LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANILA ELECTRIC COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 5091

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 02 1997

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# DECISION

This is a judicial claim for the refund of alleged overpaid income tax in the total amount of P21,583,920.00 for the calendar year 1991.

Petitioner Manila Electric Company (Meralco) is a domestic corporation duly organized and existing under the laws of the Philippines and it exists by virtue of a legislative franchise under Act No. 484, as amended by Republic Act 4159 and Presidential Decree No. 551, dated September 11, 1974. It is engaged in the business of generating, distributing and selling electricity in Metro Manila and its suburbs.

On April 14, 1994, petitioner filed a letter-claim for refund/tax credit of alleged overpaid income tax in the total amount of P21,583,920.00 for the taxable year 1991. Petitioner alleged that for taxable year 1991 it paid an income tax of P590,511,450.00, as shown by its tentative income tax return. In an amended income tax return filed on April 14, 1994, petitioner reflected a tax due of only P568,927,530.00 for the said year 1991 resulting to the alleged overpayment of P21,5837,920.00 computed by the petitioner, as follows:

| | |
|---|---|
| Tax paid (Per Tentative ITR) | P590,511,450.00 |
| Tax due (Per Amended ITR) | 568,927,530.00 |
| Refundable amount for 1991 | P 21,583,920.00 |

This overpayment was a result of the deductions of the expansion reinvestment allowance allegedly granted by the BOI to the petitioner in the sum of P71,707,375.00 on its taxable income for the year 1991 which therefore altered the amount of tax due for the same taxable year. Petitioner in this same letter-claim for refund, illustrated the overpayment in this manner:

> We wish to inform you, however, that the BOI has recently granted the amount of P71,707,375.00 as our client's allowable expansion reinvestment allowance deduction from its taxable income. Accordingly, our client filed an amended income tax return for 1991 and recomputed its tax liability as follows:
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> | | |
> |---|---|
> | Gross Income | P28,003,355,119.00 |
> | Less: Deductions as adjusted [P26,316,579,546 + (71,727,375 - 10,039,031)] | 26,378,247,890.00 |
> | Net Income, as adjusted | P 1,625,507,229.00 |
> | Tax Due, as adjusted | P 568,927,530.00 |
>
> Considering that our client has erroneously paid to the BIR the amount of P590,511,450.00, it is therefore legally entitled to a refund of (or issuance of a tax

credit certificate) for the 1991 excess income tax payment in the amount of P21,583,920.00 computed as follows:

| | | |
|---|---|---|
| Tax Paid | P | 590,511,450.00 |
| Tax Due | | 568,927,530.00 |
| Excess Income Tax Payment | P | 21,583,920.00 |

On April 14, 1994 or on the same day petitioner filed the letter claim for refund with the BIR, a petition for review reiterating the same grounds proposed in the administrative level, was filed with this Court.

Respondent, in her Answer, filed on July 5, 1994, denied that petitioner overpaid its income tax for the taxable year 1991. Furthermore, respondent stresses that the petitioner's acts of filing its administrative claim for refund and the petition for review with this Court on the same day constitutes a violation of the principle of exhaustion of administrative remedies.

The allegations proposed by both parties lead us to two issues, to wit:

1. Whether or not petitioner is entitled to deduct from its taxable income for 1991, the amount of P71,707,375.00, representing the expansion reinvestment allowance allegedly granted in its favor by the BOI, and;

2. Whether or not the petitioner is entitled to the refund of P21,583,920.00 as overpaid income tax for the taxable year 1991.

Petitioner alleges that on December 2, 1991, it filed a letter-request with the Board of Investments for an expansion reinvestment allowance to be used for its expansion project for the year 1991 pursuant to the provisions of Article 45(I) of P.D. No. 1785 (Exhibit "Q"). Petitioner further claims that this application was eventually granted by the BOI in a letter, dated January 2, 1995, allowing the amount of P71,707,375.00 to be deducted from its taxable income in 1991. However, petitioner had already filed its Tentative Annual Corporate Income Tax Return (ITR) for the taxable year 1991 (Exhibit "B") and claimed as deduction an expansion reinvestment allowance of only ₱10,039,031.00 which petitioner asserts to be understated by ₱61,688,344.00, illustrated as follows:

| | |
|---|---|
| Expansion reinvestment allowance per tentative ITR | ₱10,039,031.00 |
| Approved application for expansion reinvestment allowance | 71,707,375.00 |
| Understated Expansion Reinvestment Allowance | ₱61,668,344.00 |

As a result, petitioner submitted an Amended Corporate Annual Income Tax Return for the taxable year 1991 (Exhibit "L") reflecting the allowable deduction of P71,707,375.00 thus resulting to a refundable amount of P21,583,920.00.

Respondent did not directly address the issue of whether or not petitioner is entitled to an expansion reinvestment allowance in the stated amount or whether or not such amount should be allowed as a deduction from petitioner's income tax due for the taxable year 1991. Respondent, however, made the general statement that petitioner did not overpay its income tax for the taxable year 1991, hence was not entitled to the refund claimed. Moreover, respondent questioned the propriety of filing the administrative claim for refund and the judicial claim for refund on the same day and declared that this constituted a violation of the principle of exhaustion of administrative remedies. Apart from the Answer filed, respondent failed to present any evidence to refute the petitioner's claim nor submitted any memorandum.

The allegation of respondent with regard to the violation of the principle of exhaustion of administrative remedies deserves our foremost consideration as it will determine whether or not the other issues raised are still worthy of attention.

Respondent avers that petitioner's acts of filing its administrative claim for refund and the petition for review with the Court of Tax Appeals all on the same day constitutes a violation of the principle of exhaustion of administrative remedies because such a situation did not allow her office an opportunity, even for a single day, to study and/or act on petitioner's written claim for refund. The facts of this case show that petitioner filed its written claim for refund with the Bureau of Internal Revenue on April 14, 1994 (Exhibit "M") and on the same day (April 14, 1994), it elevated a petition for review with this Court reiterating the same grounds found in the original claim.

Petitioner remained silent on this particular allegation even when it filed its memorandum on July 23, 1996. The memorandum contains arguments in support of the legality of the deductions made on its taxable income which resulted in a refundable amount for the taxable year 1991. Existing jurisprudence, however, has answered this particular issue in favor of the petitioner.

In the case entitled **Commissioner of Internal Revenue v. Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA G.R. SP No. 34102, September 19, 1994**, the Court of Appeals declared that the law does not require that a claim for refund should be filed at the earliest instance in order to give the respondent the time to rule on the claim. It further added that it is sufficient that the taxpayer takes advantage of the two-year period prescribed by law for filing the claim for refund and we quote:

> "Accordingly, We do not agree with appellant that it is necessary for the Commissioner of Internal Revenue to act unfavorably on the claim for refund before the Court of Tax Appeals may acquire jurisdiction. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute.
>
> Neither are We convinced that the law requires that the claim for refund should have been filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. The law fixed the same period - two years - for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of decision) for appealing to the court, thus clearly implying that the prior decision of the Commissioner is necessary for the court to take cognizance of the case. While it may be true that the Court of Tax Appeals is essentially an appellate court, and should act only upon claims for refund that are unfavorably decided by the Commissioner, the remedy is addressed to the legislature.
>
> The taxpayer cannot be faulted for taking advantage of the full two-year period prescribed by law in filing his claim for refund. The Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner can be pending simultaneously with a suit for refund filed with said court:
>
>> "xxx. In fact the records will show that from the time Petitioner filed its claim for refund either

> from April 2, 1986 or April 4, 1988 up to promulgation of this decision on December 20, 1993, respondent has failed to act favorably or unfavorably on the said claim for refund. The institution of a petition for review covering claim for refund filed with the Bureau of Internal Revenue has never been a bar to the continuous administrative processing of claim for refund. In fact in number of cases filed before this court, petition for review were withdrawn afterwards by the petitioner from this court by reason of the grant of the refund by the respondent." (See Order denying Motion for Reconsideration, dated April 27, 1994)

In the instant case, petitioner adopted the calendar basis for reporting its income tax for 1991 and accordingly filed its Income Tax Return on April 15, 1992. Petitioner then filed its administrative claim for refund with the Bureau of Internal Revenue on April 14, 1994 and simultaneously elevated a petition for review on that same day on April 14, 1994 in a hurried attempt to beat the two-year prescriptive period for filing a claim for refund. It should be added that on that eventful day of April 14, 1994, petitioner also filed its amended income tax return for its 1991 income tax liabilities reflecting therein the deductions of its expansion reinvestment allowance resulting in the present claim for refund (Exhibit "L").

In the light of the aforequoted decision of the Court of Appeals, there is no legal impediment in filing the administrative claim for refund with the BIR simultaneously with the petition for review in the Court of Tax Appeals as long as these two acts fall within the two-year prescriptive period prescribed by Section 230 of the Tax Code which provides as follows:

> 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 of Internal Revenue; 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.
>
> xxx xxx xxx

Clearly, the abovecited provision of law fixed a period of two years both for filing the claim for refund and the filing of a suit in court and as long as these two acts fall within this period then, there is no legal impediment to the judicial claim for refund as in the instant case.

With regard to the merits of the claim for refund, petitioner explains that the expansion reinvestment allowance granted by the Board of Investments on January 11, 1995 (Exhibit "P") in the amount of P71,707,300.00 and allowed to be deducted from its taxable income for 1991 had the effect of altering the tax due for the said year resulting in an overpayment of P21,583,920.00 which is now the subject of the present claim for refund.

Respondent's lethargic response to the aforementioned allegations of petitioner manifested by her failure to offer any substantial arguments and corresponding evidence, leads this Court to resolve this case based on the evidence submitted by the petitioner.

Petitioner maintains that as a BOI-registered non-pioneer enterprise with Certificate of Registration No. 82-280 (Exhibit "A"), it is entitled to an expansion reinvestment allowance (ERA) allowed to be deducted from its taxable income in the year when such reinvestment is made, pursuant to Article 45(i) of Presidential Decree No. 1789.

To support its claim for refund, petitioner presented the letter issued by the Board of Investments

(Exhibit "R") allowing them to deduct the amount of P71,707,300.00 as expansion reinvestment allowance, from its taxable income for 1991, pertinent portions of said letter are quoted hereunder, thus:

> "Please be advised that your request for Board of Investments approval for declaration of stock dividends in the amount of P71,707,300.00 for purposes of expansion reinvestment allowance (ERA) to be deducted from your taxable income for the year 1991 was approved by the Board thru MANCOM Resolution No. 88-31 Series of 1994 dated November 25, 1994 subject to certain conditions and payment of fine for failure to secure prior BOI approval x x x"

The tentative corporate annual income tax return for 1991 as well as its amended income tax return (Exhibit "B", and "L") were all presented as evidence to illustrate the differences in the tax liabilities arising from the deductions made by the petitioner of its expansion reinvestment allowance on its 1991 taxable income. In addition, petitioner presented proofs of payment of its income tax liabilities for 1991 before it deducted the allowed ERA to illustrate the overpayment made during that taxable year.

The evidence presented by the petitioner which were not controverted by the respondent clearly point towards the refundability of the amount claimed.

The overpaid income tax of petitioner is rooted on the expansion reinvestment allowance granted to petitioner by virtue of Article 45(i) of Presidential Decree No. 1789, as an incentive given to registered non-pioneer enterprise, thus:

**ARTICLE 45**

(i) *Deduction from Expansion Reinvestment.* - When a registered enterprise reinvests its undistributed profit or surplus, whether from registered operations or not, by actual transfer thereof to its capital for procurement of machinery, equipment and spare parts previously approved by the Board under paragraphs (d) and (e) of Article 45 or for the expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested, to the extent of 25%, $37^1/_2$, 50%, the appropriate percentage to be determined by the Board for each industry taking into account the relative risk, technology transfer and fall-out, export potential, incremental labor, use of locally manufactured machinery and equipment and domestic raw materials, shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: *Provided,* (1) That prior approval of the Board of such reinvestment was obtained by the registered enterprise planning such reinvestment, and (2) That the registered enterprise does not reduce its capital stock represented by the reinvestment within seven (7) years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made or reduces its capital stock represented by the reinvestment within a period of seven (7) years from the date of reinvestment, a recomputation of the income tax liability therefor shall be

> made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest.

This expansion reinvestment allowance was allowed to be deducted on petitioner's taxable income for 1991 as directed by the Board of Investments in a letter, dated January 11, 1995, and presented to this Court as Exhibit "P". Since this allowance was granted only in 1995 and referred to petitioner's income tax liabilities for 1991, petitioner made sure that the claim for refund was made within the two-year prescriptive period which is why the administrative claim for refund and the petition for review filed in this Court were both filed in 1994 prior to the actual approval of the said allowance which was granted in 1995. This particular strategy of the petitioner allowed it to beat the two-year prescriptive period while waiting for the approval of its application that was eventually granted in 1995 during the pendency of the hearings on this case. At the time petitioner was ready to file its formal offer of evidence on May 11, 1995, it already had in its possession the letter approval issued by the Board of Investments.

A review of the evidence presented by the petitioner led this Court to conclude that petitioner is entitled to the refund of the amount of P21,583,865.60. This Court noted that the expansion reinvestment allowance granted to the petitioner is only in the amount of P71,707,300.00 as seen in Exhibits "P" and "R" and not P71,707,375.00 as claimed by the petitioner, thus the refundable amount was adjusted accordingly. Shown hereunder is the tabular computation of petitioner's claim for refund:

| | | | | | |
|---|---|---|---|---|---|
| Gross income for the year 1991 | | | | | P28,003,755,199.00 |
| Less deductions: | | | | | |
| Per tentative 1991 ITR | | | | P26,316,579,546.00 | |
| Add balance of ERA granted by BOI [Exh. P less B-4] (P71,707,300.00 - 10,039,031) | | | | 61,668,269.00 | 26,378,247,815.00 |
| Adjusted net income | | | | | P 1,625,507,384.00 |
| Income tax due thereon (P1,625,507,384.00 x 35%) | | | | | P 568,927,584.40 |
| Less income tax paid for 1991: | | | | | |
| Qtr. | CR/ROR No. | Date | Exh. | Amount | |
| 1st | B2138601 | 05-31-91 | D | P185,640,600.00 | |
| 2nd | B23295015 | 08-29-91 | G | 135,160,867.00 | |
| 3rd | B23374339 | 11-29-91 | J | 112,159,135.00 | |
| Annual | Bank validation | 04-15-92 | B-2 | 157,550,848.00 | 590,511,450.00 |
| AMOUNT REFUNDABLE | | | | | P 21,583,865.60 |

**WHEREFORE**, in view of the foregoing, petitioner's claim for refund/tax credit in the amount of P21,583,865.00 representing overpaid income tax for the taxable year 1991, is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a tax credit certificate in favor of the petitioner in the amount of P21,583,865.00.

**SO ORDERED.**

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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
Court of Tax Appeals