REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB LEASING and FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5513

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: FEB 10 1999

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of P295,283.32 representing alleged unused income taxes paid in 1994.

Tha facts of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. During the third quarter of the Taxable year 1994 Petitioner had a net income of P3,624,280.89, for which it was liable to pay P1,268,498.32 as income tax. Since there was prior year's excess credit of P973,215.00, petitioner paid only the amount of P295,283.32 (Exhibit "B"). However, when Petitioner filed its Consolidated Corporate Income Tax Return for 1994, it incurred a net loss of P3,450,916.00 in its business operation. (Exh. "A")

For the taxable year 1995, petitioner again suffered a net loss amounting to P3,521,352.00 (Exhibit "E"). Consequently, it was not able to apply the P295,283.32 it paid for the preceding year. Thus, on April 11, 1997, Petitioner, through counsel, filed with the Bureau of Internal Revenue a letter-claim for the refund of the aforesaid unused tax credit (Exhibit "F"). Since there was no immediate action on the part of herein Respondent and the two-year prescriptive period to file a claim for refund was about to expire, the instant petition was filed on April 15, 1997.

The sole issue to be resolved is whether or not Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of ₱295,283.32.

To support its case, Petitioner submitted the following documents:

a. Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1994 (BIR Form No. 1702) to prove that petitioner promptly filed its ITR for the said year together with its audited financial statements and to prove that it suffered a net loss for the said year (Exh. "A", inclusive of submarkings);

b. Quarterly Income Tax Return of AB Leasing for the quarter ending September 30, 1994 (BIR Form No. 1702 Q) to prove that petitioner had a net income for the third quarter of 1994 and actually paid the tax due thereon (Exh. "B");

c. Asian Bank Corporation Check No. MM119493 in the amount of ₱295,283.32 payable to the order of the Commissioner-Bureau of Internal Revenue dated November 28, 1994 and the covering Check Voucher to prove the fact of payment of the aforestated amount subject of the instant claim for refund (Exhs. "C" and "D");

d. Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1995 to prove that petitioner ended the year 1995 at a net loss and hence, was unable to apply the excess tax payment in 1994 as a tax credit for 1995 (Exh. "E", inclusive of submarkings)

e. Letter-claim for the refund of the amount of ₱295,283.32 dated April 11, 1997 filed with the Bureau of Internal Revenue (Exh. "F"); and

f. Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1996 to prove that petitioner ended the year 1996 at a net loss and therefore, was unable to use any prior years' excess tax payments as tax credits. (Exhs. "G", inclusive of submarkings)

Respondent, offered no controverting evidence, not even a memorandum in support of its case.

After a careful examination of the facts and evidence attending the instant petition, We find for the Petitioner. Section 69 of the National Internal Revenue Code provides:

> **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) <u>Be refunded the excess amount paid, as the case may be</u>;
>
> 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. (Underscoring supplied)

Clearly then, from the above-quoted provision, Petitioner may rightfully claim for the refund of the excess amount paid during the year 1994. There is not even an excess amount paid to speak of because Petitioner has no tax liability for that year as it incurred losses amounting to ₱3,450,916.00. Likewise, Petitioner was not able to utilize its 1994 "excess tax payments" as tax credit for the succeeding year 1995 because it was again in a net loss position.

And with its submission of the documents in evidence hereunder, Petitioner has presented adequately enough evidence to convince this Court of its entitlement to the refund sought.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** to Petitioner in the amount of ₱295,283.32 representing unutilized income taxes paid for the year 1994.

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 this 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
Court of Tax Appeals