REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK
(PHIL. BRANCH),
Petitioner,

- versus - C.T.A. CASE NO. 4272

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

2/17/92

D E C I S I O N

This is a claim for the refund of petitioner of alleged overpayments of income tax for the fiscal year 1986 in the sum of P4,577,453.00, representing overpaid income tax on excess tax credit as at December 31, 1986.

As borne out by the pleadings and records of this case, petitioner is a foreign corporation duly licensed to engage in banking business in the Philippines in accordance with Philippine law, with office address at Petrophil Bldg., Makati Avenue, Makati, Metro Manila.

This case at hand has been submitted for decision based on the pleadings and records of the case, with petitioner submitting its memoranda sans the memoranda of respondent.

For the calendar year ended December 31, 1986 petitioner paid his income tax in the sum of P6,348,571.00 computed as follows:

QUARTER	AMOUNT	EXHIBITS
First	P1,641,261	F, F-1, J, K-1
Second	4,046,136	F, F-1, J, K-1
Third	661,173	F, F-1, J, K-1

(Petition for Review, par. 2, p. 1 CTA records, Admitted Answer, par. 2, p.18, CTA rec.). Petitioner's income tax liability for the calendar year 1986 amounted only to P4,807,281.00. Petitioner alleged to have overpaid its 1986 income tax liability to the total amount of P4,577,453.00 (Petition for Review, par. 3, p. 2,; Admitted, Answer, par. 2, p. 18, CTA rec.).

The excess amount of P4,577,453.00 representing overpaid income tax was not utilized or applied in petitioner's quarterly income tax liabilities for the taxable quarters of the succeeding taxable year 1987. Petitioner incurred no loss for the said year. (Petition for review, par. 4, p. 2; Admitted, Answer, par. 2, p. 18, CTA rec.).

On February 29, 1988, petitioner filed with respondent a written request for the refund and/or tax credit in the amount of P4,577,453.00, representing overpaid income tax payment for calendar year 1986 (Annex "A", Petition for Review, pp. 4-6; Admitted, Answer, par. 4, p. 18, CTA rec.).

On November 4, 1988, the Makati Regional Office, thru Director Perfecto T. Domingo made a favorable endorsement of petitioner's claim for the refund of ₱4,577,608.00 (Exh. "G", p. 53, CTA rec.), which was not acted upon by respondent. Petitioner without waiting for respondent's action in its claim for refund filed the instant petition for review on May 27, 1988.

The paramount issues raised on this appeal are:

1. Whether petitioner is entitled to the refund of the overpaid income tax and/or tax credit certificate for the said amount; and

2. Whether petitioner's claim has prescribed.

Respondent in his special and affirmative defenses stated that:

1. In an action for refund, the burden of proof is upon the taxpayer to show that it is entitled to the tax refund and failure to sustain the burden is fatal to the action for refund;

2. Taxes are presumed to have been paid and

collected in accordance with law;

3. Under Section 292 of the Tax Code, no suit for the recovery of national internal revenue tax shall begin after the expiration of two (2) years from the date of payment of tax;

4. Any amount sought to be refunded must be shown to have been paid to, and received by the Bureau of Internal Revenue;

5. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the Tax Code;

6. Claims for tax refund are strictly construed against the claimants since they are in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, G.R. No. L-29787, October 20, 1975, 67 SCRA 351;

7. Granting arguendo that petitioner is entitled to tax refund/credit, nevertheless, petitioner's claim has prescribed with respect to tax payments made prior to May 27, 1986, pursuant to Section 292 in relation to Section 295 of the 1977 Tax Code (Pacific Procon Ltd. vs. C.T.A. G. R. No. 6805, November 27, 1984);

8. The petition states no cause of action as it does not allege the date when the tax sought to be refunded was paid (Manufacturer's Bank and Trust

Co., as Trustee for General Trust Plan vs. Commissioner of Internal Revenue, C.T.A. Case No. 1659, November 19, 1965).

Petitioner, on the other hand, allege that under Section 69 (formerly Sec. 79) of the Tax Code, taken in relation to Revenue Memorandum Circular Nos. 7-85 and 32-76, it is rightfully entitled to be refunded and/or entitled to tax credit certificate for the overpaid income taxes as of December 31, 1986 which was not applied or utilized on the succeeding taxable year.

Pertinent portion of Section 69 of the Tax Code, which was cited by petitioner, reads:

> "Final adjustment of 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 supplied)

Likewise the pertinent provision of Revenue Memorandum Circular No. 7-85 dated April 1, 1985 was emphasized by petitioner as follows:

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

from the provisions of law above quoted, petitioner maintained that since in this case at hand, it is not denied, nor respondent disputed that petitioner's annual corporate income tax return reflected an overpayment of P1,713,736.00, and the same was carried over in the succeeding taxable year. Petitioner concluded that since respondent, did not dispute the fact that for taxable year ended December 31, 1986, petitioner's annual corporate income tax return reflected the sum of P9,384,754.00 as total payment while the total income tax liability was only P4,807,201.00, this clearly shows that petitioner has a refundable amount of P4,577,453.00.

A close scrutiny of the records will justify that this claim of petitioner was never contested by respondent in specific terms.

Furthermore, the records will show that respondent, through its Regional Director, Perfecto T. Domingo, had prepared a letter dated November 24, 1988 addressed to the Chief Refund Audit Section that the said amount of P4,547,608.18 was the amount overpaid by petitioner (Exh. L, p. 53, CTA rec.). However, said recommendation was not acted upon by the respondent. Said letter/ memorandum is hereby quoted below:

"November 24, 1988

The Commissioner of Internal Revenue
Diliman, Quezon City

Attn.: <u>The Chief, Refund Audit Division</u>

Sir:

In compliance with Revenue Memorandum Order No. 32-76 dated June 11, 1976, I have the honor to forward herewith the Audit Sheet for Corporate Income Tax Returns and other related papers bearing on the refund cases of STANDARD CHARTERED BANK - PHILIPPINE

BRANCH, 7901 Makati Avenue, Makati, Metro Manila, for the calendar years ending December 31, 1985 and 1986, showing overpayments of P1,713,736.00 and P2,833,872.18, respectively, for appropriate action.

Please acknowledge receipt hereof.

Very truly yours,

(Sgd.)PERFECTO T. DOMINGO
Regional Director
TAN: D-5527-D1824-1-0"

it should be noted that the mathematical disparity between the amount claim by petitioner which is P4,577,433.00 and the total overpayment recommended by the Regional Director of P4,547,608.18 such disparity as explained by petitioner was due to the fact that respondent failed to consider the creditable withholding tax, and the adjustment on 1985 share of the head office expenses in the sum of P29,845.00, as reflected in the 1986 income tax return of petitioner. (Exh. "K", p. 51, CTA rec.). This computation was not rebutted by respondent by concrete proof.

Anent the allegation of respondent in his answer (par. 3, p. 5, CTA rec.) specifically denying the claim of the petitioner's entitlement to the refund of the excess tax credit on overpaid income tax for the calendar year ended December 31, 1986, which were not applied or utilized by petitioner in the succeeding taxable year, and as correctly asserted by petitioner in its petition for review (par. 5, p. 2, CTA rec.) "the law allows the automatic carry-over and application of the excess tax credits only against the estimated quarterly income tax liabilities to the taxable quarter of the succeeding taxable year". It is, therefore, of paramount importance to consider that the respondent's office to which the claim for refund was assigned for investigation strongly recommended the granting of the claim for refund or tax credit after auditing the corporate income tax returns of petitioner for the calendar years ended December 31, 1985 and 1986. The BIR Regional director acknowledged that the 1985 and 1986 returns of petitioner showed overpayments of P1,713,736.00 and P2,833,872.18. (Exh. "L", p. 53, CTA rec.).

Contrary to respondent's claim, respondent was furnished pertinent returns and other related papers both in the administrative level and judicial trials. We find the claim of petitioner that the matter which respondent is denying for lack of knowledge or information is a matter of record, and the means of information concerning which are within the control of the respondent is readily accessible to him. Respondent allegation of lack of information will not be considered as a specific denial as cited by petitioner. ***(J.P. Juan and Sons, Inc., v. Lianga Industries, Inc., 28 SCRA 807; Philippine Advertising Counselors, Inc., v. Revilla,*** *52 SCRA 246).* We agree with petitioner that while the Rules of Court allows respondent to state in general terms that he cannot admit or deny specific matters averred in the complaint for lack of knowledge or information sufficient to form a belief as to the truths of the averment which will amount to specific denial, such rule has limitation. Where the fact, to which want of knowledge is asserted, is within the knowledge of the court and not plainly and necessarily within the respondent knowledge, the averment of lack of knowledge thereof will be disregarded.

On the issue of prescription, respondent's allegation in his answer that petitioner's claim has already prescribed with respect to tax payments made prior to May 27, 1986, pursuant to Section 292 of the Tax Code, in relation to Section 295 of the Code, is without merit. We agree with the petitioner that "xxx the two year prescriptive period is counted only from the date the final return showing the overpayment is filed which was on April 15, 1987 (Please see Exhibit "A-2") and not in the dates the quarterly payment were made. Accordingly, petitioner filed an administrative claim and instituted a judicial suit for the refund of P4,577,453 on May 25, 1988 and May 27, 1988, respectively, which are well within the 2 year period counted from the filing of petitioner's 1986 return on April 15, 1987" as held in the case of ***Asia Australia Express, Ltd., v. Commissioner of Internal Revenue,*** *CTA Case No. 3695*, September 29, 1988 *(Affirmed on appeal by the Supreme Court G. R. No. 85956, April 10, 1989)* this Honorable Court ruled therein that:

> "The apparent contentious quibble on the computation of the 2-year prescriptive period under Section 292 of the Tax Code had been squarely resolved in earlier decisions of the Supreme Court which lend settling eloquence to the precise issue in the case at bar. Thus ruled, *inter alia*, "When a tax paid in installments, the prescriptive period of two years provided in Section 306 (now Sec. 292) of the Revenue code should be counted from the date of the final or last installment. xxx This rule proceeds from the theory that, in contemplation of tax laws, there is no payment until the whole or entire tax liability is completely paid. Thus, a payment of a part of portion thereof, cannot operate to start the commencement of the statute of limitations. In this regard, the word 'tax' in statutory provisions comparable

to Section 306 of our Revenue Code have been uniformly held to refer to the entire tax and not a portion thereof *(Clark v. U.S., 69 F 2d 748; A.S. Kriedner Co, v. U.S., 30 F supp. 724; Hills v. U.S., 50 F 2d 302, 55 F 2d 1001)* and the vocables 'payment of tax' within statutes requiring refund claim, refer to the date when all the tax was paid, not when a portion was paid *(Braun v. U.S., 8 F supp. 869, 836; Collector of Internal Revenue v. Prieto, 2 SCRA 1007; Commissioner of Internal Revenue v. Palanca, 18 SCRA 496)*."

IN VIEW OF THE FOREGOING, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner Standard Chartered Bank (Phil. Branch) the sum of P4,577,453.00 and to issue a tax credit certificate for the said amount in favor of petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 17, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals