REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ACCRA INVESTMENTS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3767

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

1/27/88

D E C I S I O N

ACCRA Investments Corporation is a domestic corporation existing under the laws of the Philippines engaged in business as real estate investor and management consultancy.

For the calendar year ended December 31, 1981, ACCRA, in short, filed its corporate annual income tax return on April 15, 1982, declaring therein a net loss of ₱2,957,142.00. Thus, it did not incur any tax liability for said year. In the same return, however, ACCRA credited all the taxes withheld at source by its various withholding agents namely: Angara, Concepcion, Regala and Cruz Law Offices, Philippine Global Communication, Inc., Malayan Insurance Company and MJ Development Corporation, the amounts of ₱73,588.00, ₱15,133.00 and

₱2,002.00 or a total of ₱90,722.00. The said amounts were withheld from ACCRA's rental, commission and consultancy income from the said withholding agents.

Since ACCRA incurred a net loss for the calendar year ended December 31, 1981, it filed a claim for refund with respondent in a letter dated December 29, 1983 (Exh. G), of all creditable taxes withheld at source by its various withholding agent herein mentioned allegedly in the total amount of ₱90,223.00. Said claim for refund was not acted upon by respondent, hence petitioner filed the instant petition for review.

Considering that the last payment of the alleged overpaid income tax was January 20, 1982, and the petition for review was filed on April 13, 1984, more than two years have elapsed since the last payment of the tax.

The sole issue in this case is whether or not petitioner's claim for refund has prescribed.

It is the position of petitioner that the claim for refund has not prescribed. However, respondent is of the view ard submits that petitioner's claim for refund had already prescribed pursuant to Section 292 of the Tax Code of 1977 as amended. Section 292 of the Tax Code of 1977, as amended, provides:

> Section 292. Recovery of Tax Erroneously or Illegally Collected.- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongly collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, 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. (Underscoring ours.)

Petitioner for the year ended December 31, 1981 filed its Corporate Income Tax Return on April 15, 1982. In the said return, it credited the total amount of ₱90,723.00, allegedly representing the total amount of creditable withholding tax at source for the said year, by its various withholding agents aforementioned (Exhs. C, E and F). Having incurred a net loss, ACCRA sought for the refund f all the tax withheld at source herein stated.

A review of all the receipts of payments and/or remittance of the tax withheld, they were paid and remitted to the Bureau of Internal Revenue by the withholding agents from February to December, 1981. (Exhs. C-1, C-1-a to C-12, C-12-a, inclusive; Exhs. D-1, D-1-a to D-10, D-10-a, inclusive; Exhs. F-2, F-2-a to F-11, F-11-a inclusive.)

Furthermore, a computation of the alleged taxes withheld at source as supported by evidence only resulted to an amount of ₱82,751.91 and not ₱90,723.00, computed as follows:

	WITHHOLDING AGENT	AMOUNT WITHHELD
1.	Malayan Insurance Co., Inc. (Exh. "C", Petitioner)	₱ 1,429.97
2.	Angara Concepcion Regala & Cruz Law Office (Exh. "D", Petitioner)	73,588.00
3.	MJ Development Corp. (Exh. "E", Petitioner)	1,155.00
4.	Philippine Global Communication, Inc. (Exh. "F", Petitioner)	6,578.94
	T O T A L	₱82,751.91

The instant petition for review was filed only on April 13, 1984, or more than two (2) years from the dates of payment or remittance of the alleged overpaid income tax withheld at source. We have no doubt that petitioner's claim for refund had already prescribed pursuant to Section 292 of the Tax Code of 1977, as amended.

Moreover, as decided by this Court in the case of Pacific Procon Limited, C.T.A. Case No. 3200, dated January 25, 1984, affirmed by the Supreme Court by virtue of its denial of the petition for review filed by petitioner (G.R. No. L-68013, Nov. 12, 1984), held that:

> "The two-year period for judicial recovery of the tax alleged to have been erroneously or illegally paid or collected is a positive and mandatory requirement of Section 306 (now Section 292) of the Tax Code. (Gibbs vs. Collector of Internal Revenue, L-13453, February 29, 1960, 107 Phil. 232; Guagua Electric Light Plant Co., Inc. vs. The Collector of Internal Revenue & The Hon. Court of Tax Appeals, <u>supra</u>.) It is prescriptive (College of Oral & Dental Surgery vs. Court of Tax Appeals, 102 Phil. 912; Panay Electric vs. Collector of Internal Revenue, 103 Phil. 819; Lu Do & Lu Ym vs. Central Bank of the Philippines, 108 Phil. 566), and in order to confer jurisdiction upon the court, it is necessary that in all cases the suit must be brought within the statutory period of two years and the requirements provided for in Section 306 (now 292) must have been duly complied with. (Collector of Internal Revenue vs.

The Court of Tax Appeals & Hume Pipe & Asbestos Co., Inc., supra.) Moreover, the provision is mandatory and is not subject to any qualification, hence, it applies regardless of the conditions under which payment may have been made." (IBM Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2855, February 27, 1981, citing Guagua Electric Light Plant Co., Inc. vs. Collector of Internal Revenue, 1 SCRA 1221.)

"x x x While the gross income and deductions declared in one quarter are now allowed to be cumulated with those of the succeeding quarters of the same taxable year, and the tax paid for any one quarter on cumulative basis is creditable against the quarterly tax liability for each succeeding quarters of the taxable year, the law has placed, as initiated by Presidential Decree No. 30, all corporations on a tax withholding system of income tax payment on a quarterly basis. (Secs. 85, 86 & 87, National Internal Revenue Code; Manila Central University vs. Commissioner of Internal Revenue, CTA Case No. 2848, October 19, 1978.)

"Nevertheless, even on the assumption that the sum of ₱29,408.34 as income tax for the first quarter of 1978 remained outstanding as a refundable amount until the incurrence of a loss at the end of the taxable year, or until the filing of the final and adjustment return, the provision of Section 292 that 'In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment' would still foreclose

> this Court's jurisdiction to take cognizance of the instant case. The two-year prescriptive period for bringing the suit for refund to the Court would still be reckoned from the date of payment of the tax on May 30, 1978. x x x"

Finally, claims for refund are construed strictly against claimants since a claim for refund partakes of the nature of an exception for taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95), and it is incumbent upon petitioner to show that it has complied with the provision of Section 292 of the Tax Code as amended and failure to sustain said burden is fatal to its claim for refund.

WHEREFORE, this instant case filed by petitioner is hereby dismissed. With costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 27, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals