

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

FIRST DIVISION

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

C.T.A. CASE NO. 7290

Members:

- versus -

ACOSTA, Chairperson
BAUTISTA, and
CASANOVA, JJ.

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

AUG 09 2007, 10:00 AM

x - - - - -

DECISION

BAUTISTA, J.:

This case involves a claim for refund in the amount of P5,014,682.31 allegedly representing petitioner's unapplied creditable income tax withheld for the fiscal year ended March 31, 2003.

Petitioner Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines, with principal office at the 9th Floor, PAL Center, Legazpi St., Legazpi Village, Makati City.¹ Respondent, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in-charge of the assessment and collection of all national internal

¹ Paragraph 1, Joint Stipulation of Facts and Issues, Records, page 102



revenue taxes, fees and charges, with principal office at the BIR National Office Building, Agham Road, Diliman, Quezon City.²

On July 15, 2003, petitioner filed its income tax return for the fiscal year (FY) ended March 31, 2003,³ which was subsequently amended on July 28, 2003 and December 2, 2003.⁴ In its second amended income tax return for FY 2003 filed on December 2, 2003, petitioner reported an amount of P14,865,157.00 accumulated tax credits consisting of the prior year's excess credits of P9,850,475.00 and creditable taxes withheld for the first three quarters and fourth quarter of FY 2003 in the respective amounts of P3,239,615.00 and P1,775,067.00⁵, totaling P5,014,682.00. Since petitioner declared no amount of income tax liability (either at the regular rate of 32% or Minimum Corporate Income Tax rate of 2%), the total tax credits of P14,865,157.00 remained unutilized as of the end of FY 2003.

On April 25, 2005, petitioner filed with the BIR a written claim for refund corresponding to its unutilized creditable taxes withheld for FY 2002-2003 in the amount of P5,014,682.31.⁶

Due to respondent's inaction on its claim, petitioner elevated its case before this Court on July 15, 2005.

Respondent, in his Answer filed on August 31, 2005, raised the following Special and Affirmative Defenses:

- "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
5. The amount of P5,014,682.31 being claimed by petitioner allegedly representing unapplied creditable income tax withheld for the fiscal year ended March 31, 2003 was not properly documented;
6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

² Paragraph 2, Joint Stipulation of Facts and Issues, Records, page 102

³ Exhibit "B", "B-1"

⁴ Exhibits "C", "C-1", "D", and "D-1"

⁵ Exhibits "D-4" and "D-5"

⁶ Exhibit "A"



7. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

During the trial on the merits, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, did not submit any controverting evidence but merely submitted the case for decision.

On May 11, 2007, the Court considered the case submitted for decision, with petitioner submitting its Memorandum sans the Memorandum of respondent.

As jointly stipulated by the parties, the issues⁷ to be resolved by this Court are:

- "a. Whether or not petitioner PAL is entitled to the refund of the amount of PHP5,014,682.31 representing its unapplied creditable income tax withheld for the fiscal year ended March 31, 2003;
- b. Whether or not the aforementioned amount has not been applied against any income tax liability of the petitioner for the succeeding taxable period;
- c. Whether or not petitioner paid income or franchise taxes for the period ending March 31, 2003;
- d. Whether or not the income from which the alleged taxes were withheld were included in petitioner's gross income for 2003;
- f. Whether the amounts allegedly withheld were actually remitted to the BIR."

All of the above issues boil down to the question of whether or not petitioner is entitled to a refund in the amount of P5,014,682.31 allegedly representing unapplied creditable income taxes withheld for the FY ended March 31, 2003, on the basis of the evidence presented.

Pertinent to the resolution of the issue are Sections 76, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997, which are all quoted hereunder for ready reference, to wit:

⁷ Joint Stipulation of Facts and Issues, Records, page 103



"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. **Once the option to carry-over and apply the excess quarterly income tax against income 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.** (*Emphasis supplied*)

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

xxx

xxx

xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless **the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.*** xxx" (*Emphasis supplied*)

"SEC. 229. *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 excessively 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 filed after the expiration of two (2) 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." (*Emphasis supplied*)

At this juncture, the Court reckons to resolve first the question of the timely filing of the refund claim, both in the administrative and judicial level.

In the cases of *Commissioner of Internal Revenue vs. TMX Sales, Inc.*⁸ and *ACCRA Investments Corporation vs. Commissioner of Internal Revenue*,⁹ the Supreme Court held that in claims for refund of excess creditable withholding taxes, the two (2)-year prescriptive period should be counted from the filing of the final adjustment return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.

In the computation of the two-year prescriptive period, a "year" is understood to be of 365 days as provided under Article 13 of the Civil Code, thus:

"Article 13. When the laws speak of years, months, days or nights, **it shall be understood that years are of three hundred sixty five days each**, months, of thirty days, days of twenty-four hours, and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days, which they respectively have.

In computing a period, the first day shall be excluded and the last day included."

The instant claim covers FY ended March 31, 2003 for which petitioner originally filed its income tax return on July 15, 2003.¹⁰ Counting from this date, petitioner had 730 days from July 15, 2003 or until July 14, 2005, year 2004 being a leap year, within which to file its claim for refund/tax credit certificate both in the administrative and judicial levels.

⁸ 205 SCRA 184

⁹ 204 SCRA 957

¹⁰ Exhibit "B"



In the case of *State Investment House, Inc. vs. Court of Appeals 215 SCRA 734, November 13, 1992*, the Supreme Court, elucidated thus:

"Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 was a leap year, Cuenca had only until *August 23, 1984*, the 365th day after registration of the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on *August 24, 1984*.

It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. **Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last day to redeem would be and indeed fell on *August 23, 1984*, said year being a leap year** (cf. *Go vs. Dizon, et al.*, G.R. No. 75915-16, Sept.18, 1992).

In the present case, petitioner's administrative claim was timely filed on April 25, 2005. The Petition for Review, however, was only filed on July 15, 2005, or one day after the lapse of the two-year prescriptive period on July 14, 2005. Accordingly, the present claim must be denied on the ground of prescription.

Even granting for the sake of argument that petitioner timely filed its refund claim, still petitioner's claim must be denied.

From the afore-quoted provision of Section 76, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year maybe refunded (either in the form of cash or tax credit certificate) or applied against its income tax liabilities of the succeeding taxable years. Nevertheless, once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

In its income tax returns (original and amended) for FY 2003, petitioner reflected as part of its unutilized tax credits of P14,865,157.00 as of the end of FY 2003, the amount of



P5,014,682.00 representing the sum of its creditable taxes withheld for the first three quarters of P3,239,615.00 and creditable taxes withheld for the fourth quarter of P1,775,067.00.¹¹ However, in its FY 2004 income tax return,¹² petitioner carried-over and indicated the excess tax credits of P14,865,157.00 as "Prior Year's Excess Credits".¹³ Considering that the "Prior Year's Excess Credits" of P14,865,157.00 included the amount of P5,014,682.00¹⁴ subject of the instant Petition, petitioner is barred from claiming a refund therefor pursuant to Section 76 of the NIRC of 1997. Petitioner actually exercised the option of carry-over insofar as the FY 2003 claim of P5,014,682.00 is concerned and the same is *irrevocable*. Petitioner's only recourse is to carry-over the claimed amount of P5,014,682.00 to the succeeding taxable years until the same is fully utilized.

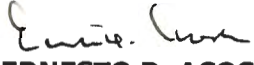
IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** on the ground of prescription.

SO ORDERED.



LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:



ERNESTO D. ACOSTA
Presiding Justice



CAESAR A. CASANOVA
Associate Justice

¹¹ Exhibits "B", "C" and "D"

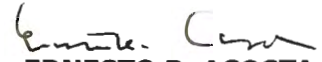
¹² Exhibit "G"

¹³ Line 27A, Exhibit "G"

¹⁴ P5,014,682.31 per Petition for Review

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division