REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

JARDINE DAVIES INSURANCE BROKERS, INC.,
Petitioner,

-versus-

C. T. A. CASE NO. 4236

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

4/04/94

D E C I S I O N

Petitioner, a domestic corporation, is seeking a confirmation that it can credit the amount of P593,762.00 representing the refundable amount shown in its final adjustment return in 1986, together with the amount of P288,663.00 representing a refundable amount shown in its 1985 final adjustment return against its income tax liabilities for the succeeding taxable year, pursuant to Section 86 (now Section 69) of the Tax Code. In the alternative, a refund or tax credit for the said amounts is prayed for in the event petitioner is unable to utilize the same or any portion thereof as automatic tax credit in accordance with the same provision of the Tax Code.

In the petition for review, petitioner alleged that the 1985 refundable amount of P288,663.$^{\underline{oo}}$ is the subject of CTA Case No. 4126.

On April 15, 1987, petitioner filed its 1986 corporate annual income tax (final adjustment) return with Revenue District Office No. 32-A (Makati West). The said tax return reflected a net loss of P376,021.$^{\underline{oo}}$ and a nil tax liability. In said tax return, petitioner declared creditable taxes in the amount of P593,762.$^{\underline{oo}}$. Inasmuch as petitioner had no income tax liability with which to apply said creditable taxes, petitioner's 1986 corporate annual income tax (final adjustment) return showed a refundable amount of P593,762.$^{\underline{oo}}$.

Consequently, in its income tax return for the first, second and third quarters of 1987, petitioner applied against the tax due the total amount of P882,425.$^{\underline{oo}}$ representing its refundable amount of P288,633.$^{\underline{oo}}$ shown in its 1985 final adjustment return and its refundable amount of P593,762.$^{\underline{oo}}$ shown in its 1986 final adjustment return.

On June 26, 1987, petitioner, through its tax manager, filed with respondent's Appellate Division a letter, dated June 19, 1987 (Ref. JCC-123/87), requesting for confirmation that the amount of P593,762.oo representing the refundable amount shown in its 1986 final adjustment return, together with the amount of P288,663.oo, representing the refundable amount shown in its 1985 final adjustment return, or a total amount of P882,425.oo can be automatically applied against any income tax liability of petitioner for 1987 and succeeding taxable years and, in the alternative, sought a refund or tax credit of said total amount of P882,425.oo.

Respondent did not take action on the matters raised by petitioner.

Hence, this petition for review, practically reiterating the same request made in the administrative level.

In answer to the herein petition, respondent, aside from the general denial of petitioner's allegations, averred as part of its special and affirmative defenses that: 1) petition states no cause of action because it did not allege that petitioner actually paid the tax sought to be refunded and the dates of actual payment; 2) this being an action for tax credit or tax refund, petitioner must prove that the subject taxes were erroneously or illegally paid and collected; 3) that the mere averment that petitioner incurred a net loss of P376,021.$\underline{^{oo}}$ in 1986 does not *ipso facto* merit a refund; and, 4) that pending investigation by respondent, petitioner's alleged refundable tax in the amount of P593,762.$\underline{^{oo}}$ for the year 1986 as reflected in its corporate annual income tax return cannot be automatically applied to his tax liability for the year 1987.

During the hearings of this case, petitioner presented in evidence its 1986 final adjustment return and certificates/statement of Creditable Income Tax Withheld at source [BIR Form 1743] (Exhibits "A" and submarkings; Exhibits "B" up to "DD" inclusive), as well as quarterly income tax returns for 1987 (Exhibits "EE", "FF", & "GG"). Ms. Daisy Padolina, Accounting Manager of petitioner, identified the Income Tax Returns and Certificates of Income Tax Withheld at source correspondingly marked as exhibits.

Respondent did not submit any evidence in support of its special and affirmative defenses or to controvert the claim of petitioner. Instead, she submitted her case on the basis of the records and pleadings. Respondent further manifested that she will not file any memorandum in support of her case.

The only issue to be resolved is whether or not petitioner may automatically apply as tax credit the refundable amount shown in its 1986 corporate annual income tax (final adjustment returns) against its income tax liability for the succeeding taxable year or in the alternative be entitled to an ordinary tax credit or refund.

As averted to earlier, petitioner included in this petition its 1985 final adjustment return in the amount of P288,633.$\underline{^{oo}}$ as automatic tax credit against its income tax liabilities during the year 1987 in spite of the fact, which it has admitted, that it is the subject of another case before this Court (Jardine Davies Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, Case No. 4126). This case has already been decided and promulgated by this Court on May 28, 1992, in favor of the petitioner, the dispositive part of which reads:

> "Wherefore, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant a tax credit to petitioner the refundable amount of P288,663.00 shown in its income tax (final adjustment) return for 1985."

Respondent appealed the case to the Court of Appeals (Commissioner of Internal Revenue vs Court of Tax Appeals and Jardine Davies Insurance Brokers, Inc., CA-GR No. SP-31934). In a Resolution of the Court of Appeals (Third Division) issued on October 04, 1993, it resolved that:

> "Acting on the petitioner's manifestation stating 'that after a circumspect study of the facts and the law of the case, petitioner believes that the questioned decision is in accordance with the law and is no longer pursuing the appeal, the instant petition for review is DEEMED WITHDRAWN and is hereby DISMISSED."

The corresponding Entry of Judgment was issued on October 11, 1993, and the same resolution has become <u>final</u> and <u>executory</u>.

The *ratio decidendi* in CTA Case No. 4126 which has become a ruling case law insofar as this Court is concerned, is in all fours with the present case.

In the matter of automatic application by the petitioner as tax credit, the refundable amount shown in its corporate annual income tax (final adjustment) return of 1986 in the amount of P593,762.$\underline{^{oo}}$, we quote verbatim our very own decision involving the same parties in CTA Case No. 4126:

"In a previous case, *San Carlos Milling Co., Inc. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3811, February 28, 1990,* involving a similar issue, this Court, in interpreting the pertinent provisions of the Tax Code (Section 79, formerly Section 86 and now Section 69 of the National Internal Revenue Code) and Revenue Regulations No. 10-77 dated October 7, 1977, had already ruled that the corporate taxpayer cannot automatically credit the refundable amount shown in its final adjustment return against the income tax liability for any of the taxable quarters of the succeeding taxable year, without the "imprimatur" or approval of the Commissioner of Internal Revenue. Thus:

> All that we need to state is that the authorization for a kind of set-off of creditable income tax against future tax liabilities conferred the corporate taxpayer in no wise lessens nor muffles the respondent's power of ascertaining the correctness of any tax return, hence the necessity of his imprimatur. A perusal of the implementing regulations readily provides a feel of the statutory intendment, thus:
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> > Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. <u>The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarter of the succeeding taxable year, by filling up the appropriate tax on the corporate tax</u>

return, BIR Form No. 1702. *(Section 7, Revenue Regulations No. 10-77, October 3, 1977)* [Underscoring ours]

The clear and unambiguous consequence of the regulations as above stressed insofar as the same is brought to bear upon the circumstances obtaining in the case at bar, limits the petitioner's right to signify an intention to opt for either a refund or automatic tax credit. Any entitlement thereof must prove compliance with terms and conditions peremptorily required by law and rules lest the integrity of collection of the lawful dues be placed in the quicksand of self-interest. A *fortiori* respondent must have to examine the return and determine the tax. Petitioner cannot have the best of both worlds so to speak.

We cannot validly infuse cognizance to an automatic crediting effected by the taxpayer in an inofficious panache much less substitute and indulge in an amorphous rule as to leave solely to the petitioner such an expedient arrangement in denigation of respondent's primary responsibility in ascertaining the facts necessary in making a correct return and thus suffer the cornerstone of effective assessment and collection to petrify at the cost of the animating principles tinged with strong issues of public policy that taxes are the lifeblood of government and their prompt and certain availability are an imperious need. *(Commissioner of Internal Revenue v. Goodrich International Rubber Co., 22 SCRA 1256; Commissioner of Internal Revenue v. Pineda, 21 SCRA 105; Collector of Internal Revenue v. Yuseco, 2 SCRA 313; cited in Frabelle Fishing Corporation v. Commissioner of Customs, CTA Case No. 3481, August 15, 1983.)*

Petitioner has overplayed its understanding of the automatic crediting devise which application seemed more than a clumsy attempt of defusing the peremptory legal sanction charged the respondent Commissioner of Internal Revenue. Petitioner has fumbled into a reversible error.

The Honorable Court of Appeals, in affirming said decision of this Court on appeal in *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals, C.A.-G.R. SP No. 22346, December 23, 1991,* likewise quoted some portions of the foregoing ruling of this Court and held as follows:

> Sec. 86 (now 64) of the National Internal Revenue Code (NIRC) provides:
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> "Sec. 86. 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 that year the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be.
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> In case the corporation is entitled to refund of the excess estimated quarterly income tax 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."
>
> Revenue Regulations No. 10-77 dated October 7, 1977, implements this provision of the NIRC, and provides, that:
>
> "SEC. 7. Revenue Regulations No.10-77
>
> Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the

> estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarter of the succeeding taxable year, by filling up the appropriate box on the corporate tax return, BIR Form No. 1702.
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> xxx xxx xxx
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> For the effective implementation of Sec. 86 of the NIRC, especially in case of overpayments, Revenue Regulations No. 10-77 requires the taxpayer to signify in its annual corporate return, its intention to opt for, either a refund, or an automatic tax credit. Although the regulation does not expressly state the necessity of obtaining the Commissioner's approval, it is implicit in the regulation itself. Once a taxpayer opts for either a refund, or the automatic tax credit scheme, and signified his option in accordance with the regulation, this does not _ipso facto_ confer on him the right to avail of the same immediately. An investigation, as a matter of procedure, is necessary to enable the Commissioner to determine the correctness of the petitioner's returns, and tax amount to be credited. Pre-auditing the returns consists merely of an office audit, without necessarily examining the books of the taxpayer, and this is only part of the investigation process. Whether or not a refund is to be made, and whether or not the amount to be refunded is correct, are matters that can only be determined after a complete and proper investigation of the taxpayer's books of account and accounting records. xxx."
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> xxx xxx xxx
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> xxx xxx xxx

The case of Asia-Australia Express, Ltd. v. Commissioner (CTA Case No. 3695) cited by the petitioner is not applicable to the instant case. The issue raised therein was whether the taxpayer's filing of the refund claim had already prescribed, and if not, whether the company's availment of the automatic tax credit scheme operates as a waiver of its right to claim for a refund. The same is true in the cases of Commissioner v. Itogon-Suyoc Mines, Inc. (28 SCRA 867 [1969] and Commissioner v. ESSO Standard Eastern, Inc. (172 SCRA 364 [1989], also cited by petitioners, considering that both cases involves the imposition of interest on a refundable amount, and both cases arose from facts that happened in 1960, when Revenue Regulations No. 10-77 was not implemented."

Similarly, in *Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991,* this Court, citing the *San Carlos Milling case (CTA Case No. 3811),* made this interpretation:

> "xxx. Sec. 86 of the Tax Code and Sec. 7 of Rev. Reg. 10-77 merely gives the petitioner the right to signify his intention to opt for a refund or automatic tax credit because "the authorization for a kind of set-off of creditable income tax against future tax liabilities conferred the corporate taxpayer in no wise lessens or muffles the respondent's power of ascertaining the correctness of any tax return" for "(A)ny entitlement thereof must prove compliance with the terms and conditions peremptorily required by law xxx *A fortiori,* respondent must have to examine the returns and determine the tax xxx" *(San Carlos Milling v. Commissioner of Internal Revenue, CTA Case No. 3811, February 28,1990).* Thus the taxpayer is

> not assured that by signifying his intent to have the overpaid tax credited in the succeeding year, and even if he did credit the same, the amount claimed as refundable (or a portion thereof) would indeed be allowed as a tax credit for the succeeding year by the BIR. More so, if the refundable amount for one year was not fully credited in the succeeding year, the excess uncredited amount can no longer be credited in the following year because the law limits the automatic tax credit to the 'succeeding' year only." [pp. 164-170, CTA Case No. 4126 rec.]

We find therefore no justifiable ground or reason to depart from the pronouncements of this Court and the Court of Appeals.

However, in the alternative, is petitioner entitled to a refund or tax credit?

We find for the petitioner.

It is significant to note that respondent did not submit any contravening evidence in support of her Answer to the Petition for Review. Instead, respondent submitted her case on the basis of the record and pleadings. She even waived the opportunity to submit or file a memorandum in support of her case. Under the circumstances and in the light of previous rulings of this Court, more particularly in the cases of Sun Life Insurance Office Ltd. vs the Acting Commissioner of Internal Revenue, CTA Case No. 3205 [1989], Jardine Fleming (Phils.), Inc. vs Commissioner of Internal Revenue, CTA Case Nos.

4041 and 4125 [1991], Philippine Commercial Capital Inc. vs Commisioner of Internal Revenue, CTA Case No. 4274 [1991], Paseo Realty and Development Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4148, and lately, Jardine Davies Insurance Brokers, Inc. vs Commissioner of Internal Revenue, CTA Case No. 4126 [1992], respondent is considered to have unqualifiedly admitted petitioner's entitlement to the claim for refund.

WHEREFORE, respondent, Commissioner of Internal Revenue, is hereby ordered to refund or grant a tax credit to petitioner in the amount of P593,726.00 representing the refundable amount shown in its 1986 final adjustment return.

SO ORDERED.

Quezon City, Metro Manila, 4 April 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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, Article VIII, of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals