

SECOND DIVISION

[G.R. No. 144653, August 28, 2001]

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision, dated April 14, 2000, of the Court of Appeals,^[1] affirming the decision of the Court of Tax Appeals (which denied petitioner Bank of the Philippine Islands' claim for tax refund for 1985), and the appeals court's resolution, dated August 21, 2000, denying reconsideration.

The facts are as follows:

Prior to its merger with petitioner Bank of the Philippine Islands (BPI) on July 1, 1985, the Family Bank and Trust Co. (FBTC) earned income consisting of rentals from its leased properties and interest from its treasury notes for the period January 1 to June 30, 1985. As required by the Expanded Withholding Tax Regulation, the lessees of FBTC withheld 5 percent of the rental income, in the amount of P118,609.17, while the Central Bank, from which the treasury notes were purchased by FBTC, withheld P55,456.60 from the interest earned thereon. Creditable withholding taxes in the total amount of P174,065.77 were remitted to respondent Commissioner of Internal Revenue.

FBTC, however, suffered a net loss of about P64,000,000.00 during the period in question. It also had an excess credit of P2,146,072.57 from the previous year. Thus, upon its dissolution in 1985, FBTC had a refundable amount of P2,320,138.34, representing that year's tax credit of P174,065.77 and the previous year's excess credit of P2,146,072.57.

As FBTC's successor-in-interest, petitioner BPI claimed this amount as tax refund, but respondent Commissioner of Internal Revenue refunded only the amount of P2,146,072.57, leaving a balance of P174,065.77. Accordingly, petitioner filed a petition for review in the Court of Tax Appeals on December 29, 1987, seeking the refund of the aforesaid amount.^[2] However, in its decision rendered on July 19, 1994, the Court of Tax Appeals dismissed petitioner's petition for review and denied its claim for refund on the ground that the claim had already prescribed.^[3] In its resolution, dated August 4, 1995, the Court of Tax Appeals denied petitioner's motion for reconsideration.^[4]

Petitioner appealed to the Court of Appeals, but, in its decision rendered on April 14, 2000, the appeals court affirmed the decision of the CTA.^[5] The appeals court subsequently denied petitioner's motion for reconsideration.^[6] Hence this petition.

The sole issue in this case is whether petitioner's claim is barred by prescription. The resolution of this question requires a determination of when the two-year period of prescription under §292 of the Tax Code started to run. This provision states:

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 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.

There is no dispute that FBTC ceased operations on June 30, 1985 upon its merger with petitioner BPI. The merger was approved by the Securities and Exchange Commission on July 1, 1985. Petitioner contends, however, that its claim for refund has not yet prescribed because the two-year prescriptive period commenced to run only after it had filed FBTC's Final Adjustment Return on April 15, 1986, pursuant to §46(a) of the National Internal Revenue Code of 1977 (the law applicable at the time of this transaction) which provided that —

Corporation returns.— (a) *Requirement.*-- Every corporation, subject to the tax herein imposed, except foreign corporations not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter X of this Title. The return shall be filed by the president, vice-president, or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

On the other hand, the Court of Tax Appeals ruled that the prescriptive period should be counted from July 31, 1985, 30 days after the approval by the SEC of the plan of dissolution in view of §78 of the Code, which provided that—

Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, including corporations which have been notified of possible involuntary

dissolution by the Securities and Exchange Commission, render a correct return to the Commissioner of Internal Revenue, verified under oath, setting forth the terms of such resolution or plan and such other information as the Minister of Finance shall, by regulations, prescribe. The dissolving corporation prior to the issuance of the Certificate of Dissolution by the Securities and Exchange Commission shall secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

Failure to render the return and secure the certificate of tax clearance as above-mentioned shall subject the officer(s) of the corporation required by law to file the return under Section 46(a) of this Code, to a fine of not less than Five Thousand Pesos or imprisonment of not less than two years and shall make them liable for all outstanding or unpaid tax liabilities of the dissolving corporation.

Its ruling was sustained by the Court of Appeals.

After due consideration of the parties' arguments, we are of the opinion that, in case of the dissolution of a corporation, the period of prescription should be reckoned from the date of filing of the return required by §78 of the Tax Code. Accordingly, we hold that petitioner's claim for refund is barred by prescription.

First. Generally speaking, it is the Final Adjustment Return, in which amounts of the gross receipts and deductions have been audited and adjusted, which is reflective of the results of the operations of a business enterprise. It is only when the return, covering the whole year, is filed that the taxpayer will be able to ascertain whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.^[7] Hence, this Court has ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of filing of the adjusted final tax return.^[8]

In the case at bar, however, the Court of Tax Appeals, applying §78 of the Tax Code, held:

Before this Court can rule on the issue of prescription, it is noteworthy to point out that based on the financial statements of FBTC and the independent auditor's opinion (Exhs. "A-7" to "A-17"), FBTC operates on a calendar year basis. Its twelve (12) months accounting period was shortened at the time it was merged with BPI. Thereby, losing its corporate existence on July 1, 1985 when the Articles of Merger was approved by the Security and Exchange Commission. Thus, respondent['s] stand that FBTC operates on a fiscal year basis, based on its income tax return, holds no ground. This Court believes that FBTC is operating on a calendar year period based on the audited financial statements and the opinion thereof. The fiscal period ending June 30, 1985 on the upper left corner of the income tax return can be concluded as an error on the part of FBTC. It should have been for the six month period ending June 30, 1985. It should also be emphasized that "where