REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PCCI SECURITIES BROKERS CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4275

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

2/16/93

D E C I S I O N

In the case at bar, petitioner prays that "judgment be rendered ordering the respondent to refund to the petitioner the sum of P257,828.00 or, in the alternative, issue a tax credit certificate for the said amount in favor of the petitioner" ("Petition For Review", p. 3; CTA Records, p. 3). This amount represents petitioner's allegedly overpaid income tax for taxable (calendar) year 1986.

For calendar year 1986, petitioner, a Philippine corporation, filed with the Bureau of Internal Revenue, its "Corporation/Partnership Annual Income Tax Return" (Exh. "A"; Ibid., p. 7), therein declaring a net taxable income of P280,597.00 which is subject to tax in the amount of P98,209.00. In said return, petitioner also declared the following: prior year's excess credit in the amount of P95,742.00; quarterly payments made in 1986 totalling P251,707.00; and 1986 creditable withholding tax in the amount of P8,588.00. Consequently, for the taxable year 1986, petitioner had a declared refundable amount of P257,828.00, computed as follows (See Exhs. "A" to "L"; Id., pp. 7-18):

Amount of Tax Due for 1986		P 98,209.00
Less:		
Prior year's tax credit	P 95,742.00	
1986 quarterly payments	251,707.00	
1986 creditable withholding tax	8,588.00	356,037.00
Total amount due (refundable)		(P257,828.00)

Exhibit "A" indicates that this amount is "to be applied as tax credit to succeeding taxable year" (Exh. "A-1"; Id.). Petitioner's annual income tax return for taxable year 1987 shows that it incurred a loss for that year, and consequently, a tax due of "NIL" (Exh. "N"; Id., p. 59).

On April 25, 1988, petitioner filed with the BIR, in a letter dated March 19, 1988, its request for refund of the amount of P231,388.71, representing alleged overpaid income tax for taxable year 1986 (Exh. "N"; Id., pp. 4-6). As respondent has, admittedly, not yet acted on said request for refund, petitioner filed the instant petition for review with the Court on May 27, 1988 in order to suspend the running of the two-year prescription period under the Tax Code.

The issue brought before the Court for adjudication in the present case is, what amount, if any, should be ordered refunded/credited to petitioner for allegedly overpaid income tax for 1986. In order to settle this issue, the Court shall discuss the different alleged 1986 tax payments set forth in petitioner's 1986 annual income tax return and deducted from the declared income tax due for that year, separately.

1. Re: P95,742.00
in "Prior Year's
Tax Credit"

Respondent, in its "Answer" (Id., pp. 30-32) and memorandum (Id., pp. 112-116), sets forth for the issue of prescription regarding the amount declared in petitioner's 1986 annual income tax return as alleged tax credit from taxable year 1985.

According to respondent, "petitioner's right to claim the refund of the amount of P95,742.00 has prescribed" under the provisions of Section 292 of the 1977 Tax Code (now Section 230), referring to the amount refundable to petitioner's from taxable year 1985 which it carried over to 1986 (See Exhs. "A", "O", and "O-1"; Id., pp. 7 and 58, respectively). The Tax Code provision adverted to reads, in part, as follows:

> "Section 230. Recovery of tax erroneously or illegally collected. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty

> regardless of any supervening cause that may arise after payment; Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Respondent contends that "the amount of P95,742.00 was allegedly paid in 1985, but the petition for review was filed on May 27, 1988 or a period of more than two years as prescribed by the aforesaid Section 230 of the Tax Code" ("Memorandum For The Respondent", p. 5; Id., p. 116).

The Court disagrees with respondent.

The amount of P95,742.00 was declared in petitioner's 1985 annual income tax return (Exh. "O", Id.) as the amount refundable for said taxable year. Petitioner's intention to apply the same as tax credit for 1986 is shown in said return, by Exhibit "O-1" (Id.). In fact, the excess tax payment for 1985 of P95,742.00 was automatically set off against the income tax due on petitioner for the first quarter ending March 31, 1986. (Exhibit "B", Id., p. 8). This is available to petitioner in consonance with Section 69 (formerly

Section 87) of the Tax Code which states as follows:

> "Section 69. Final Adjustment Return. - Every corporation liable to tax under Section 24 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 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> (underscoring supplied)

Accordingly, the refund being claimed by petitioner in the amount of P257,828.00 does not include the 1985 excess tax credit of P95,742.00 since this was already utilized as aforementioned. The conjured issue of precription of P95,752.00 is nowhere near.

The question that needs to be addressed next is whether petitioner can claim the entire excess taxes paid of P95,742.00 shown on its 1985 annual income tax return (Exhibit "O", Id., p. 58). Let Us consider how it was arrived at:

1985 Income Tax Due			P 261,149.00
Less: 1984 Excess Tax Credits		P 19,293.00	
1985 Quarterly Tax Payments			
1stQ CR# B-6755624	P 268,935.00		
3rdQ CR# B-7610161	25,111.00	294,046.00	313,339.00
Balance of Tax Due (or credit available)			(P52,190.00)
Less: Tax Credits			
1984 Creditable Withholding Tax		P 2,125.00	
1985 Creditable Withholding Tax		41,427.00	43,552.00
TOTAL AMOUNT DUE/(REFUNDABLE)			(P95,742.00)
(To be Applied as Tax Credit to Succeeding Taxable Year)			

The BIR Audit Sheet for Corporate Annual Income Tax Return Showing Over Payment of Income Taxes Paid for taxable year 1985 (Exhibit "S", Id., p. 62) showed however, the amount for refund/credit to be P32,897.00. The computation is presented below:

1985 Income Tax Due		P261,149.00
Deduct: 1985 Quarterly Tax Payments		
1stQ CR# B-6755624	P268,935.00	
3rdQ CR# B-7610161	25,111.00	294,046.00
Amount for Refund/Credit		P 32,897.00

Petitioner offered the foregoing as evidence to prove that the BIR Makati Regional Office has determined that petitioner had a refundable amount totalling P32,897.00. It appears that BIR did not take into consideration the 1984 excess tax credits carried over to 1985 as well as the 1984 and 1985 creditable withholding taxes claimed. The disallowance is on account of petitioner's failure to attach supporting documents as required under Section 54 (now Section 51) of the Tax Code, as amended and its implementing regulations. As to the 1984 accounts, these can be credited only against estimated income tax liabilities for the taxable quarters of the succeeding taxable year as provided by Section 69 (formerly Section 87) of the Tax Code or a written claim for refund or credit of any national internal revenue tax must be filed within two years from the date of Payment (Section 230 [formerly Section 292] of the Tax Code).

Said determination by the BIR is entitled to great weight. Accordingly, We hold that only P32,897.00 of the 1985 alleged excess tax credits of P95,742.00 can be carried over to taxable year 1986.

2. Re: P251,707.00 in
alleged 1986 quarterly
tax payments.

The Court finds that petitioner's Exhibits "C", "E" and "G" (CTA Records, pp. 11-13) sufficiently evidence the payment by petitioner of the respective amounts of P65,569.11, P78,112.42 and P108,025.65, for the first three quarters of 1986.

It is worthwhile to note that petitioner's income and business tax liabilities for 1986 have already been investigated and the deficiency taxes found due thereon were already paid per Exhibit "K" and "L" (CTA Records, pp. 17-18).

3. Re: P8,588.00 in alleged withheld creditable tax for 1986.

Petitioner submitted in evidence Certificate of Creditable Income Tax Withheld at Source for the year 1986 (Exhibit "H", Id., p. 14) to prove that the amount of P8,558.03 was deducted and withheld by MIESCOR on consultancy fees paid to petitioner amounting to P171,760.54. We find the same sufficient to show the actual withholding of said amount.

The Court, however, finds that it must disallow the refund of the amount declared in petitioner's 1986 income tax return as creditable withholding tax, by reason of petitioner's failure to show that the P171,760.54 in consultancy fees from which the P8,588.03 was withheld forms part of its declared income for 1986. Well-settled is the rule that claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form 1743) showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulation No. 13-78 as amended by Revenue Regulations No. 6-85, Section 54 [now Section 51] (f) of the Tax Code; Citytrust Finance Corporation v. CIR, CTA Case No. 4134, November 11, 1991; BPI Savings Bank Inc. v. CIR, CTA Case No. 4412, August 17, 1992).

We would now tackle the discrepancy in the amount claimed as refund/tax credit with the BIR and that claimed in the petition for review. Based on petitioner's letter to the BIR dated March 19, 1988, the amount claimed is P231,388.71 while in the petition for review, it was P257,828.00. The difference of P26,439.29 pertains to the amount allegedly applied as automatic credit against petitioner's income tax liability as of the third quarter of 1987 (Exhibt "N", CTA Records, pp. 4-6), which surprisingly was not borne out by the 1987 Annual Income Tax Return as it showed a tax due of "NIL" since it incurred a loss for the year (Exhibit "P", Id., p. 59). However, for lack or failure to file a claim for refund/tax credit of the balance of P26,439.29 with the Commissioner of Internal Revenue within two (2) years from the payment of the tax for 1986, petitioner's claim is still barred by law (Sections 292 and 295) [now Section 230 and 204) of the Tax Code as amended).

Therefore, based on the above findings, the Court holds that petitioner is entitled to the refund/tax credit of the amount of P159,955.71, thus computed:

Amount of Income Tax Due for 1986		P98,209.00
Less: Prior Year's (1985) Excess Tax Credit	P 32,897.00	
1986 Quarterly Payments	251,707.00	284,604.00
Balance of Tax Due (or Credit available for succeeding quarterly return)		(P186,395.00)
Less: Tax Credit		-
Amount of Tax Still Due/(Refundable)		(P186,395.00)
Less: Refundable amount credited against the income tax liability for the 3rd quarter of 1987		26,439.29
TOTAL AMOUNT REFUNDABLE		(P159,955.71)

IN VIEW OF THE FOREGOING, the Court GRANTS in part, petitioner's instant claim for refund/tax credit. Respondent is hereby ordered to refund to or issue a tax credit in petitioner's favor, in the total amount of P159,955.71, representing overpaid income taxes for taxable year 1986 which has not been utilized.

No costs.

SO ORDERED

Quezon City, Metro Manila, February 16, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR :

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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