Wr.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI CAPITAL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5782

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 15 2000

x -x

DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on April 14, 1999 seeking for a refund of the amount of P3,899,859.00 representing alleged overpaid income tax for taxable year 1996.

The antecedent facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

Records show that on April 14, 1997, Petitioner filed its 1996 Corporate Annual Income Tax Return declaring a net loss of P47,882,877.00 and excess creditable tax payments of P4,244,083.00 (Exh. D), which latter amount represents Petitioner's 1995 excess tax credits of P344,224.00, 1996 third quarter income tax payment of P3,568,981.46 and its 1996 creditable withholding taxes of P451,847.50 (Exh. D-6).

Petitioner carried over the 1996 excess tax credit/payments of P4,244,083.00 to taxable year 1997 and were included as part of the 1997 excess tax credits of P5,408,145.00 (Exh. H-5). However, since the Petitioner incurred a net loss in 1997, the alleged excess tax credits/payments remain unutilized.

Believing that it has refundable excess tax payments for the year 1996, Petitioner filed an administrative claim for refund with the Respondent on March 19, 1999 in the amount of P3,899,859.40 which amount no longer included its 1995 excess tax credit of P344,224.00 as this is already barred by prescription.

Unable to obtain immediate affirmative relief from the Respondent and to toll the running of the prescriptive period provided under Section 230 of the Tax Code, Petitioner elevated its grievance to this Court on April 14, 1999 via a Petition for Review claiming the amount of P3,899,859.40.

In his Answer filed on May 31, 1999, Respondent denied Petitioner's assertions and advanced the following Special and Affirmative Defenses, to wit:

> 5. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund.
>
> 6. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (**Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351**);
>
> 7. Taxes are presumed to have been paid and collected in accordance with law.
>
> 8. Petitioner failed to state the jurisdictional facts and specific law on which its action is based.

On January 10, 2000, after the parties filed their respective memorandum, this case was deemed submitted for decision.

In its memorandum, Petitioner cited the provisions of Section 69 of the Tax Code as authority for its claim for tax refund, thus:

> ***"Sec. 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, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year."

In addition thereto, Petitioner opines that the grant of refund is warranted inasmuch as all the documents necessary to prove the claim were submitted to the Court, and absent any evidence pointing to their falsity and superfluity, Petitioner's returns and financial statements should be given due credence.

The vortex of the controversy now lies on whether or not Petitioner was able to present sufficient evidence to substantiate its claim for refund.

We deny the petition.

This case presents no novel issue. In a litany of cases, this Court has invariably held that the grant of refund to the taxpayer is warranted provided that the taxpayer complies with the following requirements, to wit:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the National Internal Revenue Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient; and

3) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

These aforementioned requisites were affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459**.

This Court has noted that Petitioner was able to comply with the aforequoted requisites except with regard to the amount of P330,877.94, although supported by Certificates of Tax Withheld, the same do not bear the dates as to what taxable year they belong and therefore must be denied as a matter of course. We are not inclined to grant the entire claim for refund inasmuch as the Petitioner failed to submit a vital document, which, if presented, may have been considered in its favor and that is, the 1998 Corporate Income Tax Return. It appears that Petitioner opted to carry over its excess tax credits of P5,408,145.00, which includes the subject of the claim in the amount of P3,899,859.00, to taxable year 1998, hence, submission of its 1998 income tax return is imperative to aid the Court in determining, with reasonable certainty, whether or not the aforesaid excess tax credits were actually utilized or applied against any of petitioner's income tax liability in 1998. Thus, in **Filinvest Development Corporation versus Commissioner of Internal Revenue, CTA Case No. 5607,** this Court had the occasion to rule in this wise:

> "Following well-established precedent previously laid down in the cases of **AF Holdings and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4429, March 16, 1993; Philippine Bank of Communications vs. Commissioner of Internal Revenue, CTA Case No. 4309, May 20, 1993; BPI Data Systems Corporation (formerly**

Filipinas Management and Leasing Services, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc. Commissioner of Internal Revenue, CTA Case No. 4694, December 25, 1993; Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; and Pasig Land Corporation Commissioner of Internal Revenue, CTA Case No. 4773, May 30, 1995, when the taxpayer has opted to apply the amount refundable as a tax credit for the succeeding year it is important to present as evidence the succeeding year's Income Tax Return for verification if the amount was credited against its income tax liability for that year. Failure on the part of the taxpayer to sustain his claim is fatal to its cause of action. Petitioner has the burden of proving that it is entitled to the refund sought for because taxes are presumed to have been collected in accordance with laws and regulations **[Caltex (Phil.) Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986]**. It is hardly necessary to add that a refund partakes of the nature of an exemption and the same cannot be allowed unless granted in the most explicit and categorical language **(Resins, Inc. vs. Auditor General, L-17888, October 29, 1968, 25 SCRA 754)."**

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DISMISSED** due to insufficiency of evidence.

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