REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE COMMERCIAL CAPITAL, INC.,
Petitioner,

-versus - C.T.A. CASE NO. 4274

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

10/25/91

D E C I S I O N

This case involves a claim for the refund of the amount of P439,935 representing overpaid income tax or excess tax credit for taxable year 1986 which was not applied or utilized in the succeeding taxable year 1987.

For the calendar year ended December 31, 1986, petitioner's income tax return reflected the following income tax payments:

First quarter 1986 tax payment	P381,810
Creditable taxes, etc. paid in 1986	58,125
	P439,935

In the same 1986 income tax return, it showed petitioner to have no income tax liability since it incurred a net loss of P7,578,759. It therefore had overpaid its 1986 income tax liability in the amount of P439,935.00. And this amount of overpaid income tax was not utilized or applied against petitioner's quarterly income tax liabilities for taxable year 1987.

On March 23, 1988, petitioner through its auditors, filed with respondent Commissioner of Internal Revenue a request for refund or issuance of a tax credit for the amount of P439,935, representing overpaid income tax or excess tax credit for 1986. After this date, respondent has not yet acted on the foregoing claim for refund.

On May 26, 1988, petitioner filed its petition for review in the above-entitled case.

On July 22, 1988, respondent's Makati Regional Office, Director Perfecto T. Domingo had favorably endorsed the approval of petitioner's claim for refund in the amount of P439,935 (Exh. "R").

The only issue presented for our determination is whether or not petitioner is entitled to the refund of the overpaid income tax or excess tax credit in the amount of P439,935.

It is the view of petitioner that it is entitled to the refund of the amount of P439,935 as overpaid income tax for the year 1986. On the other hand, respondent alleged that in an action for tax refund or tax credit, it has to be shown that the taxes paid were erroneous or illegally collected from petitioner.

We agree with petitioner that it is entitled to the refund of P439,935 in accordance with Section 69 of the Tax Code which provides, thus -

> "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 the year, the corporation shall either:
>
> (a) Pay the excess tax still due;
>
> (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."

and its implementing regulation, Revenue Circular No. 7-85, which provides as follows:

> "In the above provision of the Regulations (Section 7 of Revenue Regulations No. 10-77), the corporation may request for the refund of the overpaid income tax or claim for automatic credit. To insure prompt action on corporate annual income tax return showing refundable amounts arising

> from overpaid quarterly income taxes, the office has promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, containing the procedures in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted; and, this procedure was adopted to facilitate immediate action on cases like this. x x x."

In this case, the 1986 annual corporate income tax return reflected a payment of P439,935. The same return showed that petitioner had no tax liability for the year 1986 since it incurred a net loss of P7,578,750. This net loss did not bring about any deficiency assessment for respondent nor has he seriously disputed the correctness thereof. (**Dataprep [Phils.], Inc.** v. **Comm. of Int. Rev.**, CTA Case No. 3600, March 30, 1984.) Neither has he submitted particular controverting evidence, except that this case was submitted for decision based on the pleadings. Respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. Besides, on July 22, 1988, respondent's Makati Regional Office, thru its Regional Director Perfecto T. Domingo, favorably endorsed to respondent Commissioner of Internal Revenue for approval of petitioner's claim for refund in the amount of P439,935 due to overpayment (Exh. "R"). In the case of **Ateneo de Manila University** vs. **Commissioner of Internal Revenue**, CTA Case No. 3213, dated July 28, 1989, this Court held:

> "No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was presented by respondent and this case having been submitted for decision on the pleadings and on the face of the unrebutted evidence of petitioner showing that it is entitled to refund x x x, respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. The circumstances obtaining x x x compels us therefore to sustain the x x x the petitioner's right to the refund x x x based on the evidence and pleadings." (**Ateneo de Manila University** vs. **Commissioner of Internal Revenue**, CTA Case No. 3213, July 28, 1989.)

and was reiterated in the case of **Bogo-Medellin Milling Co., Inc.** vs. **Commissioner of Internal Revenue**, CTA Case No. 4014, decided on August 7, 1991.

WHEREFORE, petitioner Philippine Commercial Capital, Inc. is entitled to the refund or tax credit in the amount of P439,935 representing overpaid income tax for the year 1986.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, October 25, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
Associate Judge

C E R T I F I C A T I O N

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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals