REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner

- versus -

C.T.A. CASE NO. 4435

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 1995

x - x

DECISION

This is an action taken by petitioner in order to recover the amount of P107,649,709.00 representing overpaid income taxes for the calendar years 1987 and 1988.

The facts of the case are as follows:

Manila Electric Company (MERALCO) is a domestic corporation duly organized and existing under the laws of the Philippines. It is a grantee of a legislative franchise under Act No. 484, as amended by R.A. 4159 and P.D. No. 551 dated September 1974. In line with its legislative franchise, MERALCO pays a 2% franchise tax based on its gross receipts which tax shall be in lieu of all other taxes and assessments of whatever nature. However, upon effectivity of E.O. No. 72 on February 10, 1987, petitioner became subject to regular corporate income tax.

Thus, on April 15, 1988, petitioner filed its tentative income tax return for the calendar year 1987 showing an overpayment of income taxes in the amount of P77,931,812.00 (Exh. "G") and eventually the final income tax return on April 17, 1989 together with that of 1988 showing a cumulative overpayment as of December 31, 1988 in the amount of P107,649,729.00. (Exhs. "N" & "O").

On March 30, 1990, petitioner filed a letter claim for refund or credit with the Bureau of Internal Revenue in the amount of P107,649,729.00, representing alleged overpaid income taxes for the years 1987 and 1988. (Exh. "P")

Since respondent has not acted on its request, petitioner on April 6, 1990 filed a judicial claim for refund or credit pursuant to Sec. 230 of the National Internal Revenue Code, as amended.

Hence, this petition for review.

The issues to be decided by this Court are:

1. whether or not petitioner was able to substantiate with sufficient evidence its claim for refund; and

2. whether or not petitioner's claim has prescribed.

Before we delve into the issues, it is noteworthy to point out that prior to the filing of the herein petition, a yearly routinary Letter of Authority No. 0018064 NA, dated June 27, 1988 was issued by the Commissioner to investigate the tax liabilities of MERALCO for taxable year 1987. The investigation was conducted by Mr. Frederick P. Capitan which resulted to:

1. deficiency income tax in the amount of P2,340,902.52[1]; and

2. deficiency franchise tax in the amount of P2,838,335.84.

The deficiency franchise tax was paid while deficiency income tax was protested claiming as alternative remedy to deduct said assessment from the herein claim. (Exh. "1" Respondent, BIR records, pp. 333-350)

While there may be some basis for the assessment of deficiency income tax, we cannot uphold the same in the view of the compromise settlement[2] entered into by the parties. To deduct said deficiency to the instant claim for refund would cause injustice to the taxpayer.

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[1]Under Assessment No. 1-87-90-000040, BIR records, p. 318.

[2]See Resolution in CTA Case No. 5005 dated May 17, 1994, dismissing the case on the ground that petitioner's application for compromise settlement was granted by respondent Commissioner of Internal Revenue.

Going now on the first issue, this Court was convinced that petitioner proved its entitlement for the refund.

As can be gleaned from the 1987 final income tax return (Exh. "N"), petitioner had an income tax liability of P142,088,822.00 which was set-off against three quarter payments in the total sum of P243,986,563.00 (Exhs. "A", "A-1", "B", "B-1", "C", "C-1"). Thus, what remains was a refundable amount of P101,897,741.00 which petitioner opted to be applied as tax credit to succeeding taxable year (i.e, 1988). However, in the year 1988 only the amount of P77,931,812.00 was utilized as tax credit therefore leaving an unapplied balance of P23,965,929.00 for 1987.

For the year 1988, an annual income tax payable of P62,498,902.00 was due from the petitioner. This liability was settled by crediting the 1987 excess tax payment in the amount of P77,931,812.00 plus payments of P53,333,376.00 (Exhs. "I" & "J") and P14,917,514.00 (Exh. "M") for the first and third quarters of 1988. Thus, petitioner in turn overpaid the income tax due by P83,683,800.00.

It should be noted that petitioner in the 1988 income tax return (Exh. "O") opted the preceding sums (P23,965,929.00 and P83,683,800.00) to be carried-over as tax credit in 1989 and eventually the 1989 to 1990 (Exh.

"U"). However, upon examination of the records of the case, the business operation in 1989 bears unfruitful result. On the other hand, the 1990 income tax liability of P16,257,472.00 was paid by petitioner (Exh. "AA"). Hence, the sums sought to be refunded herein were not utilized in both years.

This Court would like to emphasize that an excess income tax payment of one year should only be credited automatically in succeeding year. To allow the application of excess income taxes for more than a succeeding year would run counter to the specific provision of Sec. 69 of the Tax Code (**Paseo Realty and Development Corporation v. Commissioner of Internal Revenue**, CTA Case No. 4528, April 30, 1993) which reads:

> 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) 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.**

As regards the second issue, on taxes paid two years prior to the filing of the instant case were no longer refundable, suffice it to state the Supreme Court in the case of **Commissioner of Internal Revenue v. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989,** held that "where the tax is payable by the taxpayer in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its operations". Further, in the subsequent case of **Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992,** the High Court ruled that "the most reasonable and logical application of 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**".

The quarterly income tax payments for the years 1987 and 1988 should only be considered mere installments of the annual income tax due. "These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, the two-year prescriptive period provided in Section 292 (now Sec. 230) should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax". (Commissioner of Internal Revenue v. TMX Sales, Inc. et al., supra)

Hence, since the claim for refund covers overpaid income taxes for the calendar years ending December 31, 1987 and 1988, petitioner has two years counted from April 15, 1988 and April 17, 1989 (the dates when the Final Income Tax Return was filed) to file a claim for refund. It has up to April 15, 1990 and April 17, 1991 to file a claim for refund with the respondent and with this Court.

It is clear from the record, that petitioner filed its claim for refund with the respondent on March 30, 1990 and the petition for review on April 6, 1990, which are within the prescriptive period allowed by law.

Based on the above discussion, petitioner indeed substantiate its claim for the refund. What left now is the amount that can be granted.

Respondent stressed in her memorandum that the payment made by petitioner in the amount of P37,573,630.00 alleged covered by CBCR No. 11855919 dated

June 6, 1987 (Exh. "A"), although received, cannot be determined as to what kind of tax payment it refers. The same does not bear the tax coding required nor included in the Alpha List on file with the Revenue Accounting Division. Hence, should be deducted from the amount sought to be refunded. However, after careful examination of respondent's contention against the evidence presented by petitioner, this Court ascertained that said alleged payment represents an income tax payment for the first quarter of 1987. This kind of tax payment was written in the Payment Order No. 0372476 issued by the bureau (Exh."A-1"). Therefore, the amount that can be refunded is computed as follows:

For 1987

Payments made:				
Qtr.	CR/ROR No.	Date	Amount	Exh.
1st	B11855919	06/01/87	₱ 37,575,630.00	A
2nd	B12442862	09/01/87	105,927,467.00	B
3rd	B13093885	12/01/87	100,483,466.00	C
Total			₱243,986,563.00	
Less: income tax liability			142,088,822.00	N-2
Excess payment to be carried as tax credit in 1988			₱101,897,741.00	
Less: applied in 1988			77,931,812.00	
Excess payment			₱ 23,965,929.00	

For 1988

Payments made:				
Qtr.	CR/ROR No.	Date	Amount	Exh.
1st	B11446769	05/30/88	₱ 53,333,376.00	I
3rd	B15511077	11/29/88	14,917,514.00	M
Total			₱ 68,250,890.00	
Add: tax credit from 1987			77,931,812.00	
Total			₱146,182,702.00	
Less: income tax liability			62,498,902.00	O-2
Excess payment			₱ 83,683,800.00	
Total			₱107,649,709.00	

WHEREFORE, finding the petition meritorious, respondent is hereby ordered to refund or, in the alternative, issue a tax credit certificate in favor of petitioner the sum of ₱107,649,729.00 representing overpaid income taxes for the years 1987 and 1988.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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 Rule VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge