COMMISSIONER OF INTERNAL REVENUE AND ARTURO V. PARCERO IN HIS OFFICIAL CAPACITY AS REVENUE DISTRICT OFFICER OF REVENUE DISTRICT NO. 049 (MAKATI), PETITIONERS, VS. PRIMETOWN PROP...

G.R. NO. 162155. August 28, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari[1] seeks to set aside the August 1, 2003 decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 64782 and its February 9, 2004 resolution denying reconsideration.[3]

On March 11, 1999, Gilbert Yap, vice chair of respondent Primetown Property Group, Inc., applied for the refund or credit of income tax respondent paid in 1997. In Yap's letter to petitioner revenue district officer Arturo V. Parcero of Revenue District No. 049 (Makati) of the Bureau of Internal Revenue (BIR),[4] he explained that the increase in the cost of labor and materials and difficulty in obtaining financing for projects and collecting receivables caused the real estate industry to slowdown.[5] As a consequence, while business was good during the first quarter of 1997, respondent suffered losses amounting to P71,879,228 that year.[6]

According to Yap, because respondent suffered losses, it was not liable for income taxes.[7] Nevertheless, respondent paid its quarterly corporate income tax and remitted creditable withholding tax from real estate sales to the BIR in the total amount of P26,318,398.32.[8] Therefore, respondent was entitled to tax refund or tax credit.[9]

On May 13, 1999, revenue officer Elizabeth Y. Santos required respondent to submit additional documents to support its claim.[10] Respondent complied but its claim was not acted upon. Thus, on April 14, 2000, it filed a petition for review[11] in the Court of Tax Appeals (CTA).

On December 15, 2000, the CTA dismissed the petition as it was filed beyond the two-year prescriptive period for filing a judicial claim for tax refund or tax credit.[12] It invoked Section 229 of the National Internal Revenue Code (NIRC):

> Sec. 229. Recovery of Taxes 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 excessively or in any manner wrongfully 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 filed after the expiration of two (2) 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 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.

(emphasis supplied)

The CTA found that respondent filed its final adjusted return on April 14, 1998. Thus, its right to claim a refund or credit commenced on that date.[13]

The tax court applied Article 13 of the Civil Code which states:

> Art. 13. When the law speaks of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours, and nights from sunset to sunrise.
>
> If the months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded, and the last included. (emphasis supplied)

Thus, according to the CTA, the two-year prescriptive period under Section 229 of the NIRC for the filing of judicial claims was equivalent to 730 days. Because the year 2000 was a leap year, respondent's petition, which was filed 731 days[14] after respondent filed its final adjusted return, was filed beyond the reglementary period.[15]

Respondent moved for reconsideration but it was denied.[16] Hence, it filed an appeal in the CA.[17]

On August 1, 2003, the CA reversed and set aside the decision of the CTA.[18] It ruled that Article 13 of the Civil Code did not distinguish between a regular year and a leap year. According to the CA:

> The rule that a year has 365 days applies, notwithstanding the fact that a particular year is a leap year.[19]

In other words, even if the year 2000 was a leap year, the periods covered by April 15, 1998 to April 14, 1999 and April 15, 1999 to April 14, 2000 should still be counted as 365 days each or a total of 730 days. A statute which is clear and explicit shall be neither interpreted nor construed.[20]

Petitioners moved for reconsideration but it was denied.[21] Thus, this appeal.

Petitioners contend that tax refunds, being in the nature of an exemption, should be strictly construed against claimants.[22] Section 229 of the NIRC should be strictly applied against respondent inasmuch as it has been consistently held that the prescriptive period (for the filing of tax refunds and tax credits) begins to run on the day claimants file their final adjusted returns.[23] Hence, the claim should have been filed on or before April 13, 2000 or within 730 days, reckoned from the time respondent filed its final adjusted return.

The conclusion of the CA that respondent filed its petition for review in the CTA within the two-year prescriptive period provided in Section 229 of the NIRC is correct. Its basis, however, is not.

The rule is that the two-year prescriptive period is reckoned from the filing of the final adjusted return.[24] But how should the two-year prescriptive period be computed?

As already quoted, Article 13 of the Civil Code provides that when the law speaks of a year, it is understood to be equivalent to 365 days. In National Marketing Corporation v. Tecson,[25] we ruled that a year is equivalent to 365 days regardless of whether it is a regular year or a leap year.[26]

However, in 1987, EO[27] 292 or the Administrative Code of 1987 was enacted. Section 31, Chapter VIII, Book I thereof provides:

> Sec. 31. Legal Periods. - "Year" shall be understood to be twelve calendar months; "month" of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days

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> the specific month contains; "day", to a day of twenty-four hours and; "night" from sunrise to sunset. (emphasis supplied)

A calendar month is "a month designated in the calendar without regard to the number of days it may contain."[28] It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month."[29] To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.[30]

A law may be repealed expressly (by a categorical declaration that the law is revoked and abrogated by another) or impliedly (when the provisions of a more recent law cannot be reasonably reconciled with the previous one).[31] Section 27, Book VII (Final Provisions) of the Administrative Code of 1987 states:

> Sec. 27. Repealing clause. - All laws, decrees, orders, rules and regulation, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly.

A repealing clause like Sec. 27 above is not an express repealing clause because it fails to identify or designate the laws to be abolished.[32] Thus, the provision above only impliedly repealed all laws inconsistent with the Administrative Code of 1987.

Implied repeals, however, are not favored. An implied repeal must have been clearly and unmistakably intended by the legislature. The test is whether the subsequent law encompasses entirely the subject matter of the former law and they cannot be logically or reasonably reconciled.[33]

Both Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987 deal with the same subject matter - the computation of legal periods. Under the Civil Code, a year is equivalent to 365 days whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months. Needless to state, under the Administrative Code of 1987, the number of days is irrelevant.

There obviously exists a manifest incompatibility in the manner of computing legal periods under the Civil Code and the Administrative Code of 1987. For this reason, we hold that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods. Lex posteriori derogat priori.

Applying Section 31, Chapter VIII, Book I of the Administrative Code of 1987 to this case, the two-year prescriptive period (reckoned from the time respondent filed its final adjusted return[34] on April 14, 1998) consisted of 24 calendar months, computed as follows:

Year 1 1st calendar month

April 15, 1998 to

May 14, 1998

2nd calendar month

May 15, 1998 to

June 14, 1998

3rd calendar month

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June 15, 1998 to

July 14, 1998

4th calendar month

July 15, 1998 to

August 14, 1998

5th calendar month

August 15, 1998 to

September 14, 1998

6th calendar month

September 15, 1998 to

October 14, 1998

7th calendar month

October 15, 1998 to

November 14, 1998

8th calendar month

November 15, 1998 to

December 14, 1998

9th calendar month

December 15, 1998 to

January 14, 1999

10th calendar month

January 15, 1999 to

February 14, 1999

11th calendar month

February 15, 1999 to

March 14, 1999

12th calendar month

March 15, 1999 to

April 14, 1999

Year 2 13th calendar month

April 15, 1999 to

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May 14, 1999

14th calendar month

May 15, 1999 to

June 14, 1999

15th calendar month

June 15, 1999 to

July 14, 1999

16th calendar month

July 15, 1999 to

August 14, 1999

17th calendar month

August 15, 1999 to

September 14, 1999

18th calendar month

September 15, 1999 to

October 14, 1999

19th calendar month

October 15, 1999 to

November 14, 1999

20th calendar month

November 15, 1999 to

December 14, 1999

21st calendar month

December 15, 1999 to

January 14, 2000

22nd calendar month

January 15, 2000 to

February 14, 2000

23rd calendar month

February 15, 2000 to

March 14, 2000

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24th calendar month

March 15, 2000 to

April 14, 2000

We therefore hold that respondent's petition (filed on April 14, 2000) was filed on the last day of the 24th calendar month from the day respondent filed its final adjusted return. Hence, it was filed within the reglementary period.

Accordingly, the petition is hereby DENIED. The case is REMANDED to the Court of Tax Appeals which is ordered to expeditiously proceed to hear C.T.A. Case No. 6113 entitled Primetown Property Group, Inc. v. Commissioner of Internal Revenue and Arturo V. Parcero.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna and Garcia, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza of the Special Fifteenth Division of the Court of Appeals. Rollo, pp. 21-25.

[3] Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza of the Former Special Fifteenth Division of the Court of Appeals. Id., pp. 26-28.

[4] Id., pp. 37-42.

[5] Id., pp. 39-40.

[6] Id. This was the period of economic slowdown known as the "Asian (Financial) Crisis" which started in mid-1997.

[7] Id., p. 41.

[8] Summary of Tax/Payments for 1997:

Quarter

Corporate Income Tax

Creditable Withholding Tax

TOTAL

1st

P 3,440,082.00

P 687,783.00

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P 4,127,865.00

2nd

15,694,502.00

633,175.00

16,327,677.00

3rd

2,419,868.81

3,154,506.51

5,574,375.32

4th

288,481.00

288,481.00

P 21,554,452.81

P 4,763,945.51

P 26,318,398.32

Id., p. 40.

[9] Id., p. 41.

[10] Id., pp. 78-79.

[11] Docketed as C.T.A. Case No. 6113. Id., pp. 192-199.

[12] Penned by Presiding Judge Ernesto D. Acosta and concurred in by Associate Judges Amancio Q. Saga (retired) and Ramon O. de Veyra (retired). Dated December 15, 2000. Id., pp. 187-190.

[13] CIR v. CA, 361 Phil. 359, 364-365 (1999).

[14] The computation was as follows:

April 15, 1998 to April 14, 1999 ---------- 365 days
April 15, 1999 to April 14, 2000 (leap year) ---------- 366 days
TOTAL 731 days

[15] Rollo, p. 190.

[16] Id., p. 191.

[17] Docketed as CA-G.R. SP No. 64782. Id., pp. 180-186. (This case observes the procedure in RA 1125 prior to the amendments of RA 9282.)

[18] Id., pp. 21-25. Under RA 9282 which took effect on April 22, 2004, decisions of the CTA are now appealable

to the Supreme Court.

[19] Id., p. 24.

[20] Id.

[21] Id., pp. 26-28.

[22] Id., p. 13.

[23] Id., p. 15.

[24] Tax Code, Sec. 229 and supra note 12 at 367. See also ACCRA Investments Corporation v. CA., G.R. No. 96322, 20 December 1991, 204 SCRA 957. See also CIR v. Philippine American Life Insurance Co., G.R. No. 105208, 29 May 1995, 244 SCRA 446.

[25] 139 Phil. 584 (1969).

[26] Id., pp. 588-589 citing People v. del Rosario, 97 Phil 70, 71 (1955).

[27] Executive Order

[28] Gutierrez v. Carpio, 53 Phil. 334, 335-336 (1929).

[29] Section 9, Time, 74 AmJur 2d 593 citing Re Lynch's Estate, 123 Utah 57, 254 P2d 454.

[30] This is pursuant to Article 13(3) of the Civil Code which provides that "[i]n computing a period, the first day shall be excluded, and the last day included."

Cf. Rules of Court, Rule 22, Sec. 1. The section provides:

Section 1. How to compute time. In computing any period of time prescribed or allowed by this Rules, or by the order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday or a legal holiday in the place where the court sits, the time shall not run until the next working day. (emphasis supplied)

[31] Jose Jesus G. Laurel, Statutory Construction: Cases and Materials, 1999 ed., 176 citing Black's Law Dictionary, 4th ed., 1463.

[32] Agujetas v. Court of Appeals, G.R. No. 106560, 23 August 1996, 261 SCRA 17, 32.

[33] David v. Commission on Election, G.R. No. 127116, 08 April 1997, 271 SCRA 90, 103.

[34] Supra note 25.

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