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FIRST DIVISION

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

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 PROPERTY GROUP, INC., RESPONDENT.

D E C I S I O N

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 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