LIB.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**HYATT OF HONGKONG LIMITED
PHILIPPINE BRANCH,**
Petitioner,

- versus -

C.T.A. Case No.4959

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:
JUL 16 1996

x -- x

DECISION

This is a claim for the refund of alleged overpaid income tax for the years 1990 and 1991 in the total amount of P1,275,096.00.

Petitioner is the Philippine branch of a foreign corporation primarily authorized to engage in the business of managing hotels.

For taxable year 1990, Petitioner filed with the BIR its final corporate income tax return (Exh. A) showing a refundable income tax paid amounting to P1,224,435 arising from quarterly payments and excess creditable income tax withheld for the year.

For taxable year 1991, Petitioner filed with the BIR its corporate annual income tax return (Exh. L and submarkings) on April 15, 1992 showing a tax due of P411,062.00 and a refundable income tax paid amounting to P1,275,096.00 computed as follows:

Tax due				P 411,062.00
Less:				
	a)	Prior year's excess credit	P1,224,435.00	
	b)	Creditable tax withheld	461,723.00	1,686,158.00
		Refundable		**P1,275,096.00**

Said excess income tax payments for the taxable year 1990 and 1991 amounting to P1,275,096.00 was not utilized by Petitioner as tax credit for the taxable year 1992 (Exh. P-3)

On January 16, 1993, Petitioner filed an administrative written claim for refund for the above amount but was never acted upon by the Respondent.

Hence, this appeal.

The only issue is: Whether or not Petitioner is entitled to said refund.

We answer in the affirmative.

Records of the case readily show that Petitioner, indeed, is entitled to the refund claimed. The Respondent did not object to the documentary and testimonial evidences presented by the Petitioner supporting its case. In fact, Respondent did not present any evidence disproving Petitioner's claim for refund. In fine, respondent has no serious objections to said claim which she should have granted in the administrative level.

Section 69 of the National Internal Revenue Code, provides, thus:

> "**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 said taxable year is not equal to the total tax 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, <u>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.</u>" (*Underscoring supplied*)

The pertinent provision of Revenue Memorandum Circular (RMC) Nos. 7-85 and 32-76, also states, that:

> "In the above provision of the Regulation (Section 7 of the Revenue Regulations No.10-77), the corporation may request for the refund of the overpaid income tax or claim for automatic credit. <u>To</u>

insure prompt action on corporate annual income tax returns showing refundable amounts arising from overpaid quarterly income taxes, this office has promulgated Revenue Memorandum Order No.32-76 dated June 11, 1976, containing the procedures, in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted; and, this procedure was adopted to facilitate immediate action on cases like this. x x x" (*Underscoring supplied*)

The aforesaid provisions of law and RMC allow the automatic carry-over and application of the excess tax credits against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Thus, since the prior year's excess tax credit of Petitioner was not utilized against its income tax liabilities for the succeeding taxable year 1992 , Petitioner, therefore, is clearly entitled to the refund of the excess amount paid.

WHEREFORE, the refund claimed by the Petitioner is hereby **GRANTED. ACCORDINGLY**, Respondent is hereby **ORDERED** to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the Petitioner in the amount of P1,275,096.00 representing overpaid income tax for taxable years 1990 and 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
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