REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASIG LAND CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4773

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 30 1995 A.B.C.

x - x

DECISION

This is a judicial action taken by petitioner in order to recover the amount of P56,368.00 representing overpaid income tax for the year 1990.

Petitioner Pasig Land Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

On April 15, 1991, petitioner filed its 1990 annual income tax return reflecting a taxable income of P112,820.00 and a tax due thereon of P39,487.00. Petitioner had a quarterly income tax payments in the sum of P39,545.00 and a creditable withholding taxes of P56,310.00, which when applied to the income tax liability of P39,487.00 will result to a refundable amount of P56,368.00.[1]

On July 30, 1991, petitioner filed a claim for refund with the respondent requesting for a tax credit in the amount of P56,368.00 representing overpaid income tax for the year ended December 31, 1990.[2]

On March 31, 1992, a petition for review was filed with this Court.

Respondent in her answer raised the following, by way of special and affirmative defenses:

> 4. The claim for refund is still under investigation;
>
> 5. This case does not involve illegally or erroneously collected taxes. A petition for review is therefore not the proper remedy.
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> 6. To implement Sections 85 and 86 of the Tax Code, which require filing of corporate quarterly income tax returns and corporate final adjustment returns, the Ministry of Finance issued B.I.R. Memorandum Circular No. 10-177, providing, among others, that any excess of the total quarterly payments over the actual income tax computed per adjusted return or final corporate income tax return shall be refunded to the corporation or credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year;
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> 7. To ensure prompt action on corporate annual income tax returns with refundable amounts from overpaid quarterly income tax, the B.I.R. promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, wherein returns are

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[1]Exh. "G".
[2]Exh. "J".

pre-audited and the refund or tax credit is granted.

8. Consequently, there is no need to file a petition for review with this Honorable Court to preserve the right to refund or tax credit within the two-year period. xxx.

9. The taxes claimed are presumed to have been collected in accordance with law and regulations;

10. In a claim for refund, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, failure on the part of the petitioner to prove the same is fatal to its claim; and

11. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation (**Commissioner of Internal Revenue v. Ledesma**, G.R. No. L-175509; January 30, 1970, 31 SCRA 95; **Resins v. Auditor General**, 25 SCRA 754).

Is petitioner entitled to the refund or tax credit in the amount of P56,368.00, representing alleged overpaid income tax for the year 1990?

We answer in the negative.

Reproduced hereunder is petitioner's 1990 income tax return:

Income				P1,149,000
Less deductions				1,036,180
Taxable income				P 112,820
Tax due				P 39,487
Less: (b) quarterly payments				
Qtr.	CBCR No.	Date	Amount	
1st	B19343008	05.30.90	P14,829[3]	
2nd	B18257557	08.29.90	11,228[4]	

[3]Exhs. "A", "B", and "B-1".
[4]Exhs. "C", "D", and "D-1".

3rd	B18276734	11.29.90	13,488[5]	
			₱39,545	
(c) creditable tax withheld			₱56,310[6]	95,855
Total amount refundable				(₱ 56,368)

[2][x] To be Applied as Tax Credit to Succeeding Taxable Year

This Court took note of the intention of petitioner in the lower right box of the income tax return - "To be Applied as Tax Credit to Succeeding Taxable Year". However, after a careful examination of the evidence presented by petitioner we find that the burden of proof was not overcome by the petitioner. The evidence offered by it lacks one vital document which is the 1991 income tax return. As we rule in a similar case involving the same scenario:

> xxx xxx xxx
>
> Thus, in the case at bar, petitioner failed to substantiate its claim for refund or the grant of a tax credit certificate due to failure or omission on its part to present and offer its 1991 Income Tax Return. Its presentation is necessary to prove to the Court that the refundable amount claimed was not applied as tax credit to the succeeding taxable year. xxx. **(Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 4947, January 30, 1995.)**

In fact, we already have denied several claims for refund of income taxes and creditable withholding taxes which necessitates presentation of succeeding year's

[5]Exhs. "E", "F", and "F-1".
[6]Exhs. "H" and "I".

income tax return (**BPI Family Bank, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 4694, December 24, 1993, **BPI Data Systems Corporation [formerly Filipinas Management and Leasing Service, Inc.] vs. Commissioner of Internal Revenue**, CTA Case No. 4691, December 6, 1993, **AF Holdings and Management Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4529, March 16, 1993). To the Court's mind, the intention made by petitioner of carrying over the excess income tax payments of a current year to the succeeding taxable year is consummated if there is no evidence to the contrary.

The burden of proof is upon petitioner to show that it is entitled to the refund of the amount claim because taxes are presumed to have been collected in accordance with laws and regulations (**Caltex (Phil.) Inc. v. Commissioner of Internal Revenue**, CTA Case No. 2871, January 29, 1986).

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit and petitioner's claim for refund or credit is hereby **DENIED**.

No cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

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