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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GREAT PACIFIC LIFE ASSURANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 1944

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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9/28/83

D E C I S I O N

This is an offshoot of C.T.A. Case No. 1046 entitled Filipinas Life Assurance Company vs. Commissioner of Internal Revenue, the decision on which was later appealed to the Supreme Court as G.R. No. L- 21258 and decided by the latter on October 31, 1967. In that case the Supreme Court ruled to the effect that domestic and resident foreign life insurance companies are entitled to report only 25% of their dividend income as provided in subsection (a) of Section 24 of the Tax Code. Petitioner in the present case moves for a summary judgment to sustain its claim for refund of alleged overpayment of income tax in the amount of ₱5,902.00 for the taxable year 1965, apparently on the ground that there is no longer any genuine issue to be resolved.

Be that as it may, the following are the facts which are alleged in the petition for review and admitted in the answer or supported by the evidence, that gave rise to the present controversy.

It appears that petitioner is a domestic life insurance corporation organized and existing under the laws of the Philippines. On April 5, 1966, petitioner filed an income tax return for the year 1965 declaring in full the dividends it received from various corporations amounting to ₱458,244.55, on which it paid income tax in the amount of ₱29,786.00 in two installments, the first installment was paid when it filed its return on April 5, 1966 under O.R. No. C-4778611 and the second installment on July 15, 1966 under O.R. No. C-5403176. Realizing that only 25% of the dividends was returnable for purposes of the income tax imposed on domestic corporations, petitioner filed on June 13, 1968, an amended income tax return for 1965 declaring therein only a taxable income of ₱23,884.00. Together with the amended return, petitioner filed a written request for refund of the excess payment of its income tax for 1965 in the amount of ₱5,992.00.

Not receiving a decision from respondent on its claim for refund and believing that no decision is forthcoming before the expiration of the two-year period within which to initiate a judicial action, petitioner interposed this appeal to this Court on July 3, 1968.

In answer to the petition for review, respondent merely denied in general terms, petitioner's reason for filing this case and as special and affirmative defenses, alleges among others: that (1) the tax sought to be refunded was paid and collected in accordance with law; and (2) there being no decision as yet of respondent, the filing of the petition for review is premature.

Truly, it seems clear that there is no longer any genuine issue to be resolved in the present controversy because the principal question of whether or not only 25% of petitioner's dividends from other corporations is taxable has long been decided in a case between the same parties entitled Great Pacific Life Assurance Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 2026 on September 29, 1971. In resolving the issue, this Court in its decision held:

> "The claim for refund of petitioner is based on Section 24 of the National Internal Revenue Code which provides that 'in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax . . . only twenty-five _per centum_ thereof shall be returnable for purposes of the tax imposed by this section.' It is not controverted that petitioner is a domestic corporation and that the dividends in question were received by it from other domestic corporations subject to tax under the Income Tax Law. Therefore, the dividends received by petitioner from other domestic corporations as declared in its original and amended income tax returns are taxable only to the extent of 25% of such dividends, and its claim of having made an overpayment must be sustained. (See Filipinas Life Assurance Co. v. The Court of Tax Appeals, G.R. No. L-21258, October 31, 1967.)"

As to the allegation of respondent that the filing of the petition for review is premature, it would suffice to quote from the very same decision in the case of Great Pacific Life Assurance Co. v.

Commissioner, supra, which states:

> "x x x. However, where the two year period is about to lapse and the Commissioner is not expected to render a decision on the taxpayer's claim for refund before expiration of said period, the taxpayer must appeal to the Court of Tax Appeals without waiting for a formal decision of the Commissioner, otherwise, the taxpayer's right to the refund would be barred. (Collector v. Sweeney, supra; Gibbs v. Coll. supra; Collector v. Convention of Phil. Baptist Churches, G.R. No. L-11807, Jan. 28, 1961; Koppel v. Coll., G.R. No. L-10550, Sept. 16, 1961)"

We find no valid or cogent reason to modify the opinion and observations of this Court in the afore-cited case.

In view of the foregoing, the relief sought by summary judgment is hereby granted. Petitioner is entitled to the refund of the amount of ₱5,902.00, representing an overpayment of income tax for the year 1965.

WHEREFORE, respondent is hereby ordered to grant the refund to petitioner Great Pacific Life Assurance Corporation, without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, September 28, 1983.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge