REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST E-BANK CORPORATION (A DEVELOPMENT BANK), (Formerly PDCP Development Bank, Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 5740

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 04 2001
[signature]

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P33,867,086.00, representing unutilized payments of quarterly income tax and creditable withholding taxes at source for the calendar years ended December 31, 1996 and December 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at PDCP Bank Building, 8737 Paseo de Roxas, Makati City. It is primarily engaged in the banking business.

On April 15, 1997, Petitioner filed its 1996 Corporation Annual Income Tax Return reflecting a taxable income of P50,181,777.00 with a corresponding tax due of P17,563,622.00. The same return also shows that Petitioner had a third quarter income tax payment of P17,114,703.00 and creditable taxes withheld of P23,229,871.00 (or a total of P40,344,574.00) which were applied to its income tax liability of P17,563,622.00 resulting in an overpayment of income tax in the amount of P22,780,952.00. Petitioner indicated in its 1996 income tax return its intention to apply the overpaid income tax as credit to the succeeding taxable year 1997 (Exhibit "D", inclusive of sub-markings).

On April 15, 1998, Petitioner filed its 1997 tentative Corporation Annual Income Tax Return reflecting a net loss in the amount of P28,208,767.00 but with an amount refundable of P33,867,086.00, detailed as follows: (Exhibit "E", inclusive of sub-markings)

Net loss		P28,208,767.00
Tax Due		P -
Less: Tax Credits/Payments		
a) Prior year's excess credits	P22,780,952.00	
b) Quarterly excess credits	-	
c) Creditable tax withheld	11,086,134.00	33,867,086.00
Amount Refundable		P33,867,086.00

Petitioner opted to ask for the refund of prior year's excess credit of P22,780,952.00 while the 1997 creditable tax withheld of P11,086,134.00 was chosen to be applied as tax credit to the succeeding year.

On August 12, 1998, Petitioner amended its 1997 final adjustment return showing the same refundable amount of P33,867,086.00 but with a corrected operating loss of P98,320,258.00. In the said return, Petitioner maintained its intention to refund the prior year's excess credit of P22,780,952.00 and to apply the 1997 creditable withholding taxes of P11,086,134.00 as tax credit to the succeeding taxable year 1998 (Exhibit "F", inclusive of sub-markings).

On November 4, 1998, Petitioner filed with Revenue Region No. 8, Bureau of Internal Revenue, a written application for the refund of excess income tax payments for the calendar years 1996 and 1997 in the total amount of P33,867,086.00 manifesting therein that it is no longer pursuing the carry-over of its 1997 unutilized creditable tax withheld in the amount of P11,086,134.00 (Exhibits "Z" and "Z-1").

Consistent with its desire to refund the aforementioned total overpayment, Petitioner on March 11, 1999, elevated its appeal with this Court by filing the instant Petition for Review in accordance with the provisions of Section 230 of the Tax Code.

Still mindful of its claim for refund, Petitioner did not carry-over its 1997 excess tax credit of P11,086,134.00 to calendar year 1998 as evidenced by the 1998 tentative and final Corporation Annual Income Tax Returns (Exhibits "G" and "H", inclusive of sub-markings).

In his Answer, Respondent advanced the following Special and Affirmative Defenses:

> 6. That petitioner has already exercised the option to carry-over and apply the entire excess income tax subject to (sic) its claim to taxable year 1998 which is considered under Section 76 of the NIRC 1997 irrevocable for the said taxable period, hence, application for cash refund or issuance of a tax credit certificate is no longer allowable in the instant case;
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> 7. That the amendment of the 1997 Corporation Tax Return of the Petitioner purposely intended to make it appear that the Petitioner opted to claim for refund the 1996 excess income tax in the amount of P22,780,952.00 nor its manifestation that it is no longer pursuing the

carry-over of the 1997 unutilized creditable withholding tax in the amount of P11,086,134.00 will no longer change the irrevocable option already exercised by the Petitioner in the 1997 original return and in the 1997 amended return;

8. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

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

11. Well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation (Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968).

To prove its entitlement to the claim for refund, Petitioner presented the following evidence:

1. The 1996 Corporation Quarterly Income Tax Returns (Exhs. A, B, and C);

2. The 1996 Corporation Annual Income Tax Return and the original and amended final adjustment returns for the calendar years 1997 and 1998 (Exhs. E, F, G, and H, inclusive of submarkings);

3. Various 1996 and 1997 certificates of creditable taxes withheld at source, BIR Certificates Authorizing Registration, Monthly Remittance Returns, and various documents supporting the withholding of creditable withholding taxes at source (Exhs. I to Y, AA to EE, GG to MM, UU, SS and TT);

4. Letter-claim for refund (Exhs. Z to Z-2);

5. Report of the commissioned independent CPA with respect to the accuracy of Petitioner's claim for unutilized creditable withholding taxes and overpaid income taxes (Exh. WW and WW-1); and

6. Schedules of income tax payments & income tax withheld for the years 1996 and 1997 (Exhs. FF and NN).

This case was submitted for decision on February 20, 2001 without the evidence and memorandum of the Respondent.

The issues jointly stipulated by the parties are as follows:

1. Whether or not Petitioner has excess or overpaid income tax for the calendar years ended December 31, 1996 and 1997 which is a proper object of a claim for refund pursuant to Section 229 of the National Internal Revenue Code as amended;

2. Whether or not the said excess or overpaid income tax of the Petitioner for the years ended December 31, 1996 and 1997 are substantiated by documentary evidence;

3. Whether or not said excess or overpaid income tax for the calendar years ended December 31, 1996 and 1997 was carried over to the succeeding calendar year ended December 31, 1998 and applied against any of the income tax liability of the Petitioner for the said period; and

4. Whether or not the excess creditable withholding tax being claimed by Petitioner represents tax on income which was reported in the Corporation Annual Income Tax Return of Petitioner for calendar years ended December 31, 1996 and 1997.

The legal basis in claiming for the refund of overpaid income tax is Section 69 (now Sec. 76) of the Tax Code, as amended, which reads as follows:

> **SEC. 69.** ***Final Adjustment Return.*** – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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. (Underlining supplied)

Based on the afore-quoted proviso, the refundable income tax payment of a given year can only be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It is apparent that in the taxable years 1996 and 1997, Petitioner had accumulated income tax payments in the total amount of P33,867,086.00 which were not utilized as tax credit in the years 1997 or 1998 (Exhibits "D", "E", "F", "G", and "H"), hence, it is a proper subject of a claim for refund based on the afore-quoted Section 69 of the Tax Code, as amended. However, before the present appeal could prosper, Petitioner should prove its entitlement to the refund by substantial evidence.

Section 230 of the Tax Code provides:

> **SEC. 230.** ***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 excessive 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 begun after the expiration of the two 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following requisites, to wit:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;
>
> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. the fact of withholding is established by a copy of a statement (BIR For 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957)**.

A perusal of the evidence submitted by the Petitioner reveals that the claim for refund was timely filed within two years from the date of payment of the tax. The administrative claim for refund was filed with the Respondent on November 4, 1998 and the Petition for Review was filed with this Court on March 11, 1999. The two-year prescriptive period commences on April 15, 1997 and April 15, 1998, the dates when Petitioner filed its 1996 and 1997 original final adjustment returns respectively **(Commissioner of Internal Revenue vs. TMX Sales, Inc. etl al., G.R. No. 837736, January 15, 1992)**. It is also clear from the records of the case that Petitioner paid the amount of P17,114,702.00 for third quarter income tax liability as shown by the bank's machine validation appearing in the lower portion of the 1996 third quarterly income tax return (Exhibit "C-4").

With respect to the claim for refund of creditable withholding taxes, the Court finds the report of the commissioned independent CPA, Ms. Feliza A. Peralta, commendable (Exhibits "WW" and "WW-1"). The audit procedures stated therein are sufficient to come-up with the desired result of ascertaining the propriety of Petitioner's claim for refund of creditable withholding taxes for the years 1996 and 1997, therefore, the observations and findings arrived at by Mr. Peralta are hereby adopted.

Petitioner sufficiently established by means of the various Certificates of Withholding Tax at Source and other pertinent documents the amounts of P20,341,040.42 and P8,708,513.95 for the taxable years 1996 and 1997, respectively. To wit:

For 1996:

Withholding Agents	Exhs.	Amount
Filipino Telephone Company	I	20,044,871.40
Bank of Commerce	J	93.50

Clemente Capital Consultants, Inc.	K	4,948.50
Clemente Capital Consultants, Inc.	L	4,948.50
Clemente Capital Consultants, Inc.	EE	4,648.60
Isla Del Pacifico Marine Products, Corp.	M	8,742.00
Benedict Jacinto	N	2,754.00
JC Gervacio & Associates	O	10,030.00
Metro Realty	P	5,632.65
Phil-Am Life-PDCP Fund Mgt, Inc.	Q	7,423.04
Remco Consulting Development, Inc.	R	22,019.40
PDCP Insurance Brokers, Inc.	S	222,428.83
AGP Industrial Corporation	T	2,500.00
Sub total		P20,341,040.42

For 1997:

Withholding Agents	Exhs.	Amount
Clemente Capital Consultants, Inc.	U	P 4,948.52
Philippine Retirement Authority	V	75,116.52
United Coconut Planters Life Assurance	X	13,057.44
United Coconut Planters Life Assurance	Y	8,704.96
PDCP Insurance Brokers, Inc.	OO	231,286.51
Multi-Realty Corp.	MM	8,342,400.00
Daphne C. Kuok	GG, HH	33,000.00
Total		P 8,708,513.95
GRAND TOTAL		P29,049,554.37

The related income of the above-listed creditable withholding taxes were included in Petitioner's gross income as reflected in the 1996 and 1997 income tax returns (Exhs. RR, SS, and TT).

With respect to Respondent's argument in his Answer that Petitioner is not entitled to the refund because Petitioner already exercised the option to carry-over and applied the entire excess income tax subject of its claim to taxable year 1998 which is considered under Section 76 of the 1997 Tax Code irrevocable, the Court, after verification of the

1997 original and amended final adjustment returns shows that only the amount of P11,086,134.00, representing the 1997 creditable taxes withheld, were opted to be applied as credit to succeeding year while the sum of P22,780,952.00 was chosen to be refunded. It was further noted that in the 1998 income tax return, Petitioner did not carry over the entire amount subject of the present appeal.

The Court does not agree with Respondent's opinion that the 1997 Tax Code which took effect on January 1, 1998, particularly the provisions of Section 76, is already applicable in cases involving the 1997 Corporation Annual Income Tax Return which was filed on April 15, 1998. The amendatory provisions introduced by the Tax Reform Act of 1997 or Republic Act No. 8424, apply only at the start of taxable year 1998, the effectivity of the Act being January 1, 1998. The date of filing of the 1997 final adjustment return which fell on April 15, 1998 is not controlling considering that the income tax liability is computed as at the end of taxable year 1997. Furthermore, the law gives a taxpayer ample time to file its income tax return. Section 70(b) of the Tax Code allows a corporate taxpayer to file its final adjustment return on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be. The rationale behind such period is to give the taxpayer the opportunity to adjust at the end of the year its income and expenses for proper determination of income tax liability and to give the independent Certified Public Accountant a chance to audit and examine the taxpayer's books of accounts. This is expressly provided under Section 232 of the Tax Code, to wit:

> **SEC. 232.** (A) *Corporations, companies, partnerships, or persons required to keep books of accounts.* – All corporations, companies, partnerships or persons required by law to pay internal revenue taxes shall keep a journal and a ledger, or their equivalents: *Provided, however*, That those whose gross quarterly sales, earnings, receipts, or output do not exceed five thousand pesos shall keep and use a simplified set of bookkeeping records duly authorized by the Secretary of Finance wherein all transactions and results of operations are shown from which all taxes due the government may readily and accurately be ascertained and determined any time of the year: *And Provided, further,* <u>That in the case of corporations, companies, partnerships, or persons whose gross sales, earnings, receipts or output exceed twenty-five thousand pesos, shall have their books of accounts audited and examined by independent Certified Public Accountants and their income tax returns accompanied with certified balance sheets, profit and loss statements, schedules listing income-producing properties and the corresponding incomes therefrom and other relevant statements</u>. (Underlining supplied)

Therefore, it is absurd and inconvenient to conclude that the 1997 Tax Code is applicable to the 1997 return considering that in taxable year 1997 the provisions of the old Tax Code still prevails **(Carmelino F. Pansacola vs. Commissioner of Internal Revenue, CTA Case No. 5924, June 13, 2000).**

In sum, Petitioner is entitled to the reduced amount of P28,600,635.13, computed as follows:

<u>1996</u>

Income Tax Due		P17,563,622.00
Less: Tax Credits/Payments		
a. Third quarter income tax payment	P17,114,702.76	
b. Creditable taxes withheld	20,341,040.42	37,455,743.18
Amount Refundable		P19,892,121.18

1997

Income Tax Due	P	0.00
Less Creditable taxes withheld		8,708,513.95
Amount Refundable		P 8,708,513.95
Total Amount Refundable		P28,600,635.13

WHEREFORE, in view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED.*** Respondent is **ORDERED to REFUND or in the alternative to ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P28,600,635.13, representing overpaid income taxes for the years 1996 and 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

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