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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PETER PAUL PHILIPPINE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5090

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 11 1997

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of ₱3,608,109.00 representing alleged overpaid income taxes for taxable years 1991 and 1992.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and engaged in the acquisition and distribution, among others, of all sorts of agricultural, forestal, animal, and mineral products and by-products (Exh. "O", p. 209, CTA records) and in the manufacture of desiccated coconut and coconut products.

For taxable year 1991, petitioner allegedly paid its quarterly income tax to the Bureau of Internal Revenue (BIR) in the following figures:

CY 1991	Date Paid	Amount	Exhibits
1st Quarter	5-30-91	P1,407,316.00	"A" and "A-1"
2nd Quarter	8-29-91	1,225,214.00	"B" and "B-1"
3rd Quarter	11-29-91	425,358.00	"C" and "C-1"

On April 14, 1992, petitioner filed its Annual Income Tax Return (ITR) for calendar year ending December 31, 1991 (Exh. "D", p. 73, CTA records) which shows a total quarterly corporate income tax payment of P3,057,888.00 which it sought to be applied as tax credit to the succeeding taxable year as indicated in Line No. 8, Section C of the said tax return. The same return also reflected a net operating loss in the sum of P8,567,056.00, thus resulting to a nil income taxability, and a refundable income tax of P3,057,888.00 computed by the petitioner as follows:

Taxable Loss		(P8,567,056.00)
Tax Due		-
Less: Total Payments/Credits		
Prior Year's Excess Credit		
Quarterly Payments		
1st Quarter	P1,407,316.00	
2nd Quarter	1,225,214.00	
3rd Quarter	425,358.00	P3,057,888.00
Total Tax Refundable		P3,057,888.00

For taxable year ending December 31, 1992, petitioner filed its Annual Income Tax Return (Exhibit "F") on April 15, 1993 reflecting an income tax due aggregating to P1,317,525.00, the prior year's excess tax credit of P3,057,888.00, and an income tax payment for the third quarter of 1992 in the amount of P1,867,746.00

which was allegedly paid as shown by the machine validation at the bottom of its Corporate Quarterly Income Tax Return (Exh. "E") filed on December 1, 1992 giving a total of ₱4,925,634.00 as tax credit. This last amount was applied against its income tax due for the year 1992 which resulted in a refundable tax amounting to ₱3,608,109.00 computed by the petitioner, thus:

Tax Due		₱1,317,525.00
Less: Total Payments/Credits		
Prior Year's Excess Credit	₱3,057,888.00	
Quarterly Payments	1,867,746.00	4,925,634.00
Total Refundable Tax		₱3,608,109.00

As in the previous taxable year, petitioner indicated its intention to apply the total refundable income tax of ₱3,608,109.00 to the subsequent taxable year (Line 8, Section C of Exh. "F"). However, this was not applied by the petitioner in 1993 as may be seen on the face of its 1993 Annual Income Tax Return (Exhs. "G" and "G-1") which reveals a nil income tax liability and a net operating loss anew in the sum of ₱5,213,801.00.

In view of such development, petitioner filed with the respondent an administrative written claim for refund or issuance of a tax credit certificate (Exh. "H", pp. 109-110, CTA records) in the amount of ₱3,608,109.00 arising from its overpaid income tax payments for taxable years 1991 to 1992. Said written claim, dated April 12, 1994, was received by the Appellate Division of the BIR on April 13, 1994.

In order to interrupt the running of the two-year prescriptive period provided for under Section 230 of the Tax Code, as amended, a judicial action was taken by the petitioner on April 14, 1994 in order to recover the aforesaid refundable amount. Hence, this petition for review.

Respondent filed her Answer thereto on May 16, 1994 and by way of special and affirmative defenses, alleged the following:

> 1. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action; and
>
> 2. Claims for tax refund are construed strictly against the taxpayer. Taxpayer-herein petitioner has no cause of action.

The issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit of ₱3,608,109.00, representing unutilized excess income tax payments for calendar years ending 1991 and 1992.

We find for the petitioner.

Petitioner invoked Section 69 of the Tax Code, as amended, implemented by Section 7 of Revenue Regulations No. 10-77 which provides as follows:

"**Sec. 69.** ***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 that 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, <u>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.</u>" (Emphasis supplied)

"**Sec. 7.** ***Filing of final or adjustment return and final payment of income tax.*** - xxx xxx xxx.

Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return its intention whether to <u>request for the refund of the overpaid income tax</u> or <u>claim for automatic tax credit to be applied against its income tax liabilities for the quarter of the succeeding taxable year</u>, by filling up the appropriate box on the corporate tax return. (BIR Form No. 1702.)". (Underscoring Ours)

Section 69 of the Tax Code, as amended and Section 7 of Revenue Regulations No. 10-77 are very explicit. A corporation with excess quarterly payments over the actual income tax computed in the final corporate income tax return has two options to choose from. It can either ask for its refund or apply it as a tax credit <u>against its estimated quarterly income tax liabilities for the succeeding taxable quarters.</u>

In the instant case, petitioner's excess income tax payments for the taxable year 1991 in the amount of ₱3,057,888.00 (Exhibit "D") was applied as a tax credit to the succeeding taxable year as clearly expressed in its 1992 Corporate Annual Income Tax Return (Exhibit "F"). However since the income tax due for the taxable year 1992 was only in the amount of ₱1,317,525.00, it again overpaid its income tax in the amount of ₱3,608,109.00 which is now the subject of the present claim for refund. The details of the excess income tax payments are shown below:

<u>1991</u>

Net loss per final income tax return		(₱8,567,056)
Tax due thereon		NIL
Less: Quarterly payments		3,057,888
Total Overpayment		(₱3,057,888)

<u>1992</u>

Net income per final ITR		₱3,764,357
Tax due thereon		1,317,525
Less: Prior year's excess credit	₱3,057,888	
Quarterly payment	1,867,746	₱4,925,634
Total Refundable Amount		(₱3,608,109)

Petitioner presented its 1993 Corporate Annual Income Tax Return (Exhibit "G") to show that the excess income taxes of 1991 and 1992 was not carried over in the said taxable year as it had no tax due during the taxable year 1993.

In addition, the records show that the claim for refund was filed within the two-year prescriptive period under Section 230 of the Tax Code. The subject claim for refund refers to the taxable years 1991 and 1992. The Corporate Annual Income Tax Return for 1991 was filed on April 14, 1992 (Exhibit "D") and the Corporate Annual Income Tax Return for 1992 was filed on April 15, 1993. The administrative claim for refund for the taxable years 1991 and 1992 was filed with the BIR on April 13, 1994 and the subsequent petition for review with this Court was filed on April 14, 1994, all within the two-year prescriptive period provided by law.

To further bolster its claim, petitioner also presented proofs of payment of the income taxes for the periods concerned. It submitted Central Bank Confirmation Receipts and BIR Payment Orders showing the quarterly payments made by the petitioner during the taxable years 1991 and 1992 (Exhibits "A", "A-1", "B", "B-1", "C", "C-1").

The evidence presented by the petitioner satisfactorily shows that it is entitled to the entire amount claimed.

WHEREFORE, premises considered, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or in the alternative issue a Tax Credit Certificate in favor of the petitioner in the amount of P3,608,109.00 representing overpaid income tax for the taxable years 1991 and 1992.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals