REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST SAVINGS BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6444

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 28 2003

x - x

DECISION

This Petition for Review involves a claim for refund of issuance of a tax credit certificate in the amount of P27,120,384, allegedly representing overpaid income tax for the calendar year December 31, 1999.

The antecedent facts of the case are as follows:

Petitioner is a domestic banking corporation organized and existing under the laws of the Republic of the Philippines, with principal offices located at FEBTC Complex, Building 3, Muralla St., Intramuros, Manila ***(par. 4 (a), Joint Stipulation of Facts and Issues, CTA Records, p. 62).***

On April 13, 2000, petitioner filed its Annual Income Tax Return (ITR) ***(Annex A, Petition for Review)*** for the calendar year ended December 31, 1999, declaring the following data:

Total Gross Income		P 375,023,109
Less: Deductions		374,830,185
Taxable Income		P 192,924
Tax Rate		33%
Tax Due		P 63,665
Less: Tax Payments for		
First Quarter[1]	P 16,391,457.23	
Second Quarter[2]	10,792,591.48	27,184,049
Tax Payable (Overpayment)		P (27,120,384)

Petitioner decided to carry-over as tax credit for next year its overpayment in the amount of P 27,120,384.

On April 11, 2001, petitioner filed its ITR ***(Annex C, Petition for Review)*** for the calendar year 2000, reflecting a net loss from operations in the amount of P395,587.00. Thus, petitioner was not able to utilize its prior year's credit of P27,120,384. This time, however, petitioner chose "to be refunded" as shown by the "x" mark in the box provided in the same ITR. The overpayment was computed as follows:

Sales/Revenues	P 21,780,589
Less: Cost of Sales	8,642,496
Income from Operations	13,138,093
Add: Non-operating and Other Income	61,907
Total Gross Income	P 13,200,000
Less: Deductions	13,595,587
Taxable Income	P (395,587)
Tax Due	NIL
Less: Prior Year's Credit	27,120,384
Tax Payable (Overpayment)	P (27,120,384)

[1] Annex B-1, Petition for Review
[2] Annex B-2, Petition for Review

On November 8, 2001, petitioner filed with respondent an administrative claim for a tax refund in the amount of P27,120,384 as excess income tax payment for taxable year 1999 ***(Annex D, Petition for Review).***

On April 12, 2002, in order to suspend the running of the two-year prescriptive period under the law and to preserve its right to judicially claim for a refund, petitioner filed the instant Petition for Review.

In his answer, respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner's alleged claim for refund is still subject to administrative investigation/ examination;
>
> 5. Nonetheless, petitioner's claim for refund must be dismissed outright because it fails to state a cause of action. Verily, from the petition itself, petitioner admitted that it intended to carry over the amount P 27,184,049 representing its alleged excess income tax payments in 1999 to the succeeding taxable year. As a matter of fact, in its 1999 Annual Income Tax Return, attached as Annex "A" by petitioner, it is evident in the said return that petitioner opted to carry over as tax credit to the next year the whole amount by checking the appropriate box for that purpose. Thus, by doing so, petitioner can no longer file a claim for refund involving the same amount before this Honorable Court. To do otherwise would be a clear violation of the express provision of the Tax Code;
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> 6. The decision of petitioner to carry over its excess income tax payment of Php: 27,184,049.00 from 1999 to be used as tax credit for 2000 is already tantamount to applying the same against its income tax liability. Therefore, it is construed that any subsequent move to recover the same through a tax refund should not be allowed. This is consistent with the provision of the Tax Code that the option made by the taxpayer on its excess income tax payment as manifested in the income tax return whether to refund, use as tax credit, or issue tax credit certificate is already irrevocable pursuant to Section 76 of the 1997 Tax Code as amended.
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> 7. Time and again, the Honorable Supreme Court has consistently held that in tax refund, the claimant has the burden of proof to establish the factual basis of his or her claim for tax refund or credit. After all, tax refunds, like exemptions, are construed strictly against

> taxpayer. Failure to prove the same is fatal to its claim for tax refund."

The parties stipulated the issues to be resolved by this court namely:

1. Whether or not petitioner is entitled to a tax refund in the total amount of P27,120,384 representing unutilized overpaid income taxes for the taxable year 1999.

2. Whether or not under Section 76 of the Tax Code, petitioner's option to carry over its 1999 tax credit to the succeeding taxable year, but in which it suffered a net loss is a bar to it claiming a refund thereof.

After the parties have submitted their respective memorandum, this court considered the case submitted for decision on June 17, 2003.

The resolution of the issues stipulated by the parties hinges on the interpretation of Section 76 of the 1997 Tax Code and we quote:

> **SEC. 76. *Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. <u>Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.</u> **(Underscoring supplied)**

The issues are now to be discussed jointly.

In the case at bar, the records indicate that petitioner elected its 1999 income tax payment to be carried over as tax credit to the succeeding year ***(Annex "A", Petition for Review)***. However, it is petitioner's position that since it suffered a net loss in its operations for the taxable year 2000, then there is no way that its tax credits can be utilized for that taxable year. Petitioner now claims that refund is proper.

Respondent, however, remains firm in his position that under Section 76 of the 1997 Tax Code, if a corporation exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

We find against the petitioner.

The aforecited Section 76 of the 1997 Tax Code is clear that if a corporation has exercised the option to carry-over and apply its excess tax credits to the succeeding years, the option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit shall be allowed. The rule seeks to prevent a taxpayer from claiming twice the excess quarterly taxes paid: one as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate (TCC) has been issued; another as a tax credit for which a TCC will be issued or convert such tax credit into a claim for cash refund. ***(The National Internal Revenue Code Annotated by Hector S. De Leon, 2000 Edition, p. 430.)***

Elementary is the rule that when laws or rules are clear, it is incumbent upon the judge to apply them regardless of personal belief or predilections – when the law is unambiguous and unequivocal, application not interpretation thereof is imperative. ***(De Guzman Jr. vs. Sison, 355 SCRA 69)***

Section 76 is clear and unambiguous, leaving no room for any other interpretation than what it literally conveys, that is, when the option to carry over has been exercised, the same shall be irrevocable for that taxable period ***(CTA Resolution, The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA, Case No. 6280, August 16, 2001; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002; Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003).*** Considering that petitioner has already exercised its option to carry-over the 1999 excess tax credits to the succeeding year, it is no longer entitled to claim for the refund or issuance of a tax credit certificate. However, petitioner may still claim the excess income tax payments as a tax credit to future income tax liabilities ***(Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, April 19, 2002).***

WHEREFORE, the petition for review is **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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