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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK, N.A.,
Petitioner,

- versus -

C.T.A. CASE No. 4068

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - x

6/21/94

# D E C I S I O N

This is a claim for refund by petitioner, Citibank N.A., in the amount of P19,726,862.00 as alleged overpaid income tax for the first quarter ended March 31, 1984.

It appears that petitioner, a resident foreign corporation engaged in banking business activities in the Philippines, is authorized by the Central Bank to operate a Foreign Currency Deposit Unit (FCDU).

Petitioner, for the years 1984 and 1985 computed its ten (10%) percent final corporate income tax as follows:

| | | Onshore Income Subj. to 10% final tax | Other Income Subj. to 25-35% tax |
|---|---|---|---|
| | 1984 | | |
| 1st Qtr. | 3/31/84 | P1,492,548.00 | P19,726,862.00 |
| 2nd Qtr. | 6/30/84 | P1,572,420.00 | NIL |
| 3rd Qtr. | 9/30/84 | P2,761,947.00 | NIL |
| 4th Qtr. | 12/31/84 | P2,012,702.00 | NIL |
| | 1985 | | |
| 1st Qtr. | 3/31/85 | P2,235,217.00 | NIL |
| 2nd Qtr. | 6/30/85 | P1,800,945.00 | NIL |
| 3rd Qtr. | 9/30/85 | P1,730,493.00 | NIL |
| 4th Qtr. | 12/31/85 | P 694,948.00 | NIL |
| | T O T A L | | P19,726,862.00 |

For the first quarter of 1984, petitioner paid the quarterly income tax in the amount of P19,726,826.00. However, for the second and succeeding quarters of the taxable year 1984, petitioner allegedly incurred losses in its foreign currency deposit unit operations. Said amount could have been applied as tax credit for 1985, but again petitioner incurred losses in its foreign currency deposit unit operations for 1985, thus resulting in an overpayment of the corporate income tax for the year 1984.

On April 9, 1986, in a letter dated April 2, 1986, petitioner filed with respondent a claim for refund or credit for overpaid corporate income tax for the taxable year 1984 in the amount of P19,726,862.$\underline{^{oo}}$. The claim for refund to this date has not been granted by respondent. Hence, this petition for review was instituted by petitioner to interrupt the running of the two-year prescriptive period.

The sole issue presented in this case is whether or not petitioner has in fact overpaid its corporate income tax for the taxable year 1984.

There is no quibble as to the applicable provisions of Sections 68 and 69 of the Tax Code which provides:

> Sec. 68. <u>Declaration of corporate quarterly income tax</u>. - Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative basis for the preceding quarter or quarters upon which the income tax as provided in Title II of this code shall be levied, collected and paid. The tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year, whether calendar or fiscal year (As amended by PD 1705).
>
> Sec. 69. <u>Final adjustment return</u>. - 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 quarters of the succeeding taxable year * (As amended by BP Blg. 41 and PD 1705) (see Sec. 24 EO 37)

Under the foregoing provisions of the law, it is therefore mandated that the corporate income tax is computed and paid based on net income on a quarterly basis and the annual tax due is adjusted for taxes paid in the previous quarters. If the taxes paid for previous quarters are not equal to the tax due for the entire taxable income for the year, the excess tax paid should be refunded or credited against the quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

To prove the excess corporate income tax payment, petitioner submitted the following documentary evidences, among others:

a) Quarterly Corporate Income Tax Return, Schedule of Computation of Corporate Income Tax, Tax Payment Order and Confirmation Receipt for the first quarter of 1984 (Exh. A; A-1-A3, pp. 9-11, CTA rec.);

b) Quarterly Corporate Income Tax Return, etc. for the succeeding quarters of 1984 (Exhs. B-B-3, C-C-3, D-D-3, pp. 12-17, CTA rec.);

c) Annual Corporate Income Tax Return, Schedule of Corporate Income Tax, Schedule of FCDU Tax (Exhs. D-4-D-6, pp. 18-20, CTA rec.). Denial of the admission of said exhibits was reconsidered by the Court through a Resolution dated November 4, 1992 (pp. 202-203, CTA rec.).

These facts were corroborated by the testimony of petitioner's witness, Ms. Julie Pua, and her statements were not challenged by respondent (see TSN, May 18, 1989). However, respondent in her memorandum stressed, among others, that petitioner has failed to produce the necessary evidence to substantiate its claim, more particularly :

a) the source documents showing the exact nature of the income from foreign exchange dealings on which the corporate income tax of P19,726,862.00 was paid for;

b) the source documents showing the exact nature of the loss from foreign exchange dealing allegedly sustained during the second, third and fourth quarter of 1984; and

c) the books of accounts on the Foreign Currency Deposit Unit (FCDU) showing, among others, how the transactions from foreign exchange dealings were recorded and arrived at during the year 1984.

To our mind, the submission of such documents are no longer necessary in the light of the undisputed documentary and testimonial evidence which sufficiently established that for the first quarter of 1984, petitioner paid P19,726,862.$\underline{^{oo}}$ as 25-35% tax derived from the Foreign Currency Deposit Unit (FCDU) operation in connection with other income and P1,492,548.$\underline{^{oo}}$ as 10% FCDU tax. For the succeeding quarters of 1984, evidence showed that petitioner sustained net losses.

Furthermore, contrary to the allegations of respondent, the information sought for are shown in the duly audited Financial Statement and Accompanying Notes found on pages 94-100 of the BIR records. Respondent therefore may be deemed not to have successfully defeated petitioner's claim for tax refund. More so, the evidence presented which were not controverted by respondent, sufficiently established petitioner's right to the refund (See **Commonwealth Mgt. and Service Corp.** vs. **Commissioner of Internal Revenue**, CTA Case No. 3232, June 26, 1985; **Bank of America NT and SA (Phil.**

Branch) vs. Commissioner of Internal Revenue, CTA Case No. 3642, December 27, 1991).

The circumstances obtaining in the case at bar compel us to sustain the tenability of petitioner's right to the refund based on the pleadings and evidence (Dataprep [Phils.], Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3600, March 30, 1984).

IN VIEW OF ALL THE FOREGOING, respondent, Commissioner of Internal Revenue, is hereby ordered to refund or grant a tax credit in the amount of P19,726,862.$\underline{^{oo}}$ in favor of petitioner, Citibank, N.A., without pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, June 21, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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