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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FERRUCI FASHION TRADING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5165

Promulgated:
NOV 19 1996

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DECISION

This case involves a claim for refund or tax credit of alleged overpaid income taxes for the years 1992 and 1993 amounting to P527,263.00.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office at A. Seno St., Banilad, Mandaue City. It is registered with the Board of Investments as a non-pioneer expanding producer of fashion accessories as evidenced by Certificate of Registration No. VII EP 91-026, dated October 18, 1991.

For the year 1992, petitioner paid its quarterly income tax with the Bureau of Internal Revenue (BIR) in the following amounts:

CY 1992	Date Paid	Amount	Exhs.
1st Qtr.	5-29-92	P767,440.00	"B"
2nd Qtr.	8-28-92	531,944.00	"C"
3rd Qtr.	12-1-92	(654,748.00)	"D"

On April 15, 1993, petitioner filed its Annual Income Tax Return for the year ended December 31, 1992, showing a refundable amount of P1,079,195.00, computed as follows:

Taxable Income		P 629,100.00
Tax Rate		35%
Tax Due thereon		P 220,189.00
Less: Quarterly payments:		
First Quarter	P767,440.00	
Second Quarter	531,944.00	1,229,384.00
Refundable Amount		P1,079,195.00

Petitioner opted to apply the amount of P1,079,195.00 as a tax credit for the succeeding taxable year pursuant to Section 69 of the Tax Code, as amended.

On February 24, 1994, petitioner filed a request with the Bureau of Internal Revenue (BIR) for the approval of its application of excess income tax payment for 1992 to the succeeding taxable year (1993) in accordance with the ruling of the Supreme Court decision in the case of **San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, 228 SCRA 135 [1993]** (Exh. "F").

For the year 1993, petitioner's Annual Income Tax Return showed a taxable income of P1,576,948.00 and a tax due of P551,932.00. After applying the excess tax credit of P1,079,195.00 from its income tax liability of P551,932.00, petitioner still has a refundable amount of P527,263.00 (Exh. "G"). Petitioner indicated in the return that it will opt for a refund of this amount by marking the appropriate box [x] TO BE REFUNDED.

On July 11, 1994, petitioner filed a letter with the BIR Revenue District Office No. 80 requesting for the refund and/or tax credit of P527,263.00 representing alleged excess income tax payments for the years 1992 and 1993 (Exh. "H").

To date, respondent has not acted upon petitioner's claim for refund and/or tax credit. Hence, petitioner filed this petition for review on October 26, 1994 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Respondent by way of special and affirmative defenses alleged among others that:

> "1) In an action for tax refund, the burden of proof is upon the taxpayer to show that the taxes alleged to have been paid were erroneously or illegally collected and failure to maintain this burden is fatal to the action for refund;
>
> 2) Claims for refund are strictly construed against the claimant as they partake the nature of an exemption from taxation; and
>
> 3) It is incumbent upon petitioner to show that it has complied with the provision of Section 230 of the Tax Code as amended." (pp. 2-3, Answer; pp. 38-39, CTA rec.)

In order to support its claim, petitioner offered various documentary evidence, which among others, consist of the following:

1. 1st Quarter Income Tax Return ending March 31, 1992 (Exh. "B"), showing the amount of P767,440.00 as tax paid for said quarter (Exh. "B-1);

2. 2nd Quarter Income Tax Return ending June 30, 1992 (Exh. "C"), showing the amount of P531,944.00 as tax paid for the quarter (Exh. "C-1");

3. 3rd Quarter Income Tax Return ending September 30, 1992 (Exh. "D");

4. Annual Income Tax Return for the year ended December 31, 1992 (Exh. "E"), showing a refundable amount of P1,079,195.00 carried over to the succeeding year (Exh. "E-1");

5. Annual Income Tax Return for the year ended December 31, 1993 (Exh. "G"), showing a refundable amount of P527,263.00;

6. Letter of SGV, dated February 17, 1994, filed with the BIR on February 24, 1994, requesting for the approval of its client's (herein petitioner's) application of prior year's (1992) excess income tax payment as a tax credit to the succeeding year (1993) (Exh. "F"); and

7. Letter claim for refund or tax credit, dated May 6, 1994, filed with the BIR Revenue District No. 80, Mandaue City (Exh. "H").

Respondent for her part waived her right to present any evidence and proceeded to submit the case for decision based on the pleadings and records thereof.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit of P527,263.00, representing unutilized excess income tax paid for the years ended December 31, 1992 and 1993.

Material to the issue posed before Us are Section 69, as implemented by Section 7 of Revenue Regulations No. 10-77, and Section 230 of the Tax Code, as amended, which are hereunder quoted for reference, to wit:

> "Sec. 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 the 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>." (as amended by Pres. Decree No. 1705) (Emphasis ours.)

> "Sec. 7. *Filing of final or adjustment return and final payment of income tax.* - x x x.
>
> Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. <u>The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarters of the</u>

> succeeding taxable year, by filling up the appropriate box on the corporate return (B.I.R. Form No. 1702)." (Sec. 7 of Rev. Regs. No. 10-77, Oct. 8, 1977) (Underscoring supplied)
>
> "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; 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."

Section 7 of Rev. Reg. No. 10-77 is clear. A corporation with excess quarterly payments over the actual income tax computed in the final corporate income tax return has two options to choose from. It can either ask for its refund or apply it as a credit against its estimated quarterly income tax liabilities for the succeeding taxable quarters.

In the case at bar, petitioner opted to apply its excess quarterly tax payments for 1992 to its tax liability for 1993 pursuant to Section 69 of the Tax Code, as amended, in relation with Section 7 of Rev. Regs. No. 10-77. And following the ruling in the San Carlos case, petitioner filed an application to carry over said excess quarterly income tax payments for the succeeding year.

In **San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, G.R. No. 103379, November 23, 1993 (228 SCRA 135)**, the Supreme Court ruled that:

> "It is difficult to see by what process of ratiocination petitioner insists on the literal interpretation of the word 'automatic'. Such literal interpretation has been discussed and precluded by the respondent court in its decision of 23 December 1991 where, as aforestated, it ruled that 'once a taxpayer opts for either a refund or the automatic tax credit scheme, and signified his option in accordance with the regulation, this does not *ipso facto* confer on him the right to avail of the same immediately. An investigation as a matter of procedure, is necessary to enable the Commissioner to determine the correctness of the petitioner's returns, and the tax amount to be credited.
>
> Prior approval by the Commissioner of Internal Revenue of the tax credit under then section 86 (now section 69) of the Tax Code would appear to be the most reasonable interpretation to be given to said section. An opportunity must be given the internal revenue branch of the government to investigate and confirm the veracity of the claims of the taxpayer. The absolute freedom that petitioner seeks to automatically credit tax payments against tax liabilities for a succeeding taxable year, can easily give rise to confusion and abuse, depriving the government of authority and control over the manner by which the taxpayers credit and offset their tax liabilities, not to mention the resultant loss of revenue to the government under such a scheme.

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> The above rule is clear. It does not mean that reference to the amount 'shown' in the final adjustment return prepared by the taxpayer implies that the taxpayer need not seek approval of the Commissioner prior to its effective availment of the tax credit scheme, it cannot simply credit an amount it deems as correct. Rather, it provides two (2) remedies, that is, the excess may either be refunded or credited, and, insofar as the option of tax credit is concerned, this right should not be construed as an absolute right which is available to the taxpayer at his sole option. It is our view that tax credit under the cited provision should be construed as an alternative remedy (to a refund) subject to the fulfillment of certain requirements, i.e., prior verification and approval by the Commissioner of Internal Revenue."

Thus, petitioner's application or request for carry over of its excess quarterly income tax payment is sufficient.

Respondent argued in her memorandum that failure on the part of petitioner to present its 1994 Corporate Annual Income Tax Return will be fatal to its claim for refund or tax credit. The presentation of its 1994 Income Tax Return is material to prove that it did not apply as a tax credit the amount of P527,263.00 subject matter of this case. Furthermore, petitioner failed to substantiate the deductions claimed for in the year 1993 .

From the evidence adduced by petitioner, this Court is fully satisfied with the proof offered by petitioner. The burden of proof in claims for refund has been satisfactorily substantiated by petitioner. Its presentation of the 1993

Annual Income Tax Return, indicating its intention to claim for the refund the amount of P527,263.00 instead of applying it as a tax credit to the succeeding year (1994), is sufficient. It need not present its 1994 Annual Income Tax Return. Otherwise, there will be no end in submitting all the succeeding income tax returns. The fact remains that it has indicated in the return its intention to claim for refund the excess income tax payments. More and more, when it subsequently filed a letter claiming for its refund or tax credit with the BIR.

For the calendar year 1992, the reckoning period is April 15, 1993, the date when the Final Income Tax Return was filed (**Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. 85956, April 10, 1989; ACRRA Investment Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. TMX Sales, Inc., et. al., G.R. No. 83736, January 15, 1992**). Hence, the two-year prescriptive period begins to run from April 15, 1993. Petitioner has up to April 15, 1995 to file a claim for refund with the BIR and with this Court. Its claim for refund/tax credit with the BIR (Exh. "H") was filed on July 11, 1994 and the petition for review with the Court was filed on October 26, 1994. Both were filed within the two-year prescriptive period as provided for in Section 230 of the Tax Code, as amended.

With respect to the allegation that petitioner failed to prove the deductions claimed in 1993, the Court adopts the presumption that petitioner's acts were done in the ordinary course of trade or business and that the same were fair and regular (Sec. 3(p) and (q) of Rule 131 of the Revised Rules of Court) as can be gleaned from the transcript of stenographic notes during the hearing scheduled on April 7, 1995 (pp. 46-55, CTA rec.). This was never contradicted by respondent. As a matter of fact, respondent failed to submit any evidence to support her claim. The burden of evidence is shifted to respondent to establish her claim as to the correctness of the deductions claimed by petitioner. It would appear that from the time petitioner filed its request application to carry over its excess quarterly payments to the succeeding year (1993) on February 24, 1994 (Exh. "F") and up to the time petitioner filed its claim for refund/tax credit on July 11, 1994 (Exh. "H"), nothing has been done by respondent. This led to the filing of the instant petition for review on October 26, 1994. Still up to the trial of this case, respondent failed to present any evidence. We therefore see no logic to the contention of respondent that petitioner failed to substantiate the deductions claimed in the return when she herself failed to disprove why the same should not be granted. It behooves upon respondent to prove that the deductions should be disallowed. Having failed to prevent any evidence to that effect, We find respondent's contention devoid of merit.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **GRANTED**. Respondent is hereby **ORDERED to REFUND** or in the alternative **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner the sum of P527,263.00, representing overpaid income tax for the years 1992 and 1993. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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
Court of Tax Appeals