

ACCRA INVESTMENTS CORPORATION, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, COMMISSIONER OF INTERNAL REVENUE AND THE COURT OF TAX APPEALS, RESPONDENTS.

G.R. No. 96322, December 20, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari presents the issue of whether or not the petitioner corporation is barred from recovering the amount of P82,751.91 representing overpaid taxes for the taxable year 1981.

The petitioner corporation is a domestic corporation engaged in the business of real estate investment and management consultancy.

On April 15, 1982, the petitioner corporation filed with the Bureau of Internal Revenue its annual corporate income tax return for the calendar year ending December 31, 1981 reporting a net loss of P2,957,142.00 (Exhibits "B", "B-1" to "B-10"). In the said return, the petitioner corporation declared as creditable all taxes withheld at source by various withholding agents, as follows:

"Withholding Agent Amount Withheld

a) Malayan Insurance Co., Inc. P 1,429.97

(Exh. "C")

b) Angara Concepcion Regala

& Cruz Law Offices P 73,588.00

(Exh. "D")

c) MJ Development Corp. P 1,155.00

(Exh. "E")

d) Philippine Global Communications, Inc.

(Exh. "F") P 6,578.94

TOTAL P 82,751.91"

(CTA Decision, p. 4; Records, p. 10)

The withholding agents aforesaid paid and remitted the above amounts representing taxes on rental, commission and consultancy income of the petitioner corporation to the Bureau of Internal Revenue from February to December 1981.

In a letter dated December 29, 1983 addressed to the respondent Commissioner of Internal Revenue (Exh. "G"), the petitioner corporation filed a claim for refund inasmuch as it had no tax liability against which to credit the amounts withheld.

Pending action of the respondent Commissioner on its claim for refund, the petitioner corporation, on April 13, 1984, filed a petition for review with the respondent Court of Tax Appeals (CTA) asking for the refund of the amounts withheld as overpaid income taxes.

On January 27, 1988, the respondent CTA dismissed the petition for review after a finding that the two-year period within which the petitioner corporation's claim for refund should have been filed had already prescribed pursuant to Section 292 of the National Internal Revenue Code of 1977, as amended.

Acting on the petitioner corporation's motion for reconsideration, the respondent CTA in its resolution dated September 27, 1988 denied the same for having been filed out of time. It ruled that the reckoning date for purposes of counting the two-year prescriptive period within which the petitioner corporation could file a claim for refund was December 31, 1981 when the taxes withheld at source were paid and remitted to the Bureau of Internal Revenue by its withholding agents, not April 15, 1982, the date when the petitioner corporation filed its final adjustment return.

On January 14, 1989, the petitioner corporation filed with us its petition for review which we referred to the respondent appellate court in our resolution dated February 15, 1990 for proper determination and disposition.

On May 28, 1990, the respondent appellate court affirmed the decision of the respondent CTA opining that the two-year prescriptive period in question commences "from the date of payment of the tax" as provided under Section 292 of the Tax Code of 1977 (now Sec. 230 of the National Internal Revenue Code of 1986), i.e., "from the end of the tax year when a taxpayer is deemed to have paid all taxes withheld at source", and not "from the date of the filing of the income tax return" as posited by the petitioner corporation (CA Decision, pp. 3-5; Rollo, pp. 27-29)

Its motion for reconsideration with the respondent appellate court having been denied in a resolution dated November 20, 1990, the petitioner corporation (ACCRAIN) elevated this case to us presenting as main arguments, to wit:

I

ACCRAIN'S JUDICIAL ACTION FOR RECOVERY OF CREDITABLE TAXES ERRONEOUSLY WITHHELD AT SOURCE WAS FILED ON TIME.

II

THE RECKONING DATE FOR THE COMMENCEMENT OF THE TWO-YEAR PRESCRIPTIVE PERIOD IS 15 APRIL 1982. ACCORDINGLY, THE 13 APRIL 1984 ACTION OF ACCRAIN FOR THE RECOVERY OF TAXES ERRONEOUSLY WITHHELD AT SOURCE IN 1981 IS NOT BARRED AND ACCRAIN IS ENTITLED TO THE REFUND OF P82,751.91 OF SUCH TAXES." (Rollo, p. 116)

We find merit in the petitioner corporation's postures.

Crucial in our resolution of the instant case is the interpretation of the phraseology "from the date of payment of the tax" in the context of Section 230 (formerly sec. 292) of the National Internal Revenue Code of 1986, as amended, which provides that:

" "Sec. 230. 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 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 begin 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 to have been erroneously paid." (Underlining Supplied)

The respondent appellate court citing the case of *Gibbs v. Commissioner of Internal Revenue* (155 SCRA 318 [1965]), construed the phrase "from the date of payment" as to be reckoned from "the end of the tax year" when the petitioner corporation was deemed to have paid its tax liabilities in question under the withholding tax system. (CA Decision, pp. 4-5; Rollo, pp. 28-29)

The respondent appellate court in this case has misapplied jurisprudential law. In the *Gibbs* case, *supra*, cited by the Court of Appeals, we have clearly stated that:

"Payment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other manner, of an obligation (*id.*, Art. 1231). A taxpayer, resident or non-resident, does so not really to deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 (now part of Section 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system. x x x (At p. 325; Underlining supplied)

The aforequoted ruling presents two alternative reckoning dates, i.e., (1) the end of the tax year; and (2) when the tax liability falls due. In the instant case, it is undisputed that the petitioner corporation's withholding agents had paid the corresponding taxes withheld at source to the Bureau of Internal Revenue from February to December 1981. In having applied the first alternative date - "the end of the tax year" in order to determine whether or not the petitioner corporation's claim for refund had been seasonably filed, the respondent appellate court failed to appreciate properly the attending circumstances of this case.

The petitioner corporation is not claiming a refund of overpaid withholding taxes, *per se*. It is asking for the recovery of the sum of P82,751.91.00, the refundable or creditable amount determined upon the petitioner corporation's filing of the its final adjustment tax return on or before 15 April 1982 when its tax liability for the year 1981 fell due. The distinction is essential in the resolution of this case for it spells the difference between being barred by prescription and entitlement to a refund.

Under Section 49 of the National Internal Revenue Code of 1986, as amended, it is explicitly provided that:

"Sec. 49. Payment and assessment of income tax for individuals and corporations.

(a) Payment of tax - (1) In general. - The total amount of tax imposed by this Title shall be paid by the person subject thereto at the time the return is filed. x x x"

Section 70, subparagraph (b) of the same Code states when the income tax return with respect to taxpayers like the petitioner corporation must be filed. Thus:

"Sec. 70 (b) Time of filing the income return - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be."

The petitioner corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The petitioner corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on 15 April 1982, it reported a net loss of P2,957,142.00. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of the aforementioned codal provision which reads:

"Sec. 70 (c) - Time payment of the income tax - The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Sections 68 and 69 shall be paid at the time the declaration or return is filed as prescribed by the Commissioner of Internal Revenue."

If we were to uphold the respondent appellate court in making the "date of payment" coincide with the "end of the taxable year," the petitioner corporation at the end of the 1981 taxable year was in no position then to determine whether it was liable or not for the payment of its 1981 income tax.

Anent claims for refund, section 8 of Revenue Regulation No. 13-78 issued by the Bureau of Internal Revenue requires that:

"Section 8. Claims for tax credit or refund - Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom."

The term "return" in the case of domestic corporations like ACCRAIN refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which partly reads:

"Sec. 69. Final Adjustment Return ? Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:

- (a) Pay the excess tax still due; or
- (b) Be refunded the excess amount paid, as the case may be."

Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G. R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.

Considering that ACCRAIN filed its claim for refund as early as December 29, 1983 with the respondent Commissioner who failed to take any action thereon and considering further that the non-resolution of its claim for refund with the said Commissioner prompted ACCRAIN to reiterate its claim before the Court of Tax Appeals through a petition for review on April 13, 1984, the respondent appellate court manifestly committed a reversible error in affirming the holding of the tax court that ACCRAIN's claim for refund was barred by prescription.

It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982.

WHEREFORE, in view of the foregoing, the petition is GRANTED. The decision of the Court of Appeals dated May 28, 1990 and its resolution of November 20, 1990 are hereby REVERSED and SET ASIDE. The respondent Commissioner of Internal Revenue is directed to refund to the petitioner corporation the amount of P82,751.91.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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