LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE COCA-COLA EXPORT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5238

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 19 1997

x - x

DECISION

The issue presented for our consideration is whether or not petitioner's claimed net foreign exchange loss in the amount of P16,753,404.00 for the year 1992, falls within the definition of "losses actually sustained" as a deductible item under Section 29 (d) (2) of the Tax Code, which will entitle petitioner to the refund or tax credit of its erroneously (over) paid income tax for the year 1992 in the amount of P5,863,691.00.

Petitioner is a corporation organized and existing under the laws of the State of Delaware, U.S.A. and is duly licensed to do business in the Philippines through its Philippine Branch specifically in the manufacture and sale of beverage base and concentrates. It employed the accrual method of accounting wherein it recognizes income when earned and expenses when incurred regardless of when cash is received or disbursed.

On April 14, 1993, petitioner filed its Annual Income Tax Return for the calendar year 1992 and paid the respondent its tax due for the said period in the amount of P92,021,284.00 (Exh. A to A-57). The contents of said return, is summarized as follows:

Gross Income		P1,960,392,477.00
Less: Deductions		639,781,176.00
Taxable Net Income		P1,320,611,301.00
Tax Due		P 462,213,955.00
Less: Quarterly payments:		
1st Quarter	P112,556,729	
2nd Quarter	153,880,670	
3rd Quarter	103,755,272	370,192,671.00
Tax Payable (Refundable)		P 92,021,284.00

On November 19, 1993, petitioner filed with the respondent an **AMENDED** Annual Income Tax Return for the calendar year ending December 31, 1992, showing a refundable amount of P5,863,691.00 (Exh. B to B-57), on grounds that in the original Annual Income Tax Return it filed on April 14, 1993, it omitted to deduct from its gross income the foreign exchange loss it sustained in 1992 amounting to P16,753,404.00. In summary, the said **AMENDED** income tax return contains the following:

Gross Income		P1,960,392,477.00
Less: Deductions		656,534,580.00
Taxable Net Income		P1,303,857,897.00
Tax Due		P 456,350,264.00
Less: Quarterly Payments:		
1st Quarter	P112,556,729.00	
2nd Quarter	153,880,670.00	
3rd Quarter	103,755,272.00	
	370,192,671.00	
4th Quarter (Annual Return)	92,021,284.00	462,213,955.00
Tax Payable (Refundable)		P (5,863,691.00)

On October 19, 1994, petitioner filed with the respondent its administrative claim for refund or tax credit of the aforementioned amount of P5,863,691.00 allegedly representing its erroneously (over) paid income tax for the calendar year ending December 31, 1992 (Exh. C to C-2).

The aforesaid claim for refund or tax credit was not acted upon by the respondent, hence, on April 12, 1995, petitioner filed with this Court the instant petition for review.

Petitioner presents the propositions as reason for the overpayment was that in 1989, 1990 and 1991 its Head Office in Atlanta, Georgia, USA billed the Philippine branch its pro-rated share of Head Office expenses. This was properly accrued in the books of the petitioner for said years. These liabilities were paid by the Philippine branch only in January and March of 1992. However, due to the devaluation of Philippine peso in 1992, a foreign currency loss arose as it has to pay more pesos in buying U.S. dollars to pay its Home Office its pro-rata share of the home office expenses. Thus it reasoned, that said foreign exchange loss in the amount of P16,753,404.00 was actually sustained in 1992, the year of its payment and the year the transactions were closed and completed, and not in 1989, 1990, 1991, hence, should be deductible from its gross income for 1992.

Petitioner stressed that since its taxable income for 1992 was overstated due to understatement of its deduction from gross income or its failure to include foreign exchange loss as one of its deductible items from gross income for 1992, it claimed that it is entitled to a refund or issuance of a tax credit certificate in the amount of P5,863,691.00, as computed and shown in its **AMENDED** Annual Income Tax Return for 1992.

Respondent in her Answer, raises the defenses that (1) the petition has no cause of action, (2) losses to be deductible must be actually sustained during the year, incurred in business or trade x x x, thus losses in 1990 and 1991 cannot be claimed in the taxable year 1992, (3) petitioner did not show that the losses claimed were not compensated for by insurance or otherwise, (4) losses claimed were not evidenced by a closed and completed transaction, (5) claims for refund or tax credit are construed strictly against the claimant, the same being in the nature of exemption from taxes, and (6) petitioner failed to show that it is exempt from the payment of the subject tax under clear and unmistakable terms found in the statute.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner's claimed foreign exchange loss in the amount of P16,753,404.00 for the year 1992 falls within the definition of "losses actually sustained and charged off within the taxable year" as a deductible item under Section 29 (d) (2) of the Tax Code, which will entitle petitioner to the refund or tax credit of its erroneously (over) paid income tax for the year 1992 in the amount of P5,863,691.00.

As mentioned in the preceeding paragraph, Sec. 29 (d) (2) of the Tax Code is pertinent to the resolution of the case at bar, hence, it is quoted hereunder for easy reference.

> Section 29. Deductions from gross income.-x x x.
>
> (d) Losses-(1) By individuals.-x x x.
>
> (2) By corporation.-In the case of a corporation, <u>all losses actually sustained and charged off within the taxable year</u> and not compensated for by insurance or otherwise. (underscoring supplied)
>
> x x x x x x.

We find nothing ambiguous nor obscure in the language of Section 29 (d) (2) of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that all losses actually sustained during the taxable year not compensated by insurance or otherwise are deductible from gross income. It does not specify that the loss must be the result of transactions in the taxable year only. What the law requires is that the loss must be actually sustained in the taxable year and not compensated by insurance or otherwise. In other words, what is needed to be entitled to a loss deduction, is for the taxpayer to prove that a closed and completed transaction sets the loss in the taxable year or in the year claimed and it is not compensated by insurance or otherwise. A closed and completed transaction is one in which the facts indicate the transaction sufficiently final to ascertain that a loss has occured. **(MERTENS Law of Federal Income Taxation, Chapter 28, Page 3).** Thus, applying the latin maxim ***"Ubi lex non distinguit nec nos distinguere debemos"***, where the law does not distinguish, we should not distinguish, the loss which is the result of a foreign exchange fluctuation ascertained and realized during the taxable period and not compensated by insurance or otherwise, except those provided in Sec. 30(b) of the Tax Code, is deductible from gross income of said taxable period, albeit it may relate to transactions of prior years.

Such provision of law was intended to relieve hardships or to compensate the financial detriment suffered by the taxpayer, hence, it should be construed in favor of those who are the intended beneficiaries. The taxpayer must however demonstrate in a clear and convincing manner that it has in fact suffered an actual loss for the taxable period and the said loss was not compensated by insurance or otherwise, to be entitled to a loss deduction from its gross income for the said taxable period.

In the case at bar, petitioner stressed that while the foreign exchange loss arose from foreign exchange denominated liability incurred in 1989, 1990 and 1991, the foreign exchange loss itself, as earlier pointed out, was actually sustained, ascertained, and determined in 1992 when the transaction was closed and terminated by the payments of said liability. To prove that it indeed suffered a foreign currency loss of P16,753,404 and that it was not compensated by insurance, petitioner adduced exhibits D to D-39, E to E-9, E-10 to E-37, F to F-1, F-2, F-3, G to G-5, H to H-5, I to I-5, K to K-18, L to L-14, M, M-1, M-2, N, N-1, N-2, O, O-1 and O-2, and the testimony of its witness, Mrs. Evangeline B. Cayaba. The evidence thus presented were not controverted by the respondent.

After a careful study of the evidence presented, the Court agrees with the petitioner's ratiocination that, what was reflected in its book as its liability to its home office was the amount before the foreign exchange fluctuated, thus, since the payment of said liability was done in 1992 when the value of the peso depreciated, it suffered a foreign exchange loss when it used more pesos to pay its foreign currency obligations.

The petitioner's case stands on more solid grounds when respondent presented its evidence and her sole witness, Revenue Officer, Ma. Carmencita Valenzuela, who investigated the books of accounts of the petitioner insofar as the claim for tax credit/refund is concerned. The results of the audit of the pertinent accounts and other documents pertinent to the instant case conducted by said examiner clearly shows that indeed petitioner is entitled to a refund or tax credit but only in the amount of P4,684,584.91. This was due to the fact that out of the total foreign exchange loss of P16,753,404.00 alleged to have been actually sustained, P3,368,875.69 remained unrealized and therefore the tax component of which in the amount of P1,179,106.49 should not be allowed for tax refund/credit purposes. (Exh. 2). The analysis, computation and explanation of said examiner was openly laid and fully disclosed in respondent's exhibits 3 and 4, thus, they deserve the credence that should normally be accorded. Hence, the Court feels compelled to affirm the import and force of the results of the investigation conducted by the respondent which may not be suffered to petrify in futility.

IN THE LIGHT OF ALL THE FOREGOING, we are persuaded to extend the relief sought by the petitioner but to a lesser amount as computed by the respondent. The latter is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein petitioner the amount of P4,684,584.91, without pronouncements as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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