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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NEW ZAMBOANGA UNIVERSAL
ENTERPRISES, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3863

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

5/31/88

D E C I S I O N

A claim for the refund of alleged overpayment of corporate income tax for a total amount of P136,615.13 representing withheld taxes by various withholding agents for the years 1982 and 1983.

As set forth - petitioner corporation organized and existing under the laws of the Philippines, alleges, that it is in the business of leasing and merchandising; that from its rental income during the calendar years 1982 and 1983, the sums of P64,632.39 and P83,583.74, were withheld by its various withholding agents, respectively; that for year ended December 31, 1982 it incurred an income tax liability of P11,601.00 (applied against the withheld amount of P64,632.39, results in a P53,031.39 overpaid creditable withheld tax for 1982); that its corporate annual income tax return ended December 31, 1983, shows a net loss of P636,811.00, thus, a refundable amount of P83,583.74 representing overpaid withholding tax; that it filed on October 25, 1984 a claim for refund of the overpayment of income tax but to the date of filing of this suit, the respondent had taken no action.

Hence, this petition.

Taking exception respondent Commissioner of Internal Revenue avers that the petition has no cause of action as it does not state when the tax sought to be refunded was paid; that the tax in question was collected in accordance with law; that the burden of proof is upon the taxpayer to establish its right to the refund and failure to sustain the burden is fatal; that the alleged losses incurred do not *ipso facto* merit a refund; and, that such claims have to be construed strictly being in the nature of tax exemption.

The parties submitted the case for decision based on the pleadings *sans* memoranda which they failed to file.

The apparent patina of expediency nonetheless impressed, We find illogic the impression precipitately broached by the petitioner that the claimed refund can simply be based on a kind of circumstantial clout drawn from inferences without bearing the burden of proof. In the case at bar, petitioner failed to prove its material allegations, neither presenting nor offering any evidence of the relevance and competence so required under the Rules. "The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified." **(Sec. 3, Rule 132, Rules of Cour .).** Upon the facts on record there is not a scintilla of proof in support of petitioner's affirmative allegations.

The short of the matter is that petitioner has created its own procedural morass, such that, "if he fails satisfactorily to show the fact upon which he bases his claim, the defendant is under no obligation to prove his exception or defense." **(Belen v. Belen,** 13 Phil. 202). Be it of cold comfort, "The courts cannot constitute themselves guardians of persons who are not legally incompetent. Men may do foolish things, make ridiculous contracts, use miserable judgments and lose money by them - indeed all they have in this world; but not for that alone can the law intervene and restore. There must be, in addition, a violation of law, the commission of what the law knows as an actual wrong, before the courts are authorized to lay hold of the situation and remedy it." (Valles v. Villa, 35 Phil. 769).

We are therefore unable to find for the petitioner's entitlement to a favorable determination as a matter of fact and law.

ACCORDINGLY, petition is hereby dismissed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, May 31, 1988.

ALEX Z. REYES
Associate Judge

I CONCUR:

AMANTE FILLER
Presiding Judge

(on official leave)
CONSTANTE C. ROAQUIN
Associate Judge

CERTIFICATION

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