surveyors Co.; Phil. Am. Life Ins. Co.; Philippine Home Assurance Corporation; Japan Marine Surveyors & Sworn Measures Corp.), and which shows the amounts of withholding tax payments in 1984, viz:

Withholding Agent	Service	Amount Withheld
AIU (Phils.) Inc.	Management & Technical	₱ 8,358.19
Am. Int. Group Services Corp.	Professional fees	1,577.68
AIC Data Center Manila, Inc.	Professional fees	170.61
Manila Adjusters & Surveyors Co.	Professional fees	1,316.78
Phil. Am. Gen. Ins. Co.	Services	11,128.08
Phil. Am. Life Ins. Co.	Professional fees	62,988.59
Phil. Home Assurance Corp.	Professional fees	2,684.90
Japan Marine Surveyors & Sworn Measures Corp.	Professional fees	420.47
	T o t a l	₱ 88,645.30

Accordingly, petitioner, as shown above, is only entitled to the refund of such overpayment as it can prove. Having proven an excess payment in the amount of only ₱88,645.30, petitioner is only entitled to the refund of this amount of ₱88,645.30 not the alleged sum of ₱94,872.00 claimed by it.

Anent the legal point presented by respondent Commissioner to the effect that there is no need for petitioner to file a petition for review (or judicial claim for refund) to be brought to this Court, because this case does not involve illegally or erroneously collected taxes; that any claim for refund due to over-payment shall be granted by respondent after pre-audit; and that this claim for the refund of taxes can be anyway recovered within 10 years under Article 1144 of the Civil Code is not only to beg the issue but these contentions are not legally and factually meritorious. Not only was there no expeditious investigation or pre-audit conducted by respondent regarding this claim with the end in view of granting a refund. And we think that this case involves erroneously collected taxes and, therefore, a proper subject of a judicial claim for a refund within the proper jurisdiction of this Court.

Under the law (Section 54(f) of the Tax Code), any income upon which any creditable tax is required to be withheld at source under Section 53 of the same Code, such tax withheld shall be included in the return of its recipient-taxpayer; however, any excess of the amount of tax so withheld over the tax due on the recipient-taxpayer's return shall be refunded to him subject to the provisions of Section 295; and if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 51 (54) (As amended by BP Blg. 41). And that under Section 295(3) of the Tax Code, as adverted to above, it provides that -

> "xxx No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for refund within two years after the payment of the tax or penalty. (309) (as amended by PD 1773.)"

It can be gathered from the above authority of law that there is a need to file a claim for refund with the Commissioner of Internal Revenue; and in case of the failure of the latter to act on the said refund, there is need for the filing of a judicial claim for refund by way of a "Petition for Review" brought within the two-year period computed from the payment of the tax. The authority granted, under

Section 292 of the Tax Code, to the Commissioner that he "may even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid" (Underlining supplied) is merely directory on his part and calls for a greater leeway of discretion, which may, as it did in this case, give rise to so much delay in the refund of overpaid taxes which if given or granted with speed, the overpaid taxes may already have long been utilized by petitioner-taxpayer to its greater advantage as this amount is undoubtedly needed in its operation and business.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Commonwealth Management & Services Corporation the sum of ₱88,645.30 as overpaid income tax for 1984.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, July 15, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge