REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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FINANCIAL MARKETING SERVICES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6443

Members:

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

SEP 07 2005

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DECISION

ACOSTA, E., P.J.:

Appealed before Us by petitioner Financial Marketing Services Corporation is a claim for an issuance of a tax credit certificate in the amount of P36,290,577.00 allegedly representing overpaid quarterly income tax as of December 31, 2000.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at 31st Floor, Philam Tower, 8767 Paseo de Roxas, Makati City.

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On April 15, 1999, petitioner filed its 1998 Annual Income Tax Return reflecting a nil income tax liability but with an excess quarterly income tax payment in the amount of P9,499,207.00 which it opted "To be carried as tax credit next year" *(Exhibit E, inclusive of submarkings).*

On April 17, 2000, petitioner filed its 1999 Annual Income Tax Return declaring, among others, tax due in the amount of P7,933,813.00 which was offset against the prior year's excess credits of P9,499,207.00 and current first three quarters' payment of P35,681,956.00 thereby resulting to an excess income tax payment as of December 31, 1999 in the sum of P37,247,350.00, detailed as follows: *(Exhibit B, inclusive of submarkings)*

Taxable Income		P24,041,858.00
Tax Due (P24,041,858.00 x 33%)		P 7,933,813.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P 9,499,207.00	
b. Tax Payments for the First Three Quarters	35,681,956.00	45,181,163.00
Tax Overpayment		P37,247,350.00

On April 18, 2001, petitioner filed its 2000 Annual Income Tax Return wherein it carried over the excess income tax payment as of December 31, 1999 in the amount of P37,247,350.00 and was applied against the annual income tax due of P956,773.00 leaving an unutilized quarterly income tax payment in the amount of P36,290,577.00 as of December 31, 2000, to wit: *(Exhibit A, inclusive of submarkings)*

Taxable Income		P 2,989,917.00
Tax Due (P2,989,917.00 x 32%)		P 956,773.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P37,247,350.00	
b. Tax Payments for the First Three Quarters	-	37,247,350.00
Tax Overpayment		P36,290,577.00

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On the face of its 2000 annual income tax return, petitioner manifested its intention "To be issued a Tax Credit Certificate" relative to its excess income tax payment of P36,290,577.00 as of the end of calendar year 2000 *(Exhibit A-2).*

On April 30, 2001, the petitioner's Board of Directors and stockholders resolved to amend its Articles of Incorporation to shorten its corporate term to expire effective April 30, 2001 *(Exhibits H and I)*. Consequently, on May 10, 2001, petitioner filed its Application for Registration Information Update with BIR, Large Taxpayers District Office-Makati requesting the cancellation of its taxpayer's identification number and registration due to its dissolution *(Exhibit J)*.

On December 12, 2001, petitioner filed with respondent an administrative claim for refund/issuance of tax credit certificate for the amount of P36,290,577.00 representing income tax overpayment shown in the Annual Income Tax Return for taxable year 2000 *(paragraph 9, Joint Stipulation of Facts)*.

Respondent processed the said claim *(BIR records, Folder Nos. 1 to 4)*. It was consolidated with the examination of petitioner's books of accounts and other accounting records for the years 1999, 2000 and 2001 *(BIR records, page 196, Folder No. 1)*. However, on April 12, 2002, petitioner filed the instant Petition for Review in order to preserve its right to claim by judicial action, the refund of its alleged overpaid income tax as of December 31, 2000.

On June 13, 2002, respondent in his Answer raised the following Special and Affirmative Defenses:

> 3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

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4. Petitioner's alleged claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

6. Petitioner is barred from claiming judicially the amount of P9,499,207.00 as excess/unutilized income tax credit for taxable year 1998 which amount is declared in its 1999 Annual Income tax Return allegedly filed on April 17, 2000 since it has already prescribed pursuant to Section 229 of the 1997 Tax Code;

7. Petitioner is barred from claiming judicially the amount of P37,247,350.00 as excess/unutilized income tax credit for taxable year 1999 since the option to carry-over provided under Section 76 of the 1997 Tax Code had been exercised by petitioner, the fact that in its 2000 Annual Income Tax Return allegedly filed on April 18, 2001, petitioner clearly indicated therein as "Prior year's excess credit" the said amount, a clear manifestation that petitioner had exercised the said option. Section 76 of the 1997 Tax Code, clearly provides that if a corporation exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate will be allowed as the options are in the alternative and the choice of one precludes the other.

8. Petitioner failed to comply with the provisions under Sections 204 in relation to Section230 (now 229) of the Tax Code; and

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation *(Commissioner of Internal Reenue 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 trial, the administrative investigation of petitioner's claim for refund and accounting records has been completed. The examining revenue officers recommended the approval for the issuance of a tax credit certificate in the amount of P36,290,577.00 in favor of petitioner *(Exhibits K and L, inclusive of submarkings).*

On May 18, 2005, this case was submitted for decision without the evidence and memorandum of the respondent *(Records, pages, 122, 186 & 219).*

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The jointly stipulated issues to be resolved by the Court are as follows:

1. Whether or not petitioner incurred overpayment of income tax for the calendar year 2000;
2. Whether or not petitioner has exercised its option to carryover the alleged overpaid income tax for the year 2000 to the succeeding taxable year or years pursuant to Section 76 of the 1997 Tax Code;
3. Whether or not petitioner's right to claim for refund/issuance of tax credit certificate has already prescribed pursuant to Section 229 of the 1997 Tax Code;
4. Whether or not Petitioner's overpayment of income tax for the year 2000 was duly substantiated; and
5. Whether or not Petitioner is entitled to the refund/issuance of tax credit certificate in the sum of P36,290,577.00 representing alleged overpaid income tax for the year 2000.

Based on the foregoing facts, records and evidence of the case, the following are undisputed:

First, petitioner has an excess quarterly income tax payments as of December 31, 2000 in the amount of P36,290,577.00 as evidenced by its 1998, 1999 and 2000 annual income tax returns *(Exhibits A, B and E, inclusive of submarkings)*. The payments of quarterly income taxes were supported by machine validated quarterly income tax returns for the first quarter of 1998 and third quarter of 1999 *(Exhibits C, C-1, F and F-1)*. The aforesaid payments were also acknowledged by Ms. Carmelita SJ. Pascual, Chief Revenue Accounting Division, BIR to have been remitted to the coffers of the government *(BIR records, pages 182 and 183, Folder No. I)*.

Second, the amount of P36,290,577.00 remained unapplied as of December 31, 2000 *(Exhibit E)* and was not carried over to the succeeding year 2001 as verified with the petitioner's short term income tax return for the year 2001 *(BIR records, page 83)*.

Third, petitioner has paid all its internal revenue taxes for the years 2000 and 2001 as shown by the result of revenue officers' investigation *(BIR records, pages 225 and 226, Folder No. 1)*.

Fourth, petitioner's corporate existence was already terminated on April 30, 2001 as evidenced by the minutes of the special meeting of the Board of Directors and stockholder *(Exhibits H and I)*, Application for Registration Information Update *(Exhibit J)*, filing of short term income tax return for 2001 *(BIR records, pages 67 to /83, Folder 2)* and payment of all internal revenue tax liabilities *(BIR records, pages 225 and 226, Folder 1)*.

Hence, pursuant to Section 229 of the National Internal Revenue Code of 1997, the subject excess income tax payment can be a subject of a claim for refund or issuance of tax credit certificate.

However, despite the favorable recommendation of the examining revenue officers, respondent opposes petitioner's entitlement to the refund by invoking the defense of prescription and Section 76 of the National Internal Revenue Code of 1997. According to the respondent, the excess 1998 income tax payment of petitioner is already barred by prescription because under Section 229 of the same Code, the filing of a claim for refund should be made within two (2) years from the date of payment of the tax. He also advances the view that Section 76 prohibits the filing of an application for refund of excess income tax payment if the taxpayer already opted the same to be carried over to the succeeding taxable years.

We will address the above arguments based on the applicable laws and jurisprudence.

The legal anchor of any claim for the refund of excess quarterly income tax payment is Section 76 of the National Internal Revenue Code of 1997 in relation to Sections 204 and 229 of the same Code. For easy reference, We are quoting the above provisions of law as follows:

Section 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 net 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 tax 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.

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

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(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.

Section 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.

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> 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 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.

We agree with respondent that the remaining 1998 claim of petitioner is already barred by prescription. Section 229 of the National Internal Revenue Code is explicit that the filing of judicial claim for refund should be made within two (2) years from the date of payment of the tax regardless of any supervening cause that may arise after payment. The phrase "date of payment of the tax" is construed to mean the date of the filing of the annual income tax return when the tax was actually paid *(Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue v. TMX Sales Inc. and The Court of Tax Appeals, G.R. No. 83736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, [Resolution] April 10, 1989).*

Records reveal that petitioner filed its 1998 annual income tax return on April 15, 1999. However, the administrative and judicial claims for refund were only filed on December 12, 2001 and June 12, 2002, respectively. Undoubtedly, the 1998 unapplied income tax payment of P608,621.00 was filed beyond two (2) years from the filing of petitioner's 1998 annual income tax return. With respect to the 1999 overpaid income tax in the amount of P35,681,956.00, the requisite of filing of the claim for refund within the two-year period was

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satisfied. The counting of the two-year period commences to run on April 17, 2000, the time when the petitioner filed its 1999 final income tax return.

We now proceed to the applicability of Section 76 of the National Internal Revenue Code of 1997 to the instant case.

Under the afore-quoted Section 76, the excess tax credits or overpaid income tax of a given taxable year of a corporation may either be carried-over or credited or refunded, as the case may be, against estimated quarterly income tax liabilities for the taxable quarters of the **succeeding taxable <u>years</u>**. However, once the option to carry-over and apply the excess quarterly income tax against income tax 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**.

In the case at bar, petitioner carried over its excess quarterly income tax payment for the year 1998 of P9,499,207.00 to the succeeding taxable years 1999 and 2000. The same was applied to income petitioner's tax liabilities for 1999 and 2000 in the respective amounts of P7,933,813.00 and P956,773.00 [applying the first-in first-out principle] thereby leaving an unapplied 1998 quarterly income tax payment of P608,621.00 as of December 31, 2000. Such act of carrying over excess income tax of 1998 for more than a year is permissible under Section 76 *(Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 119286, October 13, 2004)*. In the same manner, the 1999 quarterly income tax payment of P35,681,956.00 was carried over by petitioner in its 2000 income tax return forming part of the prior year's excess credit in the sum of P37,247,350.00. Thus, for calendar year 2000, petitioner has a total unapplied income taxes

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in the amount of P36,290,577.00 representing the remaining excess quarterly income tax payment for 1998 in the amount of P608,621.00 and the undiminished 1999 quarterly income tax payment in the amount of P35,681,956.00 or an aggregate amount P36,290,577.00 to which petitioner opted to be issued a tax credit certificate. Therefore, it is undeniable that petitioner originally elected to have both the 1998 and 1999 income tax payment to be carried over to succeeding taxable years.

If We are going to apply strictly Section 76, petitioner's application for refund can no longer be allowed. However, owing to the peculiar circumstance of the case, this Court deems it proper to rule equitably for the petitioner.

At this juncture, We will no longer include in the discussion the 1998 claim for issuance of tax credit certificate of petitioner due to prescription as earlier discussed.

True that petitioner carried over the 1999 excess payment to succeeding taxable year 2000 as reflected in its 2000 annual income tax return yet it would be grossly unfair for the petitioner not to be refunded thereof. Foremost, petitioner has dissolved its corporate existence. And as far as right to go on doing ordinary business is concerned, the same has been extinguished *(De Leon, Corporation Code of the Philippines, Annotated, 2002 Ed., page 728).* Therefore, there is no possible way by which petitioner can utilize the excess payment because petitioner will no longer incur future income tax liability.

We can find parallelism of refund of unutilized tax payment due to cessation of taxpayer's business in the VAT law. Section 112(C) of the National Internal Revenue Code of 1997 allows the refund or issuance of a tax credit certificate for any unused input tax once the taxpayer has cancelled its VAT registration due, among others, to *retirement from or cessation of business*, to wit:

SEC. 112. *Refunds or Tax Credits of Input Tax.* —

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(C) *Cancellation of VAT Registration.* — A person whose registration has been cancelled due to retirement from or cessation of business, or due to changes in or cessation of status under Section 106(C) of this Code may, within two (2) years from the date of cancellation, apply for the issuance of a tax credit certificate for any unused input tax which may be used in payment of his other internal revenue taxes.

We can see from the foregoing provision that the intent of Section 52(C) is to return to taxpayer any unutilized input tax payment which can no longer be applied against output VAT. The reason being – petitioner will no longer be liable to output VAT liability because it has ceased from its business. Although there was no exact provision in National Internal Revenue Code of 1997 pertaining to refund of income tax in case the taxpayer has ceased to operate, the taxpayer can still find redress in the earlier quoted Section 229 of the Code. For emphasis, the latter law provides for refund of internal revenue tax alleged to have been excessively or in any manner wrongfully collected. The remedy of refund was enacted to rectify the mistake of government in taking the tax not due to it.

Similarly, when petitioner dissolved its corporate existence it has to completely cancel its registration with the Bureau of Internal Revenue. It follows then that respondent is mandated to return any internal revenue tax which was paid excessively by petitioner inasmuch as the latter can no longer utilize the same.

Furthermore, Section 76 contemplates of an ongoing corporation in a continuous operation and not of a dissolving corporation. More applicable in the instant case is Section 52(C) of the same Code which provides:

SEC. 52. *Corporation Returns.* —
(A) *Requirements.* — xxx.
(B) *Taxable Year of Corporation.* — xxx.

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> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct **return** to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission. *(Underlining supplied)*

At present, respondent has not prescribed any return for dissolving corporations hence, BIR Form No. 1702 which is currently used by the corporation in filing its annual income tax return (as required in Section 76) is in order. However, this does not mean that Section 76 can prohibit petitioner in claiming its excess income tax payment for 1999. The fact remains that respondent has erroneously received petitioner's 1999 income tax payment to which he is not entitled to and therefore, he is bound by law to refund the same pursuant to Section 229.

The insistence of respondent in not granting petitioner's claim based on the strict application of Section 76 when in fact he received something not due him is a clear case of injustice. Heavily militating against respondent is the ancient principle that no one, not even the state, shall enrich itself at the expense of another. Under the principle of *solutio indebiti* provided in Article 2154 of the New Civil Code of the Philippines, the BIR has received something when "there [was] no right to demand it," and thus "the obligation to return arises."

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Indeed, simple justice requires the speedy refund of the wrongly held taxes *(Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, supra)*. It should be emphasized that petitioner has complied with the requisites of Section 229 and it was able to substantiate the 1999 excess income tax payment. Moreover, as per the memorandum report of respondent's examining revenue officers *(Exhibit K)*, the audit of the transactions affecting income tax disclosed that all revenues were reported by petitioner for income tax purpose and that petitioner declared all its revenues for income tax purposes and deductions were properly supported with documents. Thus, they recommended that a Tax Clearance be issued to the petitioner and the corresponding tax credit certificate be issued for its unapplied income tax payment.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby ***PARTIALLY GRANTED.*** Accordingly, respondent is ***ORDERED to ISSUE A TAX CREDIT CERTIFICATE*** in favor of petitioner the amount of P35,681,956.00 representing overpaid income tax as of December 31, 2000.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

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WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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