REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNISYS AUSTRALIA LIMITED -
(Philippine Branch),
Petitioner,

- versus -

C.T.A. CASE NO. 5363

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 1998

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DECISION

The issue which is presented for our consideration is whether or not petitioner is entitled to the refund of the amount of P1,138,096.00 allegedly representing its overpaid income taxes for the year 1993.

As represented, petitioner is a foreign corporation duly licensed to do business in the Philippines and is engaged in the design, manufacture, marketing and support of commercial and information processing equipment and other related software.

For the year 1993, petitioner alleges that it generated an unrealized foreign exchange gain in the amount of P1,625,852.00 which amount should have been treated as a reconciling item and should be deducted from its gross income. However, in its Income Tax Return for the year 1993 (Exh. A) which it filed with the respondent on April 15, 1994, the said unrealized foreign exchange was erroneously reflected as unrealized foreign exchange loss. As a result of which, instead of reducing its net taxable income by deducting the unrealized foreign exchange gain, its net taxable income for the said period was increased, as the unrealized foreign exchange gain which was erroneously taken up as an unrealized foreign exchange loss was added back as a reconciling item to its net income for 1993, as shown hereunder:

Income before income tax per income statement (including unrealized forex gain and other reconciling items)	₱ 2,814,631.00
Add (Deduct) Reconciling items (except unrealized forex gain):	
Items which were deducted in the income per income statement but are nondeductible in the ITR	
Provisions for inventory obsolescence	₱ 9,547,904.00
Unrealized foreign exchange loss	1,625,852.00
Pension contribution based on unapproved plan	1,137,290.00
Subtotal	₱15,125,677.00
Items which were included in the income per income statement but are nontaxable in the ITR	
Interest income already subjected to final tax	(620,016.00)
Equity in net earnings of a subsidiary	(1,122,570.00)
Items which were not deducted in the income per income statement but are deductible in the ITR	
Write-off of investments	(5,175,228.00)
Write-off receivables	(91,446.00)
Realized foreign exchange loss	(411,968.00)
Taxable income per ITR	7,704,449.00
Multiply by: Income tax rate	35%
Income tax payable	₱ 2,696,557.00

On April 17, 1995, petitioner realizing the aforementioned error, filed with the respondent an amended Income Tax Return for 1993 (Exh. B), to show the correct computation of petitioner's income tax payable for said period, which is presented as follows:

Income before income tax per income statement (including unrealized forex gain and other reconciling items)	P 2,814,631.00
Add (Deduct) Reconciling items (except unrealized forex gain):	
Items which were deducted in the income per income statement but are nondeductible in the ITR	
Provisions for inventory obsolescence	P 9,547,904.00
Pension contribution based on unapproved plan	1,137,290.00
Items which were included in the income per income statement but are nontaxable in the ITR	
Interest income already subjected to final tax	(620,016.00)
Equity in net earnings of a subsidiary	(1,122,570.00)
Subtotal	P11,757,239.00
Items which were not deducted in the income per income statement but are deductible in the ITR	
Write-off inventories	(5,175,228.00)
Write-off receivables	(91,446.00)
Realized foreign exchange loss	(411,968.00)
Unrealized forex gain	(1,625,852.00)
Taxable income	4,452,745.00
Multiply by: Income tax rate	35%
Income tax payable	P 1,558,461.00

Also, on that date, April 17, 1995, petitioner filed with respondent its 1994 Corporate Annual Income Tax Return and reported therein the unrealized foreign exchange gain for 1993 in the amount of P1,625,852.00 as realized foreign exchange gain for 1994 (Exh. C-11-1). Petitioner did not pay any tax on its 1994 and 1995 Annual Income Tax Return, as it allegedly suffered a loss position for said periods (see p. 15, August 7, 1996, TSN and exhibits C and D).

On April 12, 1996, petitioner filed with the respondent a claim for refund in the amount of ₱1,138,096.00, the alleged difference of the income tax it actually paid for the year 1993 in the amount of ₱2,696,557.00 (Exh. A) and the tax that should have been paid as shown in its 1993 Amended Income Tax Return in the amount of ₱1,558,461.00 (Exh. B).

A day later, or on April 13, 1996, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that it is entitled to the refund of the aforementioned overpaid income tax for 1993 since it falls squarely within the ambit of Sec. 69 of the Tax Code, which provides:

> **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 case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, 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. (Underscoring supplied)

Further petitioner pointed out that the instant claim for refund was well within the two (2) year period prescribed in Sections 204 and 230 of the Tax Code, which provides:

> SEC. 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - x x x (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

> 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.

Respondent on the other hand, in her answer raised the herein special and affirmative defenses, thus: 1) The petitioner's claim for refund of the alleged overpaid income taxes for 1993 is pending investigation/ examination by the BIR; 2) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes; 3) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; 4) In an action for tax credit/refund the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; and 5) It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is entitled to the refund of the amount of P1,138,096.00 allegedly representing its overpaid income taxes for the year 1993.

We find nothing ambiguous nor obscure in the language of Section 69, *supra*, 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 the automatic tax credit is limited to the succeeding year only. As held in the case of **Commissioner of Internal Revenue vs. Citytrust Banking Corporation, C.A. G.R. SP No. 26839, July 13, 1992,** if the refundable amount for one year was not 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". Further, the said provision states that 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 liability for the quarters of the <u>succeeding taxable year</u>.

It appears in the case at bar that petitioner chose the second option as its exhibits clearly show that petitioner credited to its income tax liabilities for 1994 its alleged overpaid income tax payments for 1993 in the amount of P1,138,096.00 (see Sec. B, no. 5 of Exhibit C and Sec. E thereof, p. 175 of the Court records). The total amount of P1,138,096.00 was fully utilized by the petitioner in the succeeding taxable year of 1994. The Court finds that petitioner did not actually suffer a loss in the year 1994. As a matter of fact it has a tax payable (due) for said period in the amount of ₱1,531,480.00 (Sec. B, no. 4, Exhibit C). It is from this amount that the alleged petitioner's overpaid income tax for 1993 totalling ₱1,138,096.00 was off-setted. Hence, the issue in the instant case should be ruled in the negative. To award the claimed refund, despite the fact that the overpaid income tax payments for 1993 was already credited by petitioner against its income tax liabilities for 1994, is an absurdity and a polarity in conceptual effects and is tantamount to granting petitioner twice the same amount as tax credit and as tax refund. Herein petitioner cannot be entitled to a tax refund of the amount of ₱1,138,096.00, which amount has already been credited or off-setted against its income tax liabilities for 1994.

Jurisprudence is replete with cases holding that to grant petitioner's refund despite the fact that said amount was applied as tax credit by petitioner is detrimental to the interest of the Government as the same is tantamount to granting petitioner twice the refund of the same amount (**AF Holdings and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5099, May 9, 1996**); and that an application for automatic tax credit to the succeeding taxable year of excess credits will no longer entitle the petitioner to a refund because there is really nothing left to be refunded (or credited) and to do so would be tantamount to granting twice the refund being sought (**Ayala Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5081, March 31, 1997**).

IN THE LIGHT OF ALL THE FOREGOING, finding the petition to be without merit, the same is hereby **DISMISSED** with costs against petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above 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