REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA OVERSEAS COMMERCIAL, INC.,
Petitioner,

-versus -

C.T.A. CASE NO. 4161

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is initially a judicial claim for refund by petitioner of the sum of P331,716 representing the overpaid income tax for the taxable year 1985.

Petitioner Manila Overseas Commercial, Inc. is engaged in the general business of insurance and/or reinsurance brokerage along such lines as life, health, accident, fire and allied lines, motor car, casualty, surety and fidelity, marine cargo, marine hull, comprehensive liability insurance and/or allied risks, aviation insurance and/or such other insurance coverages allied with and incident to the above enumerated lines.

For calendar year ending December 31, 1985, petitioner had a taxable income of P109,539 and the tax dues thereon being P28,339.

Pursuant to the then Section 85 (now Section 78) of the National Internal Revenue Code, petitioner paid for the 1st, 2nd and 3rd quarters of taxable year 1985, the total amount of P203,950 as its quarterly income tax liabilities on May 27, 1985, August 29, 1985 and November 27, 1985. The payments are summarized as follows:

Quarter Ending	Taxable Income	Tax Due	Tax Paid
March 31, 1985	P109,856.55	P 28,450.00	P 28,450.00
June 30, 1985	381,341.92	123,470.00	95,020.00
Sept. 30, 1985	611,285.56	203,950.00	80,480.00
		Total	P203,950.00

(Exhs. C, D & F, pp. 132, 133, CTA rec.; F, G & H, 134, 135, CTA rec.; Exh. I)

Also, for the calendar year 1985, petitioner paid creditable withholding taxes amounting to P156,105.00, representing taxes withheld on its commission income.

Upon the filing of its final income tax return for December 31, 1985 (Exh. B, p. 131, CTA rec.), it will appear that its taxable income for the year 1985 is P109,539.00 and paid the tax due thereon in the sume of P28,339.00. (Exh. C, p. 132, CTA rec.; Exhs. D & E, p. 133, CTA rec.) Having paid a withholding tax payment for the 1st, 2nd and 3rd quarters in that year of the total sum of P203,950.00 and having had a total taxes withheld on commission income of P156,105.00, it had a total withheld taxes of P360,055.00. The sum of P203,950.00 quarterly tax payments and the creditable withheld tax on commission income has been claimed by petitioner as excess tax payment for the succeeding taxable year 1986. (Exhs. K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, pp. 139-153, CTA rec.)

Deducting, therefore, the sum of P28,339.00 which was the tax paid on the total net income of petitioner from the total sum of tax withheld in the sum of P360,055.00, there remain a balance of P331,716 as creditable amount to taxpayer Manila Overseas Commercial, Inc. This amount was carried over to the succeeding taxable year 1986 pursuant to Section 79 (now Section 69) of the Tax Code (Exh. B).

For the calendar year ending December 31, 1986, petitioner had a taxable income of P166,658 and a tax due thereon was P58,330. Petitioner likewise had creditable taxes that were withheld by withholding agents on its commission income amounting to P340,836. Thus, the total tax credit or refund that petitioner was legally entitled to as of December 31, 1986 amounts to P614,222 computed as follows:

Tax credit/refund for 1985	(P331,716.00)
Tax withheld on commission income for 1986	(340,836.00)
T o t a l	(P672,552.00)
Less: Tax liability for 1986	(58,330.00)
Refundable amount	(P614,222.00)

For the calendar ending December 31, 1987, petitioner had a taxable income of P1,939,038 and tha tax due thereon was P678,663. For the same year, petitioner also had creditable taxes withheld on its commission income amounting to P362,578. Applying the 1986 refundable tax on P614,222, petitioner as of December 31, 1987 had a total tax credit or refund of P298,137 arrived as follows:

Tax credit/refund for 1986	(P614,222.00)
Tax withheld on commission income for 1987	(362,578.00)
Total	(P976,800.00)
Less: Tax liability for 1987	(678,663.00)
Refundable amount	(P298,137.00)

For the calendar year ending December 31, 1988, the taxable income of petitioner amounted to P1,648,435 and the tax due thereon was P576,952. For the first three (3) quarters of its taxable year, petitioner paid the total amount of P141,901 as its quarterly income tax liabilities. In addition, petitioner has to its credit the taxes withheld on its commission income amounting to P390,847. From the above, the refundable or creditable tax of petitioner as of December 31, 1988 amounts to P253,933 computed as follows:

Tax credit/refund for 1987	(P298,137.00)
Tax withheld on commission income for 1988	(390,847.00)
Quarterly payments made during the year	(141,901.00)
Less: Tax liability for 1988	576,952.00
Refundable amount	(P253,933.00)

From the foregoing, the computation of the claim for tax refund or credit is summarized as follows:

Year	Quarterly Payments	EWT on Commissions	Income tax Payable	Tax refund at Year End
1985	203,950	156,105	(28,339)	331,716
1986	-	340,836	(58,330)	614,222
1987	-	362,578	(678,663)	298,137
1988	141,901	390,847	(576,952)	(253,933)

On June 24, 1986, petitioner filed a supplemental claim for tax credit dated June 17, 1987, supplemental to that of May 23, 1971, a copy of which is attached and made as Annex B, of the petition for review. This claim for tax credit was filed within two (2) years from the date the refundable amount was paid to the government.

Up to this date, respondent Commissioner of Internal Revenue has not granted the tax credit allowed.

The sole issue in this case is whether or not petitioner is entitled to the refund in the amount of P253,933.

It is claimed by petitioner that it is entitled to the refund of P253,933 representing overpaid income tax or the issuance of a tax credit certificate covering the amount of P253,933. It alleges that "Under Section 69 of the Tax Code (formerly Section 79), in relation to Revenue Memorandum Circular Nos. 7-85 and 32-76, petitioner is entitled to be refunded, or given a tax credit certificate for the excess tax credit or overpaid income taxes as of December 31, 1988 which was not applied or utilized in the succeeding taxable year (1989)."

Pertinent portion of Section 69 of the Tax Code states as follows:

> "Final adjustment return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of the 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.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year." (Underscoring applied)

The pertinent provision of the Revenue Memorandum Circular No. 7-85 dated April 1, 1985, implementing Section 69 of the Tax Code (formerly Section 79), relative to the processing of refund states that:

"In the above provision of the Regulations (Section 7 of the Revenue Regulations No. 10-77), the corporation may request for the refund of the overpaid income tax or claim for automatic credit. To insure prompt action on corporate annual income tax return showing refundable amounts arising from overpaid quarterly income taxes, the office has promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, containing the procedures in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted; and, this procedure was adopted to facilitate immediate action on cases like this. xxx" (Underscoring supplied)

From the above-quoted Tax Code provision, and implementing circular issued by the respondent himself governing refund of overpaid corporate income tax, it is evident that if the corporate taxpayer did not apply or utilize the excess tax credit or overpaid income taxes in the succeeding taxable year, such taxpayer is entitled to be refunded or given a tax credit certificate, and the processing or approval thereof should come as a matter of course.

While the sum of P253,933 was proven to be the creditable amount in favor of the taxpayer Manila Overseas Commercial, Inc. for the year 1988, this court notes that no claim for refund/or tax credit has been filed. It is only on June 24, 1987 that petitioner had filed a claim for tax credit (Exhibit J), which claim did not cover the year 1988, which was in the sum of P253,933. Petitioner therefore had violated Sections 292 and 293 (now Sections 230 and 204) of the Tax Code by not filing a claim for tax refund/tax credit with the Commissioner of Internal Revenue within two (2) years for the payment of the tax for the year 1988 in the sum of P253,933.

For lack or failure to file a claim for refund with the Commissioner of Internal Revenue, it is fatal to this judicial claim for refund and must evidently fail.

WHEREFORE, the judicial claim of petitioner Manila Overseas Commercial, Inc. is hereby DENIED, with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, December 10, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals