REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY/FOREIGN CURRENCY DEPOSIT UNIT,
Petitioner,

- versus -

C.T.A CASE NOS. 4356 and 4441

5/5/94

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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DECISION

The consolidation of the above-named cases were sought by petitioner for continuity and convenience of all the parties. There being no objection from respondent, this Court granted said motion.

C.T.A. Case No. 4356 involves a claim for refund for 1986 in the amount of P3,993,067.[04] representing the following:

1986 Excess income tax payment	P2,240,675.[77] [1]	
1986 Withholding tax on interest on gov't securities & other income	2,444,806.[27] [2]	P 4,685,482.[04] [3]

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[1] Exhs. "ZZ" and "ZZ-1".

[2] Exhs. "DDD" "DDD-1" to "DDD-51", inclusive; Exhs. "YY" to "YY-2", Exhs. "BBB", "BBB-1" to "BBB-6" and Exhs. "CCC" to "CCC-2".

[3] Exhs. "WW", "XX" and "XX-1".

Less: 1987 FCDU tax liability	692,415.00[4]
1986 CLAIM FOR REFUND	P 3,993,067.04[5]

C.T.A. Case No. 4441 involves a claim for refund for 1987 in the amount of P1,584,074.25 computed as follows:

1987 Withholding tax on interest on gov't securities and other income	P 3,658,689.25[6]
Less: 1988 FCDU tax liability	2,074,671.00[7]
1987 CLAIM FOR REFUND	P 1,584,018.25[8]

Petitioner is a domestic banking corporation with a foreign currency deposit unit.

On April 14, 1989, petitioner filed a written claim for refund[9] with the Bureau of Internal Revenue (BIR) covering the 1986 alleged refundable amount of P3,993,067.04. Simultaneous therewith, it filed a petition for review[10] with the Court of Tax Appeals (CTA).

On April 16, 1990, a judicial claim[11] for refund was filed by petitioner with the Court this time covering the 1987 alleged refundable amount of P1,584,018.25 since

[4] Exhs. "NN", "OO-1"; "QQ"; This amount was offered by FEBTC against its refundable tax as shown by Exh. "BB".

[5] FEBTC was able to support with evidence only P3,891,917.04 or a difference of P101,250.00.

[6] Exhs. "BB", "EEE", "FFF" to "FFF-24", "GGG", "GGG-1" and "GGG-2", "HHH" to "HHH-2", "III" "JJJ" to "JJJ-26", "WW-13" on "WW".

[7] T.S.N. of October 20, 1992, p. 23.

[8] Ibid., Exh. "WW" 15 on Exh. "WW".

[9] Exhibit "A".

[10] Records of CTA Case No. 4356, pp. 1-4.

[11] Records of CTA Case No. 4441, pp. 1-5.

respondent has failed and refused to refund the said amount notwithstanding repeated oral demands.[12]

Practically the same allegations were made by respondent in its answer to the foregoing petitions, viz:

> (1) Petition states no cause of action since there is no allegation as to the date when the tax sought to be refunded was paid or that it was actually paid to the government;
>
> (2) Petitioner failed to show that it has complied with the provisions of Section 230 of the Tax Code;
>
> (3) The claim for refund has already prescribed as of the date of filing of the petition since the prescriptive period started to run from the date the tax was paid;
>
> (4) A claim for tax refund partakes the nature of an exemption from taxation and must be construed strictly against petitioner.

In addition, respondent raised the defense of lack of jurisdiction over the case with regards to the 1987 petition for review for failure of petitioner to file a written claim for refund with the BIR within the two year period prescribed by Section 204(3) of the Tax Code.

The issue in CTA Case No. 4356 and CTA Case No. 4441 may be briefly stated as - whether or not petitioner is entitled to the refund claimed. The question on whether this Court has jurisdiction over CTA Case No. 4441 is likewise submitted for decision.

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[12] CTA Case No. 4441 petition for review p. 3, par. 7

Petitioner presented and offered documentary and testimonial evidence in support of its claim. Counsel for respondent manifested that he has no records to transmit in these cases and submitted only one piece of evidence. These cases were submitted for decision after the parties have filed their respective memorandum.

Relevant to the resolution of the issues at bar are Sections 243 (now Section 230) in relation to Section 246 (3) (now Section 240[3]) of the Tax Code, as amended which are reproduced below:

> SEC. 243. *Recovery of tax erroneously or illegally collected.* - <u>No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax</u> hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, <u>or of any sum alleged to have been excessive</u> or in any manner wrongfully collected, <u>until a claim for refund or credit has been duly filed with the Commissioner;</u> 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, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after the 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. (Emphasis supplied.)

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SEC. 246. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* - The Commissioner may -

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(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 charge 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. (Emphasis supplied)

The filing of a written claim for refund with the Commissioner of Internal Revenue, within two years after the payment of the tax, is an indispensable requirement before any Court action may be commenced.

In C.T.A. Case No. 4441, there is nothing in the records of the case to prove that petitioner filed in writing with the Commissioner of Internal Revenue a claim for refund of the purported excess tax payment for 1987 in the amount of P1,584,018.[23]. Paragraph 7 of the petition for review in fact provides that:

"Notwithstanding repeated Oral demands made by petitioner for respondent to reimburse it with the above-stated refundable amount, respondent has failed and refused and continues to fail and refuse the said amount to petitioner." (Emphasis supplied.)

The requirement of the law is very specific and leaves no doubt as to its interpretation. The failure of petitioner to comply with the mandatory filing of a written claim for refund with the BIR is fatal to its cause.

Verily, this Court cannot take cognizance of CTA Case No. 4441 and hereby dismiss the petition for review for lack of jurisdiction.

In Case No. 4356, the written claim for refund of the 1986 excess tax payment of P3,993,067.04 was filed with the BIR on April 14, 1989 and on the same day the court action was commenced.

Every corporation shall file a quarterly income tax return (Section 78 now Section 68) and a final adjustment return covering the total net income for the preceding calendar or fiscal year (Section 79 now Section 69). The income tax due on the corporate quarterly returns and the final income tax return shall be paid at the time the declaration or return is filed in a manner prescribed by the Commissioner of Internal Revenue (Section 80(c) now Section 70(c)). Thus, the date of payment of the tax as prescribed under Section 243 (now Section 230) was construed to mean the period when the corporate income tax return is required to be filed. (**Bank of the**

Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993.) The time of filing the corporate quarterly income tax return is within sixty(60) days following the close of each of the first three quarters of the taxable year. The final Adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year as the case may be. (Section 80(b) now Section 70(b).)

In the case of **Commissioner of Internal Revenue vs. TMX Sales Inc. and the Court of Tax Appeals,** G.R. No. 83736, January 15, 1992 the Supreme Court ruled:

> "Therefore, <u>the filing of quarterly income tax returns</u> required in Section 85 (now Section 68) and implemented per BIR Form 1702-Q <u>and payment of quarterly income tax should only be considered mere installments of the annual tax due</u>. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax. Consequently, <u>the two-year prescriptive period provided in Section 292 (now Section 230 of the Tax Code) should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of income tax</u>." (Emphasis supplied.)

In the case of ACCRA **Investments Corporation vs. the Hon. Court of Appeals, Et. Al.**, G.R. No. 96322, December 20, 1991, petitioner ACCRAIN's main argument in elevating this case to the Supreme Court is precisely the reckoning date for the commencement of the two-year prescriptive period in filing a claim for refund of overpaid taxes for the taxable year 1981. The Supreme Court held:

> "The petitioner corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The petitioner corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on April 15, 1982, it reported a net loss of P2,957,142.^{00}. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of the aforementioned codal provision which reads:
>
> > 'Sec. 70(c) - *Time payment of the income tax.* - The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Sections 68 and 69 shall be paid at the time the declaration or return is filed as prescribed by the Commissioner of Internal Revenue.
>
> The term 'return' in the case of domestic corporations like ACCRAIN refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which partly reads:

'Sec. 69. *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable 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 income of the 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.

Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd.** (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.

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It should be noted that herein petitioner adopts the calendar year basis of reporting its income and expenses.

For calendar year ending December 31, 1986, petitioner filed its Income Tax Return on April 15, 1987. The Tax Code states it has on or before April 15, 1987 to file said return. Petitioner has then two years within which to file a written claim for refund with the Commissioner of Internal Revenue and with the Court counted from April 15, 1987, the date when petitioner is required to file its final adjustment return. These requirements were duly complied with by petitioner. On April 14, 1989, petitioner filed in writing with the Commissioner of Internal Revenue a claim for refund and on the same day filed a court suit for the refund of the alleged excess tax payments. Both the written claim for refund and the petition for review were filed within the two-year period as the law expressly and clearly provides. Therefore, the claim for refund in CTA Case No. 4356 has not yet prescribed.

It bears emphasis at this point that the P3,993,067.04 refund being sought still has to be substantiated in order that petitioner may be entitled thereto. The evidence formally offered by petitioner which were evaluated and admitted by this Court are the following:

I. Excess income tax payment - P 2,240,675.77

Exhibit "ZZ"	CB confirmation Receipt No. B8644454 dated May 30, 1986 in the name of FEBTC in the amount of P2,240,675.77
Exhibit "P-1"	FEBTC Cashier's Check No. 196070 dated May 28, 1986 payable to the Commissioner of Internal Revenue in the amount of P2,240,675.77
Exhibit "AAA"	FEBTC Income Tax Return for quarter ending March 31, 1986 stamped received by BIR on May 30, 1986

II. Creditable Withholding tax - P 2,444,806.27

Exhibit No.	Withholding Agent	Type of Income	Amount of Income	Tax Withheld
DDD	Central Bank of the Philippines	Interest	P 100,000.00	P 15,000.00
DDD-1	Central Bank of the Philippines	Interest	84,000.00	12,600.00
DDD-2	Central Bank of the Philippines	Interest	84,000.00	12,600.00
DDD-3	Central Bank of the Philippines	Interest	168,000.00	25,200.00
DDD-4	Central Bank of the Philippines	Interest	24,000.00	3,600.00
DDD-5	Central Bank of the Philippines	Interest	24,000.00	3,600.00
DDD-6	Central Bank of the Philippines	Interest	100,000.00	15,000.00
DDD-7	Central Bank of the Philippines	Interest	168,000.00	25,000.00
DDD-8	Central Bank of the Philippines	Interest	342,000.00	51,300.00
DDD-9	Central Bank of the Philippines	Interest	135,000.00	20,250.00
DDD-10	Central Bank of the Philippines	Interest	900,000.00	135,000.00
DDD-11	Central Bank of the Philippines	Interest	450,000.00	67,500.00
DDD-12	Central Bank of the Philippines	Interest	146,250.00	21,937.50
DDD-13	Central Bank of the Philippines	Interest	112,500.00	16,875.00
DDD-14	Central Bank of the Philippines	Interest	630,000.00	94,500.00
DDD-15	Central Bank of the Philippines	Interest	58,500.00	8,775.00
DDD-16	Central Bank of the Philippines	Interest	1,372,500.00	205,875.00
DDD-17	Central Bank of the Philippines	Interest	90,000.00	13,500.00
DDD-18	Central Bank of the Philippines	Interest	244,800.00	36,720.00
DDD-19	Central Bank of the Philippines	Interest	450,000.00	67,500.00
DDD-20	Central Bank of the Philippines	Interest	6,750.00	1,012.50
DDD-21	Central Bank of the Philippines	Interest	144,000.00	21,600.00
DDD-22	Central Bank of the Philippines	Interest	451,800.00	67,770.00
DDD-23	Central Bank of the Philippines	Interest	652,500.00	97,875.00
DDD-24	Central Bank of the Philippines	Interest	180,000.00	27,000.00
DDD-25	Central Bank of the Philippines	Interest	1,729,800.00	259,470.00
DDD-26	Central Bank of the Philippines	Interest	58,500.00	8,775.00
DDD-27	Central Bank of the Philippines	Interest	229,500.00	34,425.00
DDD-28	Central Bank of the Philippines	Interest	90,000.00	13,500.00
DDD-28-a	Central Bank of the Philippines	Interest	328,500.00	49,275.00
DDD-29	Central Bank of the Philippines	Interest	675,000.00	101,250.00

Exhibit No.	Withholding Agent	Type of Income	Amount of Income	Tax Withheld
DDD-30	Central Bank of the Philippines	Interest	630,000.00	94,500.00
DDD-31	Central Bank of the Philippines	Interest	459,000.00	68,850.00
DDD-32	Central Bank of the Philippines	Interest	231,750.00	34,762.50
DDD-33	Central Bank of the Philippines	Interest	3,600.00	540.00
DDD-34	Central Bank of the Philippines	Interest	628,200.00	94,230.00
DDD-35	Central Bank of the Philippines	Interest	135,000.00	20,250.00
DDD-36	Central Bank of the Philippines	Interest	135.000.00	20,250.00
DDD-37	Central Bank of the Philippines	Interest	373,950.00	56,092.50
DDD-38	Central Bank of the Philippines	Interest	27,000.00	4,050.00
DDD-39	Central Bank of the Philippines	Interest	114,750.00	17,212.50
DDD-40	Central Bank of the Philippines	Interest	374,850.00	56,227.50
DDD-41	Central Bank of the Philippines	Interest	13,950.00	2,029.50
DDD-42	Central Bank of the Philippines	Interest	374,850.00	56,227.50
DDD-43	Central Bank of the Philippines	Interest	13,950.00	2,092.00
DDD-44	Central Bank of the Philippines	Interest	23,750.00	3,562.50
DDD-45	Central Bank of the Philippines	Interest	23,750.00	3,562.50
DDD-46	Central Bank of the Philippines	Interest	225,000.00	33,750.00
DDD-47	Central Bank of the Philippines	Interest	225,000.00	33,750.00
DDD-48	Central Bank of the Philippines	Interest	374,850.00	56,227.50
DDD-49	Central Bank of the Philippines	Interest	13,950.00	2,092.50
DDD-50	Central Bank of the Philippines	Interest	13,950.00	2,092.00
DDD-51	Central Bank of the Philippines	Interest	374,850.00	56,227.50
		SUB - TOTAL	P14,885,985.00	P2,252,863.50
BBB	Investment Planning Corp. of Philippines	Prof. fee	12,000.00	1,200.00
BBB-1	Universal Robina Corp.	Collateral fee	4,050.00	202.50
BBB-2	Precision Electronics Corp.	Prof. fee	4,600.00	450.00
BBB-3	AGP Industrial Corp.	Prof. fee	14,583.25	729.17
BBB-4	Anglo Phil. Oil & Mining Corp.	Transfer agent	6,000.00	300.00
BBB-5	San Jose Oil Co., Inc.	Prof. fee	10,200.00	510.00
BBB-6	FILMAG (PHILS.), Inc.	Prof. fee	4,200.00	210.00
		SUB - TOTAL	P 55,633.25	P3,601.67
		T O T A L	P14,941,618.25	P2,256,465.17

Exhibits "YY" "YY-1" to "YY-3" were not considered as competent evidence since these were not the proper BIR form but mere certifications of FEBTC that it withheld the tax on its own income from its investments in DPB Countryside Bills. This is an aberration because the recipient of the income withheld the tax rather than the payor or the source of the income.

Exhibits "CCC", "CCC-1" and "CCC-2" were also set aside since the certificate of creditable withholding tax clearly show that they pertain to the period January to December 1985 when the refund sought is for 1986.

Based on the foregoing, the 1986 creditable withholding tax which were duly supported with evidence only amount to P2,256,465.^{17}, lower by P188,341.^{10} than what is claimed.

The income from which the various creditable income taxes were withheld were in all probability included as part of petitioner's 1986 reported income as the income tax return filed will show.

While the 1986 excess income tax payment and creditable withholding tax were carried over to the succeeding taxable year, only the 1987 FEBTC-FCDU income tax liability was applied against it for the reason that petitioner bank again incurred a loss in 1987 (See Exhibit "BB").

Having established its entitlement to the refund in accordance with the law and evidence, the amount which may be refunded to petitioner with regards to its 1986 claim may thus be computed as follows:

1986 Excess income tax payment	P2,240,675.77
1986 Creditable withholding taxes	2,256,465.17
1986 Excess income tax payment	P4,497,140.94
Less: 1987 FCDM income tax liability	692,415.00
1986 Refundable amount	P3,804,725.94

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or issue tax credit certificate to petitioner Far East Bank and Trust Company for the amount of P3,804,725.94 representing its 1986 excess income tax payment which have not been utilized/applied to any taxable period/year.

The 1987 claim for refund of petitioner is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Quezon City, Metro Manila, May 5, 1994.

RAMON O DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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