REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI SECURITIES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6089

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 2 2 2002

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DECISION

This is a claim for refund of P339,583.00 allegedly representing unutilized overpaid quarterly income tax in 1997.

As borne out by the records, the facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under Philippine laws with head office located at BPI Building, Ayala Avenue, corner Paseo de Roxas, Makati City (*par. 1, Joint Stipulation of Facts, p. 35, CTA Records*).

On May 30, 1997, petitioner filed with BPI-Makati, Main Branch, its first quarterly income tax return for 1997, reflecting a taxable income of P18,039,318.92, for which petitioner paid income tax in the amount of P6,313,761.62 (*Exhibit A*).

On August 29, 1997, petitioner filed with the same bank its second quarterly income tax return for 1997. The return showed a taxable income of P18,711,223.46 as of the end of the second quarter, with an income tax due of P6,548,928.21. Since petitioner had already paid P6,313,761.62 during the first quarter, it paid only the balance of P235,166.59 (*Exhibit B*).

166

On November 28, 1997, petitioner filed its third quarterly income tax return for 1997, this time declaring a loss of P1,762,555.36 for the quarter. For the first three quarters of the year, however, petitioner had already earned a total taxable income of P16,948,668.10, with the tax due thereon amounting to P5,932,033.84 (*Exhibit C*).

On April 15, 1998, petitioner filed its Annual Income Tax Return for the year ended December 31, 1997, reflecting a taxable income in the amount of P17,569,560.00. The tax due for the year amounted to P6,149,346.00. As mentioned earlier, petitioner had already paid a total of P6,548,929.00 when it filed its first and second quarterly income tax returns. Thus, for the taxable year 1997, petitioner had overpaid income tax of P399,582.21, which petitioner opted to apply as tax credit for the next taxable year 1998 (*Exhibit D*).

On April 15, 1999, petitioner filed its Annual Income Tax Return for the year ended December 31, 1998, declaring a net loss of P14,045,413.00 and nil tax liability. Unable to utilize its prior year's excess credit, petitioner again indicated in the return its intention to carry over the same to the next taxable year (*Exhibit E*).

Through a letter dated April 11, 2000, petitioner filed with the Bureau of Internal Revenue (BIR), on April 13, 2000, a written claim for refund signed by petitioner's president Virgilio Angelo *(par. 7, Joint Stipulation of Facts).*

On April 14, 2000, petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1999, showing a net loss of P2,641,424.00 and nil tax liability. As stated in the return, petitioner intended to refund its prior year's excess credit (*Exhibit F*).

On even date, petitioner filed this petition for review in order to toll the running of the two-year reglementary period provided under Section 230 of the Tax Code, as amended.

167

In his Answer filed through registered mail on June 29, 2000, respondent interposed the following Special and Affirmative Defenses:

4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable.
7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.
9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corporation vs. Commissioner of Internal Revenue, 124 SCRA 121**).

To support its claim, petitioner submitted its Corporate Quarterly Income Tax Returns for the first three quarters of 1997 (*Exhibits A to C*), its Corporate Annual Income Tax Returns for the calendar years 1997, 1998 and 1999 (*Exhibits D to F*), a bank deposit slip for the amount of P6,313,761.62, dated May 30, 1997, with machine validation (*Exhibit H*); and a bank deposit slip for the amount of P235,166.59, dated August 29, 1997, with machine validation (*Exhibit I*).

Respondent, on the other hand, presented in evidence the memorandum-report of Revenue Officer Isidoro Guzman addressed to the Revenue District Officer of RDO No. 47, East Makati, denying petitioner's claim for refund and at the same time recommending the issuance of a preliminary assessment notice in the total sum of P20,758,189.91 (*Exhibit 2, p.151, CTA Records*).

In a resolution dated May 20, 2002, this court considered the case submitted for decision after both parties failed to file their respective memorandum within the period given by the court.

The parties agreed that the issues to be resolved in this case are as follows:

1. Whether or not the petitioner has overpaid income taxes in the amount of P339,583.00 for the calendar year ended December 31, 1997;

2. Whether or not the alleged overpaid income taxes in the amount of P339,583.00 which was carried forward to the following year was not fully utilized by the petitioner during the taxable year 1998;

3. Whether or not the alleged overpaid income taxes is substantiated by documentary evidence.

The claim for refund of the petitioner is meritorious.

Section 69 of the National Internal Revenue Code clearly provides, thus:

> **Section 69.** ***Final Adjustment Return-*** Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>
> a. Pay the excess tax 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.

Based on the foregoing provision, it is clear that if the sum of the quarterly income tax payments made during the taxable year is not equal to the total tax due on the entire net income of that year, the taxpayer is entitled to a refund of the excess amount paid.

169

After a careful evaluation of the evidence presented, this court is convinced that petitioner is entitled to the refund. Petitioner was able to present its Corporate Quarterly Income Tax Returns for the first and second quarters of 1997 showing the machine validations that it had paid the amounts of P6,313,761.62 and P235,166.59, respectively, to an authorized collecting bank of the BIR.

In addition, the above-cited law provides that the taxpayer may opt to credit the refundable amount against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year. Based on the records, petitioner in its 1997 Annual Income Tax Return made the option to carry over its excess payment for the next taxable year. However, as indicated both in its 1998 and 1999 Annual Income Tax Returns, petitioner was not able to utilize the same due to a net loss position resulting to a nil tax liability for the said taxable years.

With regard to the compliance with the two-year reglementary period prescribed under Section 230 of the Tax Code, we find that both the administrative and the judicial claims for refund were filed within the allowable period.

In the case of ***Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184***, the Supreme Court categorically stated, thus:

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> "Obviously, the most reasonable and logical application of the law would be to compute the two-year prescriptive period at the time of filing the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax."

170

Records show that petitioner filed its 1997 Annual Income Tax Return on April 15, 1998. Consequently, the allowable period to file its claim for refund is until April 14, 2000. Thus, when it filed its claim for refund with the BIR on April 13, 2000 and this Petition for Review on April 14, 2000, petitioner is not yet barred by prescription.

With reference to the memorandum-report of Revenue Officer Isidoro Guzman which was offered in evidence by respondent to prove that the claim for refund of petitioner was investigated and which instead found the latter liable for deficiency taxes in the total amount of P20,758,189.91 inclusive of surcharges, interest and compromise penalties in deficiency income, withholding and value-added taxes, this court rules that the said report "cannot serve as an obstacle to the grant of the instant claim for refund because petitioner's alleged tax deficiencies for the taxable year 1997 is not the issue presented before Us in this petition for review." ***(Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, promulgated on December 9, 1997).*** Moreover, it appears that the memorandum-report has not yet ripened into a formal assessment duly approved by the Regional Director or by the Commissioner of Internal Revenue. Thus, the same can proceed independently of the claim for refund and its merits or demerits may be determined in separate proceedings as provided for in the Tax Code. The principle that taxes are not subject to set-off or legal compensation must govern, especially in this case where the taxes and the taxpayer's claim are not fully liquidated, due and demandable **(*Republic vs. Mambulao Lumber Company, 6 SCRA 858; Domingo vs. Garlitos, 8 SCRA 443*).**

Similarly, in the case of ***Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5045***, *promulgated on April 12, 1996*, this court had the occasion to pass upon a similar issue:

171

> "This Court finds no merit in this theory of the respondent, if we can call it that, as we cannot look into the merits of the pre-assessment notice issued to the petitioner unless such notice matures into a final assessment. To do otherwise is tantamount to treading into grounds where this court has no jurisdiction."

In this case, no assessment, whether tentative or final, has been issued to petitioner. Consequently, we do not find any reason to deviate from the above rulings. Thus, the argument of the respondent that petitioner's claim must be denied on the basis of the findings and recommendation in the memorandum issued by the Revenue Officer does not deserve consideration.

Finally, while both the administrative claim for refund and the 1999 Annual Income Tax Return of the petitioner showed that the latter intended to refund the amount of P399,582.21, the court cannot grant the refund of the whole amount. In the Petition for Review filed by the petitioner, it prayed for the refund of only P339,583.00. Well settled is the rule that claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*)**. Hence, we are constrained to grant a refund only up to the amount prayed for by the petitioner.

WHEREFORE, in view of all the foregoing, the court finds the instant petition meritorious and in accordance with law. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P339,583.00 representing overpaid quarterly income tax for the year 1997.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

172

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

173