

NO. CV 00 0500672S

PURNENDU AND AMITA CHATTERJEE : SUPERIOR COURT
: TAX SESSION
v. : JUDICIAL DISTRICT OF :
NEW BRITAIN
COMMISSIONER OF
REVENUE SERVICES : MARCH 10, 2004

MEMORANDUM OF DECISION ON
PLAINTIFFS' MOTION FOR JUDGMENT

The plaintiffs, Purnendu and Amita Chatterjee (Chatterjee), move for judgment on the ground that the commissioner of revenue services (Commissioner) disregarded a prior order of this court in refusing to consider the merits of their claim.

The plaintiffs brought this appeal challenging the Commissioner's decision to deny a refund of capital gains, dividends and interest income taxes for the years 1989 and 1990. The plaintiffs claim they are entitled to a refund of those taxes because they were erroneously paid. On April 29, 2003, this court rendered a decision finding that the Commissioner was in error in refusing to consider the plaintiffs' claim because of a statute of limitations issue in General Statutes § 12-515 and remanded the case back to the Commissioner to consider the plaintiffs' claim pursuant to authority in General Statutes § 12-39s without the restriction of a statute of limitations.

On remand, the Commissioner once again denied the plaintiffs' 1989 and 1990 refund claims. In a letter to plaintiffs' counsel, the Commissioner stated: "Conn. Gen. Stat. §12-39s(b) authorizes the Commissioner of Revenue Services, of his own motion, to issue a refund when 'any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or computed.' My review of this matter indicates that the Chatterjees did not pay the tax more than once and that the taxes were not erroneously or illegally collected or computed. Based on these factors, it is my determination that no refund pursuant to § 12-39s is warranted in this matter." (Defendant's Memorandum of Law in Objection to Plaintiffs' Motion for Judgment, dated January 23, 2004, Exhibit 1.)

The plaintiffs raise four points in their motion for judgment: (1) the Commissioner did not comply with the court's remand order; (2) the court has authority to compel the Commissioner to comply with its remand order; (3) the court is obligated to review the Commissioner's exercise of discretion; and (4) the court should remand the case to the Commissioner with instructions to consider the merits of plaintiffs' case or, in the alternative, order the refunds paid in full.

The plaintiffs' basic claim is that the Commissioner "failed to comply with the court's Remand Order because she did not properly interpret or apply § 12-39s. . . . in the manner intended by the legislature, i.e., based on the merits of their case." (Plaintiffs' Memorandum of Law in Support of Motion for Judgment, dated February 20, 2004, p. 13.)

The Commissioner responds to the plaintiffs' argument by stating that the sole question before this court is whether the Commissioner had complied with the Court's remand order. In this regard, the Commissioner claims that she has so complied.

Both parties cite AvalonBay Communities, Inc. v. Plan & Zoning Commission, 260 Conn. 232, 769 A.2d 1164 (2002). In AvalonBay, the court held that a trial court's

“continuing jurisdiction to effectuate its prior judgments, either by summarily ordering compliance with a clear judgment or by interpreting an ambiguous judgment and entering orders to effectuate the judgment as interpreted is grounded in its inherent powers” *Id.*, 246. Our decision of April 29, 2003 was a remand order to the Commissioner to consider the plaintiffs’ claim pursuant to § 12-39s independent of any statute of limitations. As the court in AvalonBay noted, although there is no specific rule of practice for a motion to interpret or clarify a judgment, it is procedurally proper to file such a motion with no time restrictions. *Id.*, 244.

What the plaintiffs seek to have this court do is to review the decision of the Commissioner and make a finding on the merits of the plaintiffs’ claim for a refund. Unfortunately for the plaintiffs, under our interpretation of this statutory section, we conclude that we have no right to review the Commissioner’s decision.

The decision of the Commissioner, under § 12-39s, is an administrative decision and as such, an appeal of that decision must be authorized by statute, since “[i]t is well established that the right to appeal an administrative action is created only by statute and a party must exercise that right in accordance with the statute in order for the court to have jurisdiction.” (Internal quotation marks omitted.) East Hampton v. Department of Public Health, 80 Conn. App. 248, 252, 834 A.2d 783 (2003). However, as the court noted in Kimberly-Clark Corporation v. Dubno, 204 Conn. 137, 145, 527 A.2d 679 (1987), the Uniform Administrative Procedures Act (UAPA), General Statutes § 4-166 et. seq, expressly excludes tax appeals and “a party appealing from an adverse ruling of the commissioner of revenue services is ‘entitled to a plenary review of its challenge of its tax assessment, and is not limited to an administrative appeal under the Uniform Administrative Procedure Act.’” *Id.*, 145, citing Texaco Refining & Marketing Co. v. Commissioner, 202 Conn. 583, 588, 522 A.2d 771 (1987).

One could argue that since tax appeals are not considered administrative appeals under the UAPA, this court would have jurisdiction to consider the decision of the Commissioner in a de novo hearing. The language of § 12-39s, however, overcomes this argument. Section 12-39s specifically denies the right to challenge the Commissioner's decision. See § 12-39s (c): "The provisions of this section shall not be construed as authorizing suit against the state by a person against whom any tax, penalty or interest has been erroneously or illegally assessed or from whom any tax, penalty or interest has been erroneously or illegally collected and shall not be construed as a waiver of sovereign immunity."

We understand the frustration of the plaintiffs, since the Commissioner has refunded payments for the 1991, 1992 and 1993 tax years, but has previously denied a refund of payments for the 1989 and 1990 tax years solely because the Commissioner considered those refund claims as being filed untimely. (See Stipulation of Facts, dated October 7, 2001, ¶¶ 17, 18 and 19.)

The plaintiffs argue that this court has the obligation to review the action of the Commissioner and determine whether she has acted in an unreasonable or arbitrary manner. This would require a de novo hearing under § 12-39s. However, in the face of a legislative mandate contained in § 12-39s, that the Commissioner is authorized to act on her own motion, together with a restriction on the review of this decision as set forth in § 12-39s (c), we fail to find any authority that permits this court to review the discretionary decision of the Commissioner.

We note a recent case in New York, under similar circumstances, concluded that a refund of tax payments paid under a mistake of fact could not be made to the taxpayer. See In the Matter of the Petition of Richard S. and Beverly Berry, Decision DTA No. 818673, Tax Appeals Tribunal, State of New York (January 22, 2004.) In the Berry case,

the taxpayers paid taxes on their General Business Corporation Franchise Tax Return on the advice of their accountant who was unaware of the change in tax laws which would have reduced the tax liability of the Berrys. New York Tax Law § 687(a), although similar to our § 12-39s, does not restrict a review of that decision.

Since we conclude that we have no authority to review the reasons for the refusal of the Commissioner to refund the taxes previously paid by the plaintiffs for the tax years of 1989 and 1990, the plaintiffs' motion for judgment is denied.

Arnold W. Aronson
Judge Trial Referee