REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6090**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 04 2002

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DECISION

The instant petition seeks the refund of the amount of P2,965,608.00 allegedly representing unused creditable taxes withheld during the taxable year 1997.

The antecedent facts follow.

Petitioner is a domestic corporation organized and existing under Philippine laws, with head office address located at the BPI Family Bank Building, Dela Rosa corner Paseo de Roxas Streets, Makati City (par. 1, Joint Stipulation of Facts).

On April 15, 1998, Petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year ended December 31, 1997 (Exhibit D), reflecting a net loss of P398,072,009.00 (Exhibit D-3) and unutilized tax credits/payments in the amount of P10,464,649.00 (Exhibit D-4), detailed as follows:

Gross Income		P 4,664,962,437.00
Less: Deductions		5,063,034,446.00
Net Loss		P 398,072,009.00
Income Tax Due		P -
Less: Tax Credits/Payments		
1.) Prior year's excess credits	P 4,812,395.00	

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2.) 1st Quarter income tax payment	653,195.00	
3.) Creditable taxes withheld in 1997	4,999,059.00	10,464,649.00
Income Tax Refundable		P 10,464,649.00

On April 15, 1999, Petitioner filed with the BIR its Annual Income Tax Return for the calendar year ended December 31, 1998 (Exhibit E), this time showing a taxable income of P22,056,004.00 and the tax due thereon amounting to P7,499,041.00 (Exhibit E-3). Said return likewise disclosed excess income tax payments in the amount of P62,976,607.00 (Exhibit E-5), computed as follows:

Gross Income		P 307,569,351.00
Less: Deductions		285,513,347.00
Taxable Income		P 22,056,004.00
Income Tax Due (34%)		P 7,499,041.00
Less: Tax Credits/Payments		
1.) Prior year's excess credits	P 10,464,649.00	
2.) Tax Credits/Withheld/Payments for the first three quarters	58,349,274.00	
3.) Tax Withheld for the fourth quarter	1,661,725.00	70,475,648.00
Income Tax Overpayment		P 62,976,607.00

According to Petitioner, after applying its prior year's excess credits of P10,464,649.00 against its 1998 tax liability of P7,499,041.00, the amount of P2,965,608.00 remained unutilized. Thus, on April 12, 2000, Petitioner filed with the Large Taxpayers Assistance Division of the BIR a letter claiming for the refund of its creditable and excess income taxes for the year 1997 in the aggregate amount of P2,965,606.00 (Exhibit F).

As there was no immediate action on the part of the Respondent and the two-year prescriptive period was about to lapse, Petitioner elevated its case before this Court on April 14, 2000.

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Respondent filed his Answer on May 19, 2000, claiming by way of Special and Affirmative Defenses that:

"3. The alleged claim for refund is subject to investigation by the Bureau of Internal Revenue.

4. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95**) and it is incumbent upon the petitioner to prove that it is entitled thereto under the law (**Western Minoleo Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden can not be permitted to exist upon vague implications (**Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466 cited in Collector vs. Manila Jockey Club Inc. L-8755, March 23, 1956**);

5. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended, which are quoted as follows:

> "**Sec. 204**. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may – x x x
>
> (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 payment of the tax penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."

> **Sec. 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.
>
> 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 a 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."

The issues We are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not the Petitioner has unutilized creditable withholding taxes for the year 1997;

2. Whether or not the alleged unutilized creditable withholding taxes are substantiated by documentary evidence; and

3. Whether or not the Petitioner is entitled to a refund of the alleged unutilized creditable withholding taxes.

In support of its case, Petitioner offered in evidence its Corporate Quarterly Income Tax Returns from the first to the third quarter of 1997 (Exhibits A, B and C), its Corporate Annual Income Tax Returns from 1996 to 1999 (Exhibits I, D, E and G, respectively), its administrative claim for refund dated April 11, 2000 for the amount of P2,965,606.00 (Exhibit F), the report of the independent certified public accountant, Joaquin Cunanan and Co. dated March 12, 2001 (Exhibit H), a summary of the Certificates of Income Tax Withheld at Source issued to Petitioner during the year 1997

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together with the supporting certificates (H-a, H-1 to H-231) and a certification dated September 8, 2000 issued by the Chief of the BIR Revenue Accounting Division to prove that the amount of P653,194.71 was remitted to the BIR as income tax payment for the first quarter of 1997 (Exhibit J).

Respondent, on his part, submitted this case for decision without presenting any evidence.

After a careful examination of the evidence adduced solely by the Petitioner, We rule against its grant.

Records show that Petitioner arrived at the 1997 claimable amount of P2,965,608.00 by deducting the 1998 income tax due of P7,499,041.00 from the excess tax credits of P10,464,649.00 carried-over from its 1997 income tax return. It should be noted, however, that the amount of P10,464,649.00 represents the sum of the 1996 excess tax credits of P4,812,395.00 (Exhibits D-5 & I-1), 1997 first quarter income tax payment of P653,195.00 (Exhibit D-6) and creditable taxes withheld in 1997 of P4,999,059.00 (Exhibit D-7).

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 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**

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> **quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."** (Emphasis Supplied)

Verily from the aforequoted provision, the 1996 excess tax credits of P4,812,395.00 can be applied only to the succeeding taxable year 1997. Since it suffered a net loss and was unable to utilize the 1996 excess credits of P4,812,395.00 in 1997, Petitioner, instead of carrying-over the amount of P4,812,395.00 in 1998, should have filed a claim for refund corresponding thereto within the two-year prescriptive period provided for under Sections 204 and 230 of the Tax Code. This conclusion finds support in cases previously decided by this Court involving a similar issue, the more recent of which is **Belle Corporation versus Commissioner of Internal Revenue, CTA Case No. 6070, promulgated last April 10, 2001**, where We ruled:

> "It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year (**Paseo Realty and Devt. Corp. vs. CIR, CTA Case No. 4528, April 30, 1993**). True enough, implicit from the provisions of Section 69 of the NIRC, as amended, (supra) is the fact that the refundable amount may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year, not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year (citing **ANSCOR Hagedorn Securities Inc. vs. CIR, CA-GR SP 38177, December 21, 1999**). To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned."

Consequently, out of the prior year's excess credits of P10,464,649.00 indicated in Petitioner's 1998 income tax return, only the 1997 first quarter income tax payment of P653,195.00 (Exhibit D-6) and creditable taxes withheld in 1997 of P4,999,059.00 (Exhibit D-7) or the sum of P5,652,254.00 can be applied/credited against its 1998 income tax liability of P7,499,041.00. Considering that the total 1997 tax credit/payment of P5,652,254.00 is lower than the 1998 income tax liability of P7,499,041.00 (see

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Exhibit E), there is no amount of excess 1997 tax credit/payment which may be the proper subject of a claim for refund under Section 69, in relation to Sections 204 & 230, of the Tax Code.

WHEREFORE, in the light of the foregoing, Petitioner's claim for refund of its unutilized creditable taxes withheld for the taxable year 1997 in the amount of P2,965,608.00 is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate 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

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