CC - remanded to CTA for further proceeding

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION,
Petitioner,

-versus - C.T.A. CASE NO. 4099

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/28/91

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D E C I S I O N

This case involves a claim for refund of overpaid income taxes for calendar years 1983, 1984, and 1985 amounting to P19,971,745. This amount is the cumulative total of the income tax payments made by petitioner on its quarterly income tax returns, taxes withheld on proceeds from its investments in government securities and on its rental income. Hereunder is a summary of petitioner's final adjustment returns for the years involved:

1983

Net Income		P 21,859,364
Tax Due		P 7,640,778
Previous year's creditable amount	P 2,229,060	
Quarterly payments	10,239,072	(12,448,032)
Balance of Tax due		(4,847,354)
Tax Credits (W/T on income from Gov't. Securities and rental income)		(61,763,869)
Tax Refundable		P (6,611,223)

1984

Net Income		P 13,501,522
Tax Due		4,715,533
Previous year's creditable amount	P 6,611,223	
Quarterly payments	16,214,599	(22,825,822)
Balance of Tax Due		(18,110,289)
Tax Credits (W/T on income from Gov't. Securities and rental income)		(1,987,752)
		(20,098,041)
FCDU payable		150,252
Tax refundable		P (19,974,789)

1985

Net Income		P (46,855,560)
Tax Due		P - 0 -
Previous year's creditable amount	P19,947,789	
Quarterly payments	- 0 -	(19,947,789)
Balance of Tax due		P (19,947,789)
Tax Credits (W/T on income from Gov't. Securities and rental income)		(42,830)
		(19,990,619)
FCDU payable		18,874
Tax refundable		P (19,971,745)

Petitioner filed a claim for refund with the Commissioner of Internal Revenue of August 26, 1986 and instituted this petition for review on August 28, 1986 in order to prevent prescription (or to halt, the ~~the tolling~~ of the statute of limitation.

Respondent, in its answer, alleged that a mere averment that petitioner incurred a net loss for 1985 does not *ipso facto* merit a refund; that the amounts of P6,611,223 (overpaid income tax for 1983), P1,959,514 and P28,238 (withheld taxes in 1984) were not properly documented; and, that the right to claim for a refund with respect to income payments prior to August 28, 1984 has prescribed pursuant to Sections 292 and 295 of the 1977 Tax Code as amended (now Sections 230 and 204). However, it did not present the BIR records nor any other evidence and instead submitted this case based on the pleadings and petitioner's evidence. Both parties agreed to submit the case for decision without memoranda.

The issues prescribed before this Court for resolution are as follows:

> (1) Whether or not claim for refund with respect to income payments prior to August 28, 1984 has prescribed;
>
> (2) Whether or not petitioner has substantiated its claims for refund for the period which has not prescribed.

Respondent's contention that the claim for refund of amounts paid prior to August 28, 1984 has prescribed because the claim for refund thereof was filed beyond the two-year prescriptive period under Section 230 of the Tax Code is unavailing. With respect to the taxes withheld at source, the Supreme Court held in ***Gibbs v Commissioner of Internal Revenue*** *(15 SCRA 318, November 29, 1965)*.

> "A taxpayer, resident or non-resident, who contributes to the withholding tax system, does so not really to deposit an amount to the

> Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at source will be deemed to have paid his income tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 of the Revenue Code starts to run with respect to payments effected through the withholding tax system. It is of no consequence whatever that a claim for refund or credit against the amount withheld at source may have been presented and may have remained unresolved *since the delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute."*

While in ***Commissioner of Internal Revenue v. Asia Australia Express*** *(Supreme Court Resolution, GR 85956, April 10. 1989, affirming this Court's decision in* ***Asia Australia Express v. Commissioner of Internal Revenue****)*, the High Court stated that,

> "[Court of Tax Appeal's] ruling that the private respondent's right to claim the refund of excess income taxes (paid by it in quarterly installments) for 1981 and 1982, had not yet prescribed is supported by Our decision in Collector of Internal Revenue v. Prieto, 2 SCRA 1007 and Commissioner of Internal Revenue v. Palanca, Jr., 18 SCRA 496, where we ruled that "When a tax is paid in quarterly installments, the prescriptive period of two years provided in Section 306 (now

> Section 292) of the National Internal Revenue Code should be counted from the date of final payment." The "final payment" is the last quarter payment at the end of the fiscal year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its business operations."

Following said pronouncement, this Court held in ***Unibake Inc. v. Commissioner of Internal Revenue*** *(CTA Case No. 3987, July 31, 1989)* that "the taxpayer has until the fourth month following the close of the fiscal period within which to file a final adjustment return of the preceding fiscal year (Sec. 87, Tax Code) which may well be the reckoning date for the 2-year prescriptive period."

Thus, the prescriptive period for refund of the overpaid taxes for the years involved computed in accordance with the provision of Article 13 of the New Civil Code are as follows:

Tax Year (Calendar basis)	1983	1984	1985
Final adjustment return filed on -	4/16/84	4/15/85	4/15/86
2-year period expires on -	4/15/86	4/14/87	4/13/88
Claim for refund filed on -	8/26/86		
Petition for Review filed on -	8/28/86		

It is clearly seen that the claim for refund of overpaid taxes in 1984 and 1985 were timely filed whereas the claim for 1983 has already prescribed. Petitioner cited BIR Memorandum

Circular 7-85 dated April 1, 1985 as authority to the effect that an income tax overpayment is not an erroneously or illegally paid tax within the contemplation of Secs. 230 and 204 of the Tax Code. Pertinent portions of the Memorandum Circular is reproduced below:

April 1, 1985

REVENUE MEMORANDUM CIRCULAR NO. 7-85

SUBJECT: PROCESSING OF REFUND OR TAX CREDIT OF EXCESS CORPORATE INCOME TAX RESULTING FROM THE FILING OF THE FINAL ADJUSTMENT RETURN

TO: : All Internal Revenue Officers and Others Concerned

Sections 85 and 86 of the National Internal Revenue Code provides:

xxx xxx xxx

The foregoing provisions are implemented by Sec. 7 of Revenue Regulations Nos. 10-77 which provide:

xxx xxx xxx

It has been observed, however, that because of the excess tax payments, corporations file claims for recovery of overpaid income tax with the Court of Tax Appeals within the two-year period from the date of payment, in accordance with Sections 292 and 295 of the National Internal Revenue Code. It is obvious that the filing of the case in court is to preserve the judicial right of the corporation to claim the refund or tax credit.

It should be noted, however, that this is not a case of erroneously or illegally paid tax under the provisions of Sections 292 and 295 of the Tax Code.

In the above provision of the Regulations, the corporation may request for the refund of the overpaid income tax or claim for automatic tax credit. To 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 procedure 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.

In this regard, therefore, there is no need to file petitions for review in the Court of Tax Appeals in order to preserve the right to claim refund or tax credit within the two-year period. As already stated, actions hereon by the Bureau are immediate after only a cursory pre-audit of the income tax returns. Moreover, a taxpayer may recover from the Bureau of Internal Revenue excess income tax paid under the provisions of Section 86 of the Tax Code within 10 years from the date of payment considering that it is an obligation created by law *(Article 1144 of the Civil Code)*.

xxx xxx xxx

Tomas C. Toledo
Acting Commissioner

The above Memorandum Circular is contrary to law and thus has no force and effect. Although the title of Sec. 230 of the Tax Code is "Recovery of Tax Erroneously or Illegally Collected", the title alone is not controlling. By the tenor of Sec. 230, the two-year limit applies to actions to recover -

1. any national internal revenue tax erroneously or illegally assessed or collected;

2. any penalty claimed to have been collected without authority; or

3. any sum alleged to have been excessive or in any manner wrongfully collected

(See Muller & Phipps v. Commissioner of Internal Revenue, 103 Phils 145, March 20, 1958). The overpaid income taxes in this case fall under #3 for although they were legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they were nonetheless "excessive".

Sections 85 and 86 (now Secs. 68 and 69) of the Tax Code and Revenue Regulation 10-77 gives the taxpayer the option, in case of a tax overpayment shown in its final adjustment return to ask for a refund or to have the overpayment credited against the estimated quarterly tax liability for the succeeding year. Nowhere it is stated therein that there is no longer any need to file a petition for review with respect to such overpayment. 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*[1]). 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

[1]Pending appeal in the Court of Appeals as of March 20, 1991.

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.

At the very least then, the automatic tax credit provision acts like a claim for refund for the year of overpayment because it serves the same purpose which is to put the BIR on notice that the collection of the tax is being contested. But, settled is the rule that even when a claim for refund or tax credit is pending with the Commissioner, when the 2 year period from the date of payment is about to elapse the taxpayer need not await the Commissioner's decision and instead must file a petition for review in this court pursuant to Sec. 230 of the Tax Code. To opine therefore that there is no need to file a petition for review to preserve the right to claim for a refund or tax credit is to go against the positive mandate of Sec. 230. An administrative interpretation out of harmony or contrary to the express provision of a statute can not be given weight for to do so would in effect amend the statute *(Utah Hotel Co. v. Industrial Com., 151 P 2d 467, 153 ALR 1176 [1944]* *as cited in footnote no. 4, 2 Am Jur 2d 76).* Therefore, the taxpayer should still file a claim for a refund or tax credit and the corresponding petition for review within the periods required in case of overpayment of income tax reflected in its returns otherwise his right to claim for a refund or tax credit will prescribe. In ***Chemical Bank NY Trust Co. v. US,*** *(275 F Supp 26 aff'd per curiam 386 F 2d 995)*, it was held that "xxx an overpayment may not be credited against estimated tax for the following year and be deemed to have paid in following year for the purpose of the statute of limitations unless the claim for credit itself is asserted within the statutory period."

A fortiori, the statement in the memorandum circular that "a taxpayer may recover the excess income tax paid under the provisions of Sec. 86 within 10 years from date of payment because this is an obligation created by law" is erroneous. The Tax Code being a special law, its provisions prevail over those under the Civil Code. And since the overpayments arose out of the application of the provisions of the Tax Code, the provisions of the same on prescriptive periods should necessarily govern. As held in ***Commissioner of Internal***

Revenue v. Insular Lumber Co. *(21 SCRA 1237, Dec. 11, 1967)*,

> "Secs. 306 and 309 of the National Internal Revenue Code govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that "this provision" referring to Sec. 306 "which is mandatory, is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made *(**Guagua Electric Light v. Collector of Internal Revenue and Court of Tax Appeals** L-14421, April 29 1961, 59 OG [Supp. 27] 4207, 4210, cited in **Gonzales v. Court of Tax Appeals and Collector of Internal Revenue,** L-14532-33, May 26, 1965).*
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> xxx xxx xxx
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> Moreover, public policy demands that tax adjustments be made as early and expeditiously as possible. The reason is that it is on taxes that the government depends for its operation and that any uncertainty or controversy on those matters will somehow impair the smooth functioning of the governmental machinery. Lengthening, therefore, of the period of limitations on refund from two to ten years would be adverse to public policy. xxx"

More importantly, as the circular states the tax credit or refund is granted after a pre-audit which consists only in checking the mathematical accuracy of the figures in the return. **Taxation** being vital to the sustenance of government, **claims** for refund or tax credit require more than a "cursory pre-audit". The Bureau of Internal Revenue has the duty to determine not only the mathematical accuracy of the figures in the return but also the validity of the claimed deductions and correctness of the expenses claimed as well as the amount of income reported. Pursuant to such duty, it must be noted that under Secs. 235 and 203 of the Tax Code, the taxpayer is required to keep his books and records for only 3 years (5 years prior to 1984). The Commissioner will then have difficulty in verifying a claim filed after the 3rd year if indeed claims for refund were allowed to be filed within ten years.

The second issue is whether or not petitioner was able to substantiate its claim for refund.

Respondent alleges that the withholding taxes for the years claimed were not properly documented. On the contrary, petitioner presented statements and certificates of withholding taxes accomplished by its withholding agents. As held in ***Ateneo de Manila v. Commissioner of Internal Revenue*** *(CTA Case No. 3213, July 28, 1989)*, "proof of withholding is established by copies of statements duly issued by the various payors to petitioner". And in ***Ateneo de Manila v. Commissioner of Internal***

Revenue (CTA Case No. 3656, October 23, 1990), the withholding taxes claimed thereon were allowed because these were "covered by such requisite statements and certifications of taxes withheld at sources consistent with the prescribed revenue regulations." [Respondent did not object to the existence of statements and certificates which were offered by petitioner as proof of the withholding taxes but took exception to their contents and purpose. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the veracity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proofs of the taxes withheld despite the fact that it is well within their competence to do so. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, those amounts of withheld taxes which are supported by corresponding statements or certificates of withholding taxes admitted in evidence shall be allowed as tax credits.]

Respondent's contention that a mere allegation of loss in 1985 does not ipso facto merit a refund, is likewise unmeritorious. As stated, respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence the income tax returns should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax return, provide sufficient proof of a loss sustained by petitioner in 1985.

More importantly, one of the evidences presented by the petitioner is an audit report submitted by the BIR Assessment Branch and recommended by the Regional Director, Revenue Region 4-B-2, in connection with the investigation conducted by the BIR pursuant to petitioner's claim, recommending the refund of overpaid taxes for the years concerned *(Exhibits Y to Y-3, Records, pp. 185-188)*. To this report applies the presumption of regularity of performance of official duty (Rules of Court, Rule 131, Sec. 3) which has not been disputed by the respondent. Therefore, the audit report gives persuasive effect to petitioner's claim to the refund.

WHEREFORE, in view of the foregoing, petitioner is entitled to a refund but only for the overpaid taxes incurred in 1984 and 1985. The refundable amount as shown in its 1983 income tax return is hereby denied on the ground of prescription. Respondent is hereby ordered to grant a refund to petitioner Citytrust Banking Corp. in the amount of P13,314,506.14 representing the overpaid income taxes for 1984 and 1985, recomputed as follows:

1984 Income tax due		P 4,715,533.00
Less: 1984 Quarterly payments	P16,214,599.00*	
1984 Tax Credits -		
W/T on int. on gov't. sec.	1,921,245.37*	
W/T on rental inc.	26,604.30*	18,162,448.67
Tax Overpayment		(13,446,915.67)
Less: FCDU payable		150,252.00
Amount refundable for 1984		P(13,296,663.67)
1985 Income tax due (loss)		P - 0 -
Less: W/T on rentals		36,716.47*
Tax Overpayment		(36,716.47)*
Less: FCDU payable		18,874.00
Amount Refundable for 1985		P (17,842.47)

*Note:

These credits are smaller than the claimed amount because only the above figures are well supported by the various exhibits presented during the hearing.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 28, 1991.

ERNESTO D. ACOSTA
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

CONSTANTE C. ROAQUIN
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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals