REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

BANK OF AMERICA, NT & SA
(Manila Branch),
Petitioner,

-versus- C. T. A. Case No. 4273

8/24/93

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - - x

D E C I S I O N

This is a claim for refund or tax credit initiated by petitioner for its overpaid income tax for December 31, 1986 and 1987, arising from excess quarterly income tax payments for the year 1986.

Petitioner Bank of America is a foreign corporation duly licensed to engage in banking business in the Philippines in accordance with Philippine Laws. As such, petitioner has the status of a resident foreign corporation or a Philippine Branch, for taxation purposes.

It appears that for the calendar year ended December 31, 1986, petitioner filed its Annual

Income Tax Return on September 4, 1987 [Exh. A and A-1] reflecting the following income tax payments:

a) Prior Year's (1985) Excess Credit (tax payment) [Exh. M & M-1]	*P 12,754,949.19*
b) First Quarter 1986 Tax Payment (May 30, 1986) [Exh. B & C]	*8,259,314.81*
TOTAL INCOME TAXES PAID	*P 21,014,264.00*

In the same 1986 corporate income tax return, petitioner declared a tax liability in the total amount of P12,101,524 (for both the regular banking unit for P10,234,915 and the FCDU unit for P1,866,609). Petitioner therefore considered itself to have overpaid its 1986 income tax liability in the amount of P8,912,740 which is likewise reflected in 1986, thus representing petitioner's excess tax credit for the year ended December 31, 1986.

For the succeeding taxable year 1987, petitioner filed its Annual Income Tax Return [Exh. P] and only the amount of P1,149,396 was applied against petitioner's quarterly income tax liabilities during the taxable quarter for that year as petitioner declared a net loss. It appears then that petitioner had an unutilized excess tax credit or overpaid income tax of

P7,763,344 (P8,912,740 less P1,149,396) as of December 31, 1987 [Exh. O]. This income tax return was filed with the Bureau of Internal Revenue on April 15, 1988.

On May 19, 1988, petitioner, through its auditors, filed with the respondent a request for refund or the issuance of a tax credit certificate in a letter, dated March 4, 1988 [Exh. K]. A supplemental letter, dated May 24, 1988, was filed by the auditors, for and in behalf of the petitioner, requesting for the refund or issuance of a tax credit for the amount of P7,763,344 as overpaid income tax or excess tax credit as of December 31, 1986, net of the application of P1,149,396 [Exh. L].

Respondent failed to act on petitioner's claim for refund.

In respondent's Answer to the instant petition, he admitted all averments relating to the filing and existence of petitioner's income tax return for the calendar year ended on December 31, 1986, but specifically denies veracity of the entries in said income tax on the ground that said income tax return is still subject to the "usual verification and investigation." He likewise admitted that petitioner requested from the respondent a tax credit in the amount of P7,763,344 but specifically denies the reasons advanced in said letter as being "erroneous conjectures."

As special affirmative defenses, respondent averred, among others, that:

> *a) The petition states no cause of action as it does not allege when the tax sought to be credited was paid;*
>
> *b) The amount of P7,763,344 claimed by petitioner as overpaid net income tax for the year 1986 was paid in accordance with law and regulations;*
>
> *c) Claims for refund are strictly construed against the taxpayer and in the instant case the same is not properly documented let alone that the same is still pending "pre-audit" pursuant to Revenue Memorandum Order No. 32-76, dated June 11, 1976, implementing the provisions of Sections 85 and 86 (now Sec. 69) of the Tax Code.*

During the hearing of this case, respondent, after a series of postponements, failed to submit any evidence. Instead, he submitted his case for decision on the "bases of the pleadings and the evidence presented by the petitioner" [Hearing on September 7, 1992, p. 106, CTA records]. He did not even file a Memorandum to buttress, at the very least, the allegations in his Answer [Manifestation, dated January 5, 1993, p. 140, CTA records]. It is likewise noted that the respondent even failed to transmit to this Court the BIR records of the case as required in Section 2, Rule 7 of the Rules of this Court which could have aided this Court in making an overall assessment of the evidence in deciding this case.

The sole issue to be resolved is whether or not petitioner is entitled to the refundable amount for the years ended December 31, 1986 and 1987 representing unutilized overpaid income tax in the amount of P7,763,344, pursuant to Section 69 in relation to Section 230 of the National Internal Revenue Code.

The evidence presented by petitioner is uncontroverted. As earlier stated, respondent did not present any evidence in support of his case. During the hearing of this case, respondent did not even cross-examine the solitary witness, Augusto Monzon, Senior Administrative Clerk of the Bank of America, presented by petitioner [Hearing of March 1, 1989].

As ably presented by petitioner in his Memorandum, dated November 6, 1992 [pp. 118-133, CTA records], the following is the "sequence" of vital documentary evidence in the form of year-end and quarterly income tax returns and payments made by the petitioner to give a clearer picture of the overpaid income tax or excess tax credit which it now seek to be refunded:

Corporate Annual Income Tax Return
Filed on April 15, 1986
(Year Ended December 31, 1985)

Income		P1,138,654,298.00
Less : Deductions		989,951,265.00
Net Income		148,703,033.00
Tax Rate		35%
Income Tax Due		52,036,061.00
Less:Prior Year's Excess Credit	P 698,917.19	
Quarterly Payments During the Year	64,366,634.33	65,065,551.52
Excess Tax Credit		13,029,490.52
Add : Creditable Taxes Withheld		4,816.67
TOTAL		13,034,307.19
Less: FCDU Payments		279,358.00
Total Amount to be Applied as Tax Credit to Succeeding Year		P 12,754,949.19

<u>For the Quarter Ended March 31, 1986</u>

Gross Income	P 264,901,163.00
Less: Deductions	204,831,836.00
Taxable Net Income	60,069,327.00
Tax Rate	35%
Income Tax Due	21,014,264.00
Less: Tax Credit for 1985	12,754,949.19
Income Tax paid for the Quarter	P 8,259,314.81

Final Corporate Annual Income Tax Return
Filed on September 4, 1987
(Year Ended December 31, 1986)

Income		P 708,043,119.00
Less : deductions		678,800,505.00
Net Income		29,242,614.00
Tax Rate		35%
Income Tax Due		10,234,915.00
Less:Prior year's excess credit	P 12,754,949.19	
Quarterly Payments during the year	8,259,314.81	21,014,264.00
Excess Tax Credit		10,779,349.00
Less: FCDU Payment		1,866,609.00
Refundable Amount		P 8,912,740.00

Corporate Annual Income Tax Return
(Year Ended December 31, 1987)

Refundable Amount as at December 31, 1986	P 8,912,740.00
Less: Amount Applied in Taxable Year 1987	1,149,396.00
Refundable Amount (Exh. O)	**P 7,763,344.00**

Did Petitioner file its administrative claim for refund within the time prescribed by Section 230 of the NIRC? Based on the evidence presented, petitioner complied with that requirement.

Section 230 of the NIRC provides thus:

"__Section 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 filed with the Commissioner; but such 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 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." (underscoring supplied)

The general rule is that the two-year period is counted from the date of payment. However, under Sections 68 and 69 of the NIRC, corporations are required to file quarterly income tax and a final adjustment return covering the total net income from the preceding calendar or fiscal year and the corresponding adjustment has likewise to be made in filing an administrative claim for refund with the Commissioner of Internal Revenue. To quote the pertinent provisions of law:

Section 68. Declaration of Corporate Quarterly Income Tax. - Every corporation shall file in duplicate a quarterly summary declaration of its gross income and deductions on a cumulative

> *basis for the preceding quarter or quarters upon which the income tax, as provided in Title II of this Code shall be levied, collected and paid. The tax so computed shall be decreased by the amount of tax previously paid or assessed during the preceding quarters and shall be paid not later than sixty (60) days from the close of each of the first three (3) quarters of the taxable year, whether calendar or fiscal year.*
>
> ***Section 69.*** ***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 year is not equal to the total due on the entire taxable net 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 liabilities for the taxable quarters of the succeeding taxable year. (underscoring supplied)*

The time for filing the administrative claim for refund or tax credit and the judicial action taken thereon was never raised by the respondent. In fact, respondent unqualifiedly admitted Exhibits K and L of the petitioner which were the letters of the auditors of the petitioner, dated March 4, 1988 and May 24, 1988, respectively, requesting for refund in the amount of P7,763,344 (p. 76, CTA records). Be that as it may, the reckoning date in the determination of the two-year prescriptive period to institute the claim for refund of this nature should be the last day for filing of the final adjustment income tax return covering the total net income for the preceding calendar or fiscal year as provided by Section 69 of the NIRC. In this case, therefore, petitioner filed its final adjustment income tax return for the year 1986 on September 4, 1987. Its administrative claim was filed on May 19, 1988 and the judicial suit, i.e., petition for review before this Court, was initiated on May 27, 1988, all within the prescribed period mandated by Section 230 of the NIRC.

The Supreme Court has in fact already ruled and interpreted this matter in the case of ACCRA Investments Corporation vs. Commissioner of Internal Revenue, G. R. No. 96322, December 20, 1991, when it pointedly stated that:

> *"Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our resolution dated April 10, 1989 in the case of*

> *Commissioner Internal Revenue vs. Asia Australia Express, Ltd. (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.*
>
> *It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that the ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The 'date of payment,' therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982."*

Respondent failed to respond to the claim for refund instituted by the petitioner giving the latter no other recourse except to bring the instant petition for review before this Court.

Having therefore proven that petitioner has overpaid income tax in the amount of P7,763,344.00 for the taxable year in question, it is thus entitled to a refund as required by law.

WHEREFORE, judgment is hereby rendered directing respondent to refund or issue a tax credit certificate in the amount of P7,763,344.00 representing unutilized excess tax credit or overpaid income tax for the years ended December 31, 1986 and 1987. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, 24 August 1993.

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