REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB LEASING AND FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5372

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 02 1997

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D E C I S I O N

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to Nine Hundred Seventy Three Thousand Two Hundred and Fifteen Pesos (P973,215.00) representing alleged overpaid income taxes remitted in 1993.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. For the taxable year 1993, petitioner had a net income of P1,775,832.00, for which it was liable to pay income taxes in the amount of P621,541.00. Petitioner, however, made income tax payments for the said year totalling P1,594,756.00, broken down as follows:

Nature of Tax Payments	Amount
1. By way of quarterly income tax payments	
Second Quarter	P 594,484.00
Third Quarter	430,145.00
Sub-Total	P1,024,629.00
2. Unused Prior Year's Tax Credits	570,127.00
Grand Total	P1,594,756.00

Since petitioner was liable for income tax only for the amount of P621,541.00 and it made payments totalling P1,594,756.00, petitioner opted to apply its excess payment of P973,215.00 as credit for the following year. In 1994, however, petitioner incurred a net loss of P3,450,916.00. As a consequence, it was not able to apply the excess income taxes it paid in 1993 as payment for its 1994 income tax liabilities.

On April 12, 1996, petitioner filed with the Bureau of Internal Revenue (BIR) a letter-claim for the refund of overpaid income taxes for 1993 amounting to P973,215.00. As said claim was not acted upon immediately, the instant petition for review was filed on April 15, 1996.

The primordial issue to be resolved in the instant case is whether or not petitioner is entitled to the refund being sought.

Petitioner, in support of its claim, submitted the following documents:

a. Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1993 (BIR Form No. 1702) to prove that petitioner promptly filed its ITR for the said year together with its audited financial statements (Exhibit A, inclusive of submarkings);

b. Quarterly Income Tax Returns to prove that petitioner filed its returns for the first, second and third quarters of 1993 (Exhibits B, C and D, inclusive of submarkings);

c. Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1994 to prove that petitioner timely filed its annual income tax return for 1994 together with its audited financial statements (Exhibit E, inclusive of submarkings);

d. Amended Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1994 to prove that petitioner suffered a net loss for that year (Exhibit F)

e. Letter-claim for refund in the amount of P973,215.00 (Exhibit G).

It is worthy to note that for taxable year 1994, petitioner's Income Tax Return reflected a net loss of P3,450,916.00, the reason why petitioner was not able to utilize as tax credit its 1993 excess tax payment of P973,215.00. However, said 1994 revised Income Tax Return showed a refundable amount of P1,268,498.00 which must have included the sum of P973,215.00 which was declared by the petitioner in the 1994 unamended return. But, petitioner failed to present the components of the P1,268,498.00 excess payment for 1994 so as to apprise the Court that the said amount excludes the P973,215.00 excess payment for 1993 and thus may be a proper subject for refund. The petitioner likewise indicated in its 1994 revised Income Tax Return filed on November 24, 1995 that the entire refundable amount of P1,268,498.00 will be applied as credit to the following year (1995) by marking X on the corresponding box. But petitioner, again, failed to submit its 1995 Income Tax Return for verification whether or not the refundable amount has been actually applied as a tax credit in its income tax liability for the year 1995 or whether it suffered a loss for that year.

The importance of the 1995 Income Tax Return was emphasized by the Us in the case of AF Holdings and **Management Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5099**, dated May 9, 1996, having substantially similar facts with those of the above-entitled case, saying:

> "The document is vital for the resolution of petitioner's claim for refund having opted to use the remedy of carry-over. As we have ruled in our Resolution dated October 21, 1993, in a Motion for Reconsideration presented by

the Commissioner of Internal Revenue, in the case of Paseo Realty Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, pertinent portion of which are quoted as follows:

A punctilious study of the case at bar reveals that indeed there is a cause to reconsider Our previous Decision. We have overlooked the fact that petitioner's 1989 Corporate Income Tax Return (Exh. A) indicated that the amount of P54,104.00 subject of petitioner's claim for refund has already been included as part and parcel of the P 172,477.00 which the petitioner automatically applied as tax credit for the succeeding taxable year 1990.

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Note should be taken that the amount of P54,104.00 is already part and parcel of P172,477.00 which presumptively was already applied as tax credit to the succeeding taxable year 1990. Such presumption, of course, could have been overturned had the petitioner submitted its Corporate Income Tax Return showing that it did not automatically credit the said amount for the said taxable year 1990. Unfortunately, petitioner failed to submit that vital document which could have unlocked his entitlement for the elusive claim for refund sought for. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the time-tested doctrine that claims for refund are construed strictly against claimant (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-17509, January 30, 1970, 31 SCRA 95**).

As correctly put by the Respondent, to grant petitioner's refund despite the fact that said amount was applied as tax credit by petitioner in the taxable year 1990 is detrimental to the interest of the government as the same is tantamount to granting petitioner twice the refund of the same amount."

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> "Thus, the Court cannot be left to speculate as to whether the amount of P25,108.00 (inclusive of P18,608.00) was actually credited or not to the succeeding taxable year (1993). For if so, then the amount of P18,608.00 cannot be granted in favor of petitioner. Failure on the part of the taxpayer to sustain his claim is fatal to its cause of action. Taxes are presumed to have been collected in accordance with laws and regulations [Caltex (Phil.) Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 2871, January 29, 1986]. A refund partakes of the nature of an exemption, and the same are construed strictly against the claimants (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)."

Respondent also contended that petitioner's right to claim for refund is barred by prescription, this petition having been filed on April 15, 1996. While the issue is rendered moot and academic by petitioner's failure to establish its claim, for purposes of clarity, this Court had the occasion to rule in Hongkong Shanghai Hotels, **Limited vs. The Commissioner** of Internal Revenue, CTA **Case No. 4979 dated September 19, 1995**, thus:

> "Even the argument of respondent that the claim for refund of tax paid two (2) years prior to April 14, 1993 is already barred" is untenable. The Supreme Court in the case of Commissioner of Internal Revenue v. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989, held that "the two (2) year prescriptive period within which to claim a refund commences to run at earliest on the date of filing of the adjusted final return. As in this case, the taxable year involved is calendar year 1990. Therefore, the prescriptive period shall begin to run, at earliest, from time petitioner is required to file its final tax return, that is April 15,

> 1991. Hence, petitioner had until April 15, 1993 within which to file its claim for refund. x x x"

Hence, in this particular case, the filing of petition for review on April 15, 1996 was still within the prescriptive period.

WHEREFORE, in view of all the foregoing, the petition is hereby **DISMISSED** for insufficiency of evidence. Accordingly, petitioner's claim for refund is hereby **DENIED**, without special pronouncement as to costs.

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 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