REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TELETRADE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5801

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 21 2000

x - x

DECISION

The case at bar seeks the refund/tax credit of the amount of P3,424,316.00 allegedly representing Petitioner's erroneously paid income taxes for the year ending December 31, 1996.

As represented, Petitioner is a corporation duly organized and existing under the laws of the Philippines with office address at 2nd floor, Eurovilla I Condominium, Legaspi cor. Herrera Streets, Legaspi Village, Makati City.

On April 15, 1997, Petitioner filed with Rizal Commercial Banking Corporation (RCBC) its Tentative Corporate Annual Income Tax Return (ITR) for the calendar year 1996 (Exh. A) declaring a taxable income of P10,722,035.00. In said return, petitioner declared a tax due of P3,752,712.00, tax credits of P315,820.00 and a tax payable of P3,436,892.00. The said tax payable was paid by petitioner on the same date as shown in the machine validation found on the lower portion of said ITR.

On April 30, 1997, Petitioner filed with the Development Bank of the Philippines its **AMENDED** Corporate Annual Income Tax Return for the year 1996 (Exh. B). In said amended return, Petitioner declared a taxable income of P938,274.00, a tax due of P328,396.00, tax credits of P315,820.00, a tax payable of P12,576.00, a tax payment of P3,436,892.00 made on April 15, 1997 when it filed its tentative ITR, and a refundable amount of P3,424,316.00 to be applied as tax credit to the succeeding year (1997).

Sometime in April, 1998, Petitioner filed its Tentative Corporate Annual Income Tax Return for the year 1997. (Exh. D, Attachment, p. 116, docket). In said return, Petitioner declared a loss of P13,042,770.00, a tax credit/payment of P3,456,872.00 and a tax refundable of P3,456,872.00. Petitioner signified in said return its intention to carry-over/apply the said refundable amount of P3,456,872.00 to the succeeding taxable year of 1998.

On January 5, 1999, Petitioner filed with RCBC its AMENDED Corporate Annual Income Tax Return for 1997 (Exh. E, attachment, pages 133 to 140, docket). In said return, it declared a loss of P13,486,780.00, a prior years excess credits of P3,424,316.00, a tax withheld of P84,081.00, and a tax overpayment of P3,508,397.00. Petitioner likewise manifests in said amended ITR that the tax overpayment of P3,508,397.00 is to be carried as tax credit to the succeeding taxable year of 1998.

On April 14, 1999, Petitioner again amended its earlier amended 1996 and 1997 ITRs (Exhs. D and E). The specific portion of Petitioner's 1996 Amended ITR that was again amended on April 14, 1999 was that of Petitioner's option as regards the overpayment of taxes. Petitioner wanted the overpayment of taxes for 1996 to be refunded [as shown in the option box provided in the BIR Form (Exh. D)], instead of being carried as tax credit to the succeeding year of 1997 [as shown in the option box of its amended 1996 ITR (Exh. B)].

Thus, in its April 14, 1999 amendment to its amended 1997 return, Petitioner deleted that portion which showed that it has a Prior Years Excess Credit of P3,424,316.00 (Exh. E-1) and reduced the amount of overpayment from P3,508,397.00, as shown in its amended 1997 ITR (pages 133-134, docket), to P84,081.00 (Exh. E, p. 131, docket).

A day after or on April 15, 1999, Petitioner filed its administrative claim for refund and/or tax credit with the Respondent in the amount of P3,424,316.00, allegedly representing its erroneously paid income taxes for the calendar year 1996 (Exh. F). On the same date, April 15, 1999, Petitioner filed with this Court the instant Petition for Review.

Petitioner posited that it is entitled to the refund of the aforesaid amount as it has sufficiently proven the factual circumstances surrounding the claim for refund with substantial evidence, and that Section 69 of the Tax Code, so provides that any excess of the total quarterly payments over the actual income tax computed in the adjusted 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. It said that since it was clearly shown on the face of its 1996 AMENDED Annual Corporate ITR (Exh. B) and its second AMENDED ITR for 1996 (Exh. D) that it incurred a tax overpayment for the year 1996 and that it opted for the refund thereof (Exh. D-2), and considering that overpaid and overwithheld or excess (erroneously paid in this case) income taxes paid can only refunded or applied as a tax credit to the taxable quarters of the succeeding taxable year (1997), and considering further that it did not carry forward the 1996 excess tax payments of P3,424,316.00 to the succeeding year of 1997 (Exh. E-1), Respondent is under obligation to refund the amount claimed.

On the other hand, Respondent argued that Petitioner is not entitled to the claimed refund. It asseverates that Petitioner, in its 1996 Amended Corporate Income Tax Return (Exh. B) which was filed on April 30, 1997, opted that its excess tax payments in 1996 in the total amount of P3,424,316.00 be carried over to the succeeding year 1997, and since during 1997 Petitioner allegedly suffered losses, Petitioner likewise opted that the excess tax payment of P3,424,316.00 in 1996 be carried over to the year 1998, as clearly shown in its tentative and amended ITR's for the year 1997 (Exh. D, Attachment, p 116 docket and Exh. E, Attachment, pages 133 to 140 docket). Thus, it concluded that since Petitioner has opted for an automatic tax credit of its 1996 excess tax payments to 1998, it can no longer refund the same as the remedies of refund and tax credit as provided for in Section 69 (now 76) are alternative, and the choice of one precludes the other (***Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999***). Respondent further contends that the manifestation by Petitioner in its latest amended 1996 ITR filed on April 14, 1999 (Exh. D) to have its 1996 excess tax payments be refunded and that it had no prior year's excess credit in its latest amended 1997 ITR, likewise filed on April 14, 1999 (E-1) should not lead this Court to grant the claimed refund, as it was already too late for the purpose. It said that Petitioner, in its 1997 amended ITR filed on January 5, 1999, had already declared as Prior Year's Excess Credit the excess tax payments for 1996 in the amount of P3,424,316.00 as well as manifested its option that the same be carried over as tax credit to the succeeding taxable year of 1998, thus the presumption that Petitioner has applied its 1996 unutilized tax credit to the taxable year 1998. Hence Petitioner has the obligation to show to this Court that the said 1996 excess tax payments were not carried over to the year 1998. Since in the case at bar Petitioner failed to include its 1998 ITR among the documents it offered as proof of its claim, the Court must deny the instant claim for refund.

The issue which is presented for our consideration is whether or not Petitioner is entitled to the refund of its excess income tax payments for the year 1996 in the total amount of P3,424,316.00.

The Court agrees with Petitioner's point that before the effectivity of the Tax Reform Act of 1997 (RA No. 8424), 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 (***Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991***). However, since in the case at bar Petitioner clearly shows, prior to its latest (second) amendment to its 1997 ITR, that it opted to carry over its 1996 excess tax payment, which were not utilized in the succeeding year 1997 due to losses, to the next succeeding year 1998, Petitioner cannot use the above reason that since the 1996 excess tax payments were not utilized in the succeeding year 1997, Respondent has to refund the said amount. If Petitioner had actually credited its 1996 excess tax payments indicated in its 1996 and 1997 ITR's to its 1998 income tax liabilities then the petition should be denied for there is no other way from which the petition can be premised. However, if the claimed refund was not, credited to the year 1998 for one reason or another then the claim for refund or tax credit can be granted provided there is a clear showing that the refundable amount was not applied to the said year of 1998.

Ironically, Petitioner failed to present in evidence its 1998 Income Tax Return. Such document is indispensable in determining whether or not Petitioner applied its 1996 excess tax payments, which were not utilized in 1997 due to losses, to its income tax liability in 1998. Petitioner cannot expect this Court to venture a wild guess on whether or not the same was applied or not. Since the burden of proof lies with the taxpayer-petitioner claiming for a refund or credit, it is incumbent upon Petitioner to prove that the refundable amount was not actually credited to its income tax liability for 1998.

Simply stated, when the taxpayer-petitioner opted to apply its excess tax payments (refundable amount) as a tax credit for the succeeding years it is important to present as evidence the succeeding years' Income Tax Return for verification if the amount was credited against its income tax liability for that year.

Verily, the glaring fact remains that in the instant case there is absence of evidence on record that would support that Petitioner did not actually credit the amount refundable to the succeeding taxable year of 1998. It may not be amiss to point out that in a claim for refund, it is incumbent upon Petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund. This is true since claims for refund are construed in *strictissimi juris* against the taxpayer (***Philippine Bank of Communication vs. CIR, CTA & Court of Appeals, GR. No. 112024 promulgated January 28, 1999; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332***). We are therefore unable to find for the Petitioner's entitlement of the claimed refund as a matter of fact.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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