REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KAPATIRAN REALTY CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3443

COMMISSIONER OF INTERNAL
REVENUE,

6/5/87

x - - - - - - - - - - - - - - - x

D E C I S I O N

This is a claim for refund from respondent Commissioner of Internal Revenue of the amount of ₱211,944.66, representing overpayment made by petitioner of corporate income tax for year 1980.

The facts are very simple, not in dispute since the same were established by evidence submitted by petitioner Kapatiran Realty Corporation. Counsel for the Commissioner of Internal Revenue had opted to submit the case based upon the general pleadings and the records of this case. The parties had submitted their respective memoranda.

The material facts can be gathered from the uncontradicted documentary evidence of petitioner, and as recited by respondent's counsel in their memorandum dated June 19, 1986 (pp. 127-129, CTA rec.) as follows:

Kapatiran Realty Corporation, Kapatiran for brevity, is a corporation organized and existing under the laws of the Philippines. It is engaged in the business of real estate investment, leasing land and buildings. The Philippine American Life Insurance Company is one of the lessees.

For the year 1979, it filed its first quarterly corporate income tax return ending March 31, 1979, declaring therein a net taxable income of ₱120,959.00 and paid the tax due thereon in the amount of ₱39,836.00 on March 30, 1979, under Central Bank Confirmation Receipt No. 2738006 (Exhibits "C-1" & "C-3", for Petitioner).

For the second quarter ending June 30, 1979, it filed its corporate quarterly income tax return on August 29, 1979, declaring therein a net taxable income of ₱248,164.00 and paid the corresponding tax due thereon in the amount of ₱42,021.00 under Central Bank Confirmation Receipt No. 2959207 on August 29, 1979. (Exhibits "C-4" & "C-6", Petitioner).

On November 29, 1979, Kapatiran filed for its first, second and third quarters ending September 30, 1979, a cummulative quarterly income tax return which it declared a net taxable income of ₱391,724.00 with a tax due thereon in the amount of ₱129,605.00. For the said quarters, Kapatiran credited the amounts it paid during the first and second quarter, ₱39,836.00 and ₱42,021.00, respectively, and the amount of ₱307,868.00, Withholding Tax Regulations, which were paid and remitted to the Bureau of Internal Revenue, monthly by Philippine American Life Insurance Company. (Exhibits "C-7" & "C-8", Petitioner)

For calendar year ended December 31, 1979, Kapatiran filed its final adjusted income tax return on April 15, 1980, declaring therein a net taxable income of ₱683,482.00, and the tax due thereon is ₱263,392.00. After crediting the total amount of ₱389,725.00, (₱39,836.00 + ₱42,021.00 + ₱307,868.00) representing payments of taxes made on the first and second quarter and the withholding tax withheld by Philippine American Life Insurance Company from

Kapatiran's rental income, resulted to a creditable amount of ₱126,333.00. (Exhibit "C-9", Petitioner)

The aforesaid amount of ₱126,333.00, was applied and credited by Kapatiran as a tax credit against its income tax liabilities for three quarters, first, second and third quarters of calendar year 1980.

For the last quarter of calendar year 1980, ended December 31, 1980, Kapatiran filed its final adjusted return on April 15, 1981, declaring therein net taxable income of ₱583,106.00 and the tax due thereon in the amount of ₱223,242.00. Kapatiran credited the amount of ₱126,334.16 for the final quarterly return ending December 31, 1979, and the amount of ₱308,852.50, representing Withholding Tax at Source withheld by Philippine American Life Insurance Company from the rental income of Kapatiran. Thus resulting to a total creditable amount of ₱435,186.66. Accordingly, Kapatiran's final adjusted return, ended December 31, 1980, showed a refundable amount of ₱211,944.66. (Exhibits "C-10" & "C-11")

For the 4th or final quarter of 1980, petitioner's net income was accumulated with the net income of the 1st, 2nd and 3rd quarters of the same year. The computation of the amount due and claimed as refundable, in the sum of ₱211,944.66, for 1980, is arrived at as follows:

4th or Final Qtr. Corporate Return for 1980 (Cumulated with the Corporate Returns for the 1st, 2nd & 3rd Qtr.) of Kapatiran Realty Corporation

| | | | |
|---|---|---|---|
| Net Cumulative income 1980 | | | ₱583,106.00 |
| Tax Due thereon (including corporate dev. tax) | | | 223,242.00 |
| Less: | (1) Creditable amount for year ending Dec. 31, 1979 | ₱126,334.16 | |
| | (2) Withheld tax at source by Phil. American Life Ins. Co. | 308,852.50 | 435,186.66 |
| Amount Refundable | | | ₱211,944.66 |

As shown in the above computation, the amount of ₱308,852.50 is an item that was withheld by Philippine American Life Insurance Co., against the rental income due to petitioner Kapatiran Realty Corporation in the year 1980. (Exhs. "C" and "C-10", "C-11", pp. 70-71, 79 & 80, CTA rec., respectively.) So that when this amount of ₱308,852.50 was subtracted, together with the creditable sum of ₱126,334.16, from the final corporate tax due for 1980 of ₱223,242.00 there resulted a refundable sum of ₱211,944.66, which both petitioner and respondent are, with respect to the computation, apparently in agreement.

On January 8, 1982, petitioner, through its external auditor, filed its claim for refund of the said overpayment of income tax of ₱211,944.66 for 1980.

On April 13, 1982, petitioner, without further waiting for the decision of the Commissioner of Internal Revenue, filed its judicial claim for refund with this Court by way of a "Petition for Review."

In the special and affirmative defenses of his Answer, (pp. 27-28, CTA rec.) respondent contends that -

> 6. Assuming, but not admitting, that petitioner is entitled to the tax refund, the right to claim the refund with respect to the amounts paid prior to April 13, 1980 has prescribed, pursuant to Sections 292 & 295 of the Tax Code;
>
> 7. The tax in question was collected in accordance with law;
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> 8. In an action for refund the burden of proof is upon the taxpayer

to establish its right to the refund and failure to sustain this burden is fatal to the action for refund;

9. It is incumbent upon petitioner to show that it has complied with the provisions of sections 292 and 295 of the Tax Code as amended;

10. Claim for refund are construed strictly against the claimants since a claim for refund is in the nature of and exemption from taxation (Comm. of Int. Rev. vs. Ledesma, L-17519, January 30, 1970, 31 SCRA 95).

The only issue for determination in this case is whether or not petitioner's right to the refund of the amount of ₱211,944.66 overpaid income tax for 1980 has prescribed.

It is respondent's contention that all income tax payment made prior to April 13, 1980 can no longer be refundable as the right of petitioner to claim for refund has prescribed. We note that apparently respondent had been erroneously referring to the withholding taxes of ₱307,868.00, which were clearly taxes withheld on rentals of petitioner's buildings largely during the years 1979. But the question properly to be answered is not with respect to the withholding taxes which has been credited by petitioner in its 3rd quarter corporate return of 1979 in the sum of ₱307,868.00, but the withholding tax withheld on rental incomes due from Philippine American Life Insurance Co. in the amount of ₱308,852.50. One will note that this amount was withheld on various rental incomes of its buildings in the year 1980 (See Exh. "C" & "C-10", "C-11, op. cit; see also pp. 188, 189, BIR rec., Italics ours ) by the said Philippine American Life Insurance Co. Since the rental incomes were payable to petitioner by the Philippine American Life Insurance Co., presumably monthly, for use of its property, and these payments were certified by the latter to have been paid to petitioner in the year 1980, the income taxes due thereon were definitely withheld and paid as of the end of the year 1980, or on December 31, 1980.

The Supreme Court held that where "xxx, a taxpayer whose income is withheld at the source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is for this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 (now Section 292) of the Revenue Code starts to run with respect to payments effected through the withholding tax system xxx." (Gibbs vs. Comm. of Int. Rev., 15 SCRA 318, 319, 325; Underlining ours.)

On January 8, 1982, petitioner aforesaid had filed its claim with the respondent Commissioner of Internal Revenue for the refund of the amount of ₱211,944.66, which amount ostensively and clearly arose solely, from the income tax in said amount of ₱308,852.50 withheld and paid as of the end of the taxable year, or on December 31, 1980, by the Philippine American Life Insurance Co. The judicial claim was filed with this Court on April 13, 1982. Therefore, both the administrative and judicial claims for refund were filed 1 year, 1 month and 7 days, and 1 year, 3 months and 12 days, respectively, well within the two-year prescriptive period provided in said Section 292 (previously Section 306) of the Tax Code counted from the date of payment of the withholding tax on the rentals of petitioner from the Philippine American Life Insurance Co. as of December 31, 1980. Consequently, we are of the opinion and so hold that this Court has jurisdiction over the refund of the sum of ₱211,944.66 which was duly substantiated by evidence and by the admission of respondent.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Kapatiran Realty Corporation the sum of ₱211,944.66.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, June 8, 1987.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

ALEX Z. REYES
Associate Judge