REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES INSURANCE BROKERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4126

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

5/28/92

D E C I S I O N

This is a petition for review seeking a judicial confirmation that petitioner can automatically apply as tax credit the amount of P288,663.00, representing the refundable amount shown in its 1985 corporate annual income tax (final adjustment) return, against any income tax liability for 1986 and succeeding years or, in the alternative, a refund or tax credit of said amount.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws.

On April 15, 1986, petitioner filed its 1985 corporate annual income tax (final adjustment) return with the Makati-West Revenue District Office (RDO No. 32-A) of the Bureau of Internal Revenue, reflecting therein an amount subject to tax of

P72,356.00 and a tax due of P18,089.00 *(Exhs. A, A-1, A-2 and A-3)*.

On the other hand, petitioner had, as of December 31, 1985, creditable income taxes totalling P306,752.00. *(Exhs. A, A-5, A-6, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and AA)*. After petitioner credited said amount of P306,752.00 against the tax due of P18,089.00, its corporate annual income tax (final adjustment) return showed a refundable amount of P288,663.00.

On October 3, 1986, petitioner filed with respondent's Appellate Division a letter of even date requesting for confirmation that it could automatically apply said amount of P288,663.00, representing the refundable amount shown in its 1985 corporate annual income tax (final adjustment) return, against any income tax liability for 1986 and succeeding years; and in the alternative, seeking a refund or tax credit of said amount of P288,663.00. *(See Annex A, Petition for Review)*

Without waiting for respondent's action on its request for confirmation and/or alternative claim for refund/tax credit, petitioner filed its petition for review in this Court on December 29, 1986 seeking the instant relief.

Subsequently, while the case was pending trial before this Court, petitioner automatically applied as tax credit the refundable amount of P288,663.00 shown in its 1985 final adjustment income tax return against its income tax liability for the first quarter of the taxable year 1987 and, on June 26, 1987, petitioner filed its supplemental petition for review praying for confirmation of its right to make such automatic tax credit.

During the hearing, petitioner adduced evidence to establish its cause of action, while respondent Commissioner of Internal Revenue submitted the case based on the records and pleadings. Although he did not categorically maintain that petitioner's right to the refund has already prescribed, respondent implied so when, in his answer, he alleged that "it is incumbent upon the petitioner to show that it has complied with the provisions of Sections 292 and 295 of the National Internal Revenue Code, as amended."

The issues presented for determination therefore are as follows:

1. WHETHER OR NOT PETITIONER MAY AUTOMATICALLY APPLY AS TAX CREDIT THE REFUNDABLE AMOUNT SHOWN IN ITS CORPORATE ANNUAL INCOME TAX (FINAL ADJUSTMENT) RETURN OF P288,663.00 AGAINST ITS INCOME TAX LIABILITY FOR 1986 AND SUCCEEDING TAXABLE YEARS.

2. ASSUMING ARGUENDO THAT PETITIONER IS NOT ENTITLED TO AN AUTOMATIC TAX CREDIT, WHETHER OR NOT PETITIONER IS ENTITLED TO AN ORDINARY TAX CREDIT OR REFUND PURSUANT TO SECTIONS 79, 243 AND 246 (NOW SECTIONS 69, 230 AND 204) OF THE TAX CODE.

3. WHETHER OR NOT THE REQUEST FOR CONFIRMATION WITH ALTERNATIVE CLAIM FOR REFUND/TAX CREDIT AND THIS PETITION FOR REVIEW HAVE BEEN FILED WITHIN THE STATUTORY PERIOD.

As regards the first issue, the same should be resolved in the negative. In a previous case, ***San Carlos Milling Co., Inc. vs. The Acting Commissioner of Internal Revenue****, CTA Case No. 3811, February 28, 1990*, involving a similar issue, this Court, in interpreting the pertinent provisions of the Tax Code* and Revenue Regulations No. 10-77 dated October 7, 1977, had already ruled that the corporate taxpayer cannot automatically credit the refundable amount shown in its final adjustment return against the income tax liability for any of the taxable quarters of the succeeding taxable year, without the "imprimatur" or approval of the Commissioner of Internal Revenue. Thus:

> All that we need to state is that the authorization for a kind of set-off of creditable income tax against future

---

*Section 79, formerly Section 86 and now Section 69 of the National Internal Revenue Code.

tax liabilities conferred the corporate taxpayer in no wise lessens nor muffles the respondent's power of ascertaining the correctness of any tax return, hence the necessity of his imprimatur. A perusal of the implementing regulations readily provides a feel of the statutory intendment, thus:

> 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 quarter of the succeeding taxable year, by filling up the appropriate tax on the corporate tax return, BIR Form No. 1702</u>. *(Section 7, Revenue Regulations No. 10-77, October 3, 1977) (Underscoring Ours)*

The clear and unambiguous consequence of the regulations as above stressed insofar as the same is brought to bear upon the circumstances obtaining in the case at bar, limits the petitioner's right to signify an intention to opt for either a refund or automatic tax credit. Any entitlement thereof must prove compliance with terms and conditions peremptorily required by law and rules lest the integrity of collection of the lawful dues be placed in the quicksand of self-interest. *A fortiori* respondent must have to examine the return and determine the tax.

> Petitioner cannot have the best of both worlds so to speak.
>
> We cannot validly infuse cognizance to an automatic crediting effected by the taxpayer in an inofficious panache much less substitute and indulge in an amorphous rule as to leave solely to the petitioner such an expedient arrangement in denigation of respondent's primary responsibility in ascertaining the facts necessary in making a correct return and thus suffer the cornerstone of effective assessment and collection to petrify at the cost of the animating principles tinged with strong issues of public policy that taxes are the lifeblood of government and their prompt and certain availability are an imperious need. *(**Commissioner of Internal Revenue v. Goodrich International Rubber Co.**, 22 SCRA 1256; **Commissioner of Internal Revenue v. Pineda**, 21 SCRA 105; **Collector of Internal Revenue v. Yuseco**, 2 SCRA 313; cited in **Frabelle Fishing Corporation v. Commissioner of Customs**, CTA Case No. 3481, August 15, 1983.)*
>
> Petitioner has overplayed its understanding of the automatic crediting devise which application seemed more than a clumsy attempt of defusing the peremptory legal sanction charged the respondent Commissioner of Internal Revenue. Petitioner has fumbled into a reversible error.

The Honorable Court of Appeals, in affirming said decision of this Court on appeal in ***San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals***, *C.A.-G.R. SP No. 22346, December 23, 1991*, likewise quoted some portions of the foregoing ruling of this Court and held as follows:

Sec. 86 (now 64) of the National Internal Revenue Code (NIRC) provides:

> "Sec. 86. 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 refund of the excess estimated quarterly income tax 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."

Revenue Regulations No. 10-77 dated October 7, 1977, implements this provision of the NIRC, and provides, that:

> "SEC. 7. Revenue Regulations No. 10-77
>
> 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. The corporation must signify in its annual corporate adjustment return in 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 quarter of the succeeding taxable year, by filling up the appropriate box on the corporate tax return, BIR Form No. 1702."

xxx xxx xxx

For the effective implementation of Sec. 86 of the NIRC, especially in case of overpayments, Revenue Regulations No. 10-77 requires the taxpayer to signify in its annual corporate return, its intention to opt for, either a refund, or an automatic tax credit. Although the regulation does not expressly state the necessity of obtaining the Commissioner's approval, it is implicit in the regulation itself. 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 <u>ipso facto</u> 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. Pre-auditing the returns consists merely of an office audit, without necessarily examining the books of the taxpayer, and this is only a part of the investigation process. Whether or not a refund is to be made, and whether or not the amount to be refunded is correct, are matters that can only be determined after a complete and proper investigation of the taxpayer's books of account and accounting records. xxx."

xxx xxx xxx

xxx xxx xxx

> The case of Asia-Australia Express, Ltd. v. Commissioner (CTA Case No. 3695) cited by the petitioner is not applicable to the instant case. The issue raised therein was whether the taxpayer's filing of the refund claim had already prescribed, and if not, whether the company's availment of the automatic tax credit scheme operates as a waiver of its right to claim for a refund. The same is true in the cases of Commissioner v. Itogon-Suyoc Mines, Inc. (28 SCRA 867 [1969] and Commissioner v. ESSO Standard Eastern, Inc. (172 SCRA 364 [1989], also cited by petitioners, considering that both cases involves the imposition of interest on a refundable amount, and both cases arose from facts that happened in 1960, when Revenue Regulations No. 10-77 was not implemented."

Similarly, in ***Citytrust Banking Corporation vs. Commissioner of Internal Revenue****, CTA Case No. 4099, May 28, 1991*, this Court, citing the ***San Carlos Milling case*** *(CTA Case No. 3811)*, made this interpretation:

> "xxx. 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)*. 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 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."

Verily, this Court finds no cogent reason to depart from the above pronouncements of this Court and the Honorable Court of Appeals.

On the second issue, however, assuming *arguendo* that petitioner cannot automatically apply as tax credit the total amount of P288,663.00, its alternative ordinary claim for refund or tax credit of said amount is justified. For respondent has not submitted any controverting evidence at all but has merely submitted the case on the basis of the records and the pleadings despite the evidence adduced by petitioner. In such case, he may thus be considered to have admitted petitioner's entitlement to the claim for refund. *(Sun Life Insurance Office Ltd. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989; see also Jardine Fleming (Phils.), Inc. vs.*

Commissioner of Internal Revenue, CTA Cases Nos. 4041 and 4125, October 31, 1991, Philippine Commercial Capital, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4274, October 31, 1191, and Paseo Realty & Development Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4148, March 17, 1992.]

Having thus ruled, we will finally tackle the question of prescription. Undisputably, on December 31, 1985, petitioner's corporate annual income tax (final adjustment) return for the year ended December 31, 1985 was filed, and its request for confirmation with alternative claim for refund/tax credit was filed with the BIR's Appellate Division on October 3, 1986. And the Petition for Review was filed in this Court on December 29, 1986. In the case of *Asia Australia Express Ltd vs. Commissioner of Internal Revenue, CTA Case No. 3695, September 29, 1988, affirmed by the Supreme Court in G.R. No. 85956, April 10, 1989*, it was held that the prescriptive period commenced to run from the date the taxpayer files its adjusted final corporate tax return, or in this case on December 31, 1985. The claim for refund/tax credit having been filed on October 3, 1986, and the Petition for Review having been filed on December 29, 1986, both were filed within the prescriptive period of two (2) years.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant a tax credit to petitioner the refundable amount of P288,663.00 shown in its income tax (final adjustment) return for 1985.

SO ORDERED.

Quezon City, Metro Manila, May 28, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

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