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efforts. All told, his handling of the case was sorely inadequate, as shown by his failure to follow elementary norms of civil procedure and evidence.

WHEREFORE, the assailed Decision is *AFFIRMED* with the *MODIFICATION* that Renato and Francia Ong are separately awarded moral damages in the amount of ₱30,000.00 and ₱50,000.00, respectively. The ten percent (10%) attorney's fees shall be based on the total modified award.

SO ORDERED.

Romero, Vitug, Purisima, and *Gonzaga-Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 117254. January 21, 1999]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS, and BANK OF THE PHILIPPINE ISLANDS as LIQUIDATOR OF PARAMOUNT ACCEPTANCE CORPORATION,** *respondents.*

SYNOPSIS

The Bank of the Philippine Islands (BPI) acts as the liquidator of Paramount Acceptance Corporation (Paramount) after its dissolution on March 31, 1986. On April 21, 1986, Paramount filed its Corporate Annual Income Tax Return for calendar year ending December 31, 1985, declaring a Net Income of ₱3,324,802.00. The income tax due thereon is ₱1,153,681. However, Paramount paid the BIR its quarterly income tax in the amount of ₱1,218.940.00. After deducting Paramount's total quarterly income tax payments from its income, the return showed a refundable amount of ₱65,259.00. On April 14, 1988, BPI filed a claim for refund of the said amount. On April 15, 1988, BPI

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filed a petition to toll the running of the prescriptive period for filing a claim for refund of overpaid income taxes. The question, is whether the two-year period of prescription for filing a claim for refund is to be counted from April 2, 1986 when the corporate income tax return was actually filed or from April 15, 1986 when the final adjustment return could still be filed without incurring any penalty.

According to the Court of Tax Appeals, the two-year period of prescription commenced to run from April 15, 1986, the last day for filing the corporate income tax return. This was affirmed by the Court of Appeals but herein petitioner believes otherwise. Hence, this appeal.

In the context of Sec. 230 which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment. Return on Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under Sec. 49(a) of the NIRC, payment is made at the time the return is filed. Thus, both claim and action for refund were already barred by prescription.

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE; SEC. 230; TWO-YEAR PERIOD OF PRESCRIPTION FOR FILING A CLAIM FOR REFUND, RECKONED. — The question is whether the two-year period of prescription for filing a claim for refund, as provided in §230 of the National Internal Revenue Code, is to be counted from April 2, 1986 when the corporate income tax return was actually filed or from April 15, 1986 when according to §70(b) of the NIRC, the final adjustment return could still be filed without incurring any penalty. The aforesaid §230 of the NIRC provides that such period must be counted "from the date of payment of the tax."... In *Commissioner of Internal Revenue v. TMX Sales Inc.*, this Court rejected the contention that the period of prescription should be counted from the date of payment of the quarterly tax... In *ACCRA Investments Corporation v. Court of Appeals*,... we explained why the two-year period of prescription should be counted from the filing

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of the final adjustment return... In the context of 230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Tax Return. This is a so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under 49(a) of the NIRC payment is made at the time the return is filed. In the case at bar. Paramount filed its corporate annual income tax return on April 2, 1986. However, private respondent BPI, as liquidator of Paramount, filed a written claim for refund only on April 14, 1988 and a petition for refund only on April 15, 1988. Both claim and action for refund were thus barred by prescription.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Padilla Law Office for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* of the decision, dated September 19, 1994, of the Court of Appeals affirming the decision of the Court of Tax Appeals which ordered petitioner to refund ₱65,259.00 as overpaid income tax.

The facts are stated in the following portion of the decision of the CTA which the Court of Appeals quoted with approval:

Petitioner, Bank of the Philippine Islands (BPI for short) is a bank and trust corporation duly organized and existing under Philippine laws. It acts as the liquidator of Paramount Acceptance Corporation after its dissolution on March 31, 1986.

On April 2, 1986, Paramount Acceptance Corporation (Paramount for brevity) filed its Corporate Annual Income Tax Return, for calendar year ending December 31, 1985, declaring a Net Income of ₱3,324,802.00 (Exh. A). The income tax due thereon is ₱1,153,681.00. However, Paramount paid the BIR its quarterly income tax, to wit:

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Qtr.	CR/ROR	Date	Bank	Amount	Exh.
1st	6817293	5-30-85	DBP	₱308,779.00	C
2nd	5613316	8-29-85	DBP	626,000.00	C-1
3rd	7720471	11-29-85	DBP	284,161.00	C-2
			TOTAL	₱1,218,940.00	

After deducting Paramount's total quarterly income tax payments of ₱1,218,940.00 from its income tax of ₱1,153,681.00, the return showed a refundable amount of ₱65,259.00. The appropriate box in the return was marked with a cross (x) indicating "*To be refunded*" the amount of ₱65,259.00.

On April 14, 1988, petitioner BPI, as liquidator of Paramount, through counsel filed a letter dated April 12, 1988 reiterating its claim for refund of ₱65,259.00 as overpaid income tax for the calendar year 1985. The following day or on April 15, 1988, BPI filed the instant petition with this Court in order to toll the running of the prescriptive period for filing a claim for refund of overpaid income taxes.

The question is whether the two-year period of prescription for filing a claim for refund, as provided in §230 of the National Internal Revenue Code, is to be counted from April 2, 1986 when the corporate income tax return was actually filed or from April 15, 1986 when, according to §70(b) of the NIRC, the final adjustment return could still be filed without incurring any penalty. The aforesaid §230 of the NIRC[1] provides that such period must be counted "from the date of payment of the

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[1] This provision reads in part as follows:

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.

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tax." But, given the facts as stated above, when was the corporate income tax paid in this case?

The Court of Tax Appeals rendered a decision considering the two-year period of prescription to have commenced to run from April 15, 1986, the last day for filing the corporate income tax return, and, since the claim for refund was filed on April 14, 1988 and the action was brought on April 15, 1988, it held that prescription had not set in. Accordingly, the CTA ordered as follows:

> WHEREFORE, the respondent [petitioner herein] is hereby ordered to REFUND in favor of petitioner, the sum of ₱65,259.00, representing overpaid income tax of Paramount Acceptance Corporation for the calendar year 1985.
>
> No pronouncement as to costs.
>
> SO ORDERED.[2]

On appeal, its decision was affirmed by the Court of Appeals. Said the appellate court:[3]

> We agree with the respondent court's ruling that the date of payment of the tax as prescribed under the Tax Code is the date when the corporate income tax return is required to be filed. . . .
>
> The Supreme Court has laid down the rule regarding the computation of the prescriptive period that the two-year period should be computed from the time of filing of the Adjustment Returns or Annual Income Tax Return and final payment of income tax; it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund

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> 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 ....

[2] *Rollo*, p. 55.

[3] *Id.*, pp. 36-37.

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can be claimed based on the adjusted and audited figures (*Commissioner of Internal Revenue vs. TMX Sales Inc.*, 205 SCRA 184). 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 (Commissioner of Internal Revenue *vs.* Asia Australia Express Ltd., G.R. No. 85956). The "date of payment" from which to reckon the two-year period, in the case of a corporation whose taxable year is on a calendar basis, is the 15th day of the fourth month (April 15th) following the close of the fiscal year, and the filing of the final adjustment return on April 15th, following the close of the preceding taxable year, is such "date of payment" (*ACCRA Investments Corp. vs. Court of Appeals*, 204 SCRA 957).

In this case, BPI filed its final adjustment return on April 2, 1986. No taxes were paid then because the returns showed that the quarterly taxes already paid exceeded the income tax due by ₱65,259.00. As correctly put by BPI, it is only on April 15 that the previous year's income tax becomes due and payable and the taxpayer is still free to make amendments or adjustments on its return, without penalty, until April 15, 1986 (See Section 80, N.I.R.C.). Thus the final payment of income tax should be deemed to be on April 15, 1986, when the previous year's income tax became due and payable and when the quarterly corporate income taxes may be considered paid. Accordingly the administrative claim and court proceeding for tax refund were timely filed.

Petitioner disagrees with the foregoing decision of the Court of Appeals. He contends that the two-year prescriptive period should be computed from April 2, 1984, when the final adjustment return was actually filed, because that is the time of payment of the tax within the meaning of §230 of the NIRC.

We agree.

The conclusions reached by the appellate court are contrary to the very rulings cited by it. In *Commissioner of Internal Revenue v. TMX Sales, Inc.*,[4] this Court, in rejecting the contention that the period of prescription should be counted from the date of payment of the quarterly tax, held:

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[4] 205 SCRA 184, 192 (1992) (italics added).

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. . . [T]he filing of a quarterly income tax return required in Section 85 [now Section 68] and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 [now Section 69] which provides for the filing of adjustment returns and final payment of income tax. *Consequently, the two-year prescriptive period provided in Section 292 [now Section 230 of the Tax Code] should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax.*

On the other hand, in *ACCRA Investments Corporation v. Court of Appeals*,[5] where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:[6]

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.

. . . . . .

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[5] 204 SCRA 957 (1991) (emphasis added).

[6] *Id.*, at 963-964 (emphasis added).

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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.*

Finally, in *Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*,[7] we held:

Clearly, the prescriptive period of two years should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished. In the present case, this date is April 16, 1984, and two years from this date would be April 16, 1986. The record shows that the claim for refund was filed on December 10, 1985 and the petition for review was brought before the CTA on January 2, 1986. Both dates are within the two-year reglementary period. Private respondent being a corporation, Section 292 [now Section 230] cannot serve as the sole basis for determining the two-year prescriptive period for refunds. As we have earlier stated in the *TMX Sales* case, Sections 68, 69, and 70 on Quarterly Corporate Income Tax Payment and Section 321 should be construed in conjunction with it.

Sec. 49(a) of the NIRC provides that —

§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. . . .

On the other hand, §70(b) of the same Code provides that —

§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

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[7] 244 SCRA 446, 453 (1995) (italics added).

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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.

Thus, it can be deduced from the foregoing that, in the context of §230, which provides for a two-year period of prescription counted "from the date of payment of the tax" for actions for refund of corporate income tax, the two-year period should be computed from the time of actual filing of the Adjustment Return or Annual Income Tax Return. This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer. Moreover, under §49(a) of the NIRC, payment is made at the time the return is filed.

In the case at bar, Paramount filed its corporate annual income tax return on April 2, 1986. However, private respondent BPI, as liquidator of Paramount, filed a written claim for refund only on April 14, 1988 and a petition for refund only on April 15, 1988. Both claim and action for refund were thus barred by prescription.

The foregoing conclusion makes it unnecessary for us to pass on the other issues raised in this case by petitioner.

WHEREFORE, the decision of the Court of Appeals is REVERSED and the petition for refund filed by private respondent is DISMISSED on the ground that it is barred by prescription.

SO ORDERED.

Bellosillo (Chairman), Puno, Quisumbing, and *Buena, JJ.,* concur.