REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE DAVIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NOS. 3839, 4013 and 4124

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

/20/94

DECISION

In these consolidated cases, petitioner seeks judicial confirmation that it can automatically apply as tax credit the cumulative amounts of P819,175.00, P905,033.00 and P1,883,260.00 shown in its 1983, 1984 and 1985 Income Tax Returns, respectively, against its income tax liabilities for the succeeding taxable year(s) or in the alternative a refund or tax credit of the said amounts.

As set forth in the pleadings and as established by the evidence, the facts are stated as follows:

Petitioner, a domestic corporation existing under and by virtue of Philippine laws, filed its corporate annual income tax returns for the taxable years 1983, 1984 and 1985 on April 9, 1984, April

15, 1985 and April 15, 1986, respectively, details of which are shown hereunder:

1983
(CTA Case No. 3839)

Net Income(Loss)		P (20,876.00)
Tax Due		Nil
Less:		
a. Previous Year(s)' Quarterly Credits		
b. Quarterly Payment(s)		Nil
Balance of Tax Due		Nil
Less: Tax Credit		
a. 1983	716,506.00	
b. 1982	102,669.00	819,175.00
Total Amount Refundable/Creditable		P 819,175.00

1984
(CTA Case No. 4013)

Net Income(Loss)		P2,953,373.00
Tax Due		1,023,681.00
Less:		
a. Previous Year(s)' Quarterly Credits		
b. Quarterly Payment(s)		Nil
Balance of Tax Due		P1,023,681.00
Less: Tax Credit		
a. 1984	P1,109,539.00	
b. 1983	716,506.00	
b. 1982	102,669.00	1,928,714.00
Total Amount Refundable/Creditable		P 905,033.00

1985
(CTA Case No. 4124)

Net Income(Loss)		P(649,748.00)
Tax Due		Nil
Less:		
a. Previous Year(s)' Quarterly Credits		
b. Quarterly Payment(s)		Nil
Balance of Tax Due		Nil
Less: Tax Credit		
a. 1985	P978,227.00	
b. 1984	905,033.00	1,883,260.00
Total Amount Refundable/Creditable		P1,883,260.00

Petitioner wrote respondent in three different occasions requesting confirmation or authorization to credit the refundable amounts against its income tax liabilities for the succeeding year pursuant to Section 86 of the Tax Code or in the alternative, grant the refund or tax credit of said amounts pursuant to Section 295.

Respondent failed to act on petitioner's requests thereby prompting petitioner to file these petitions on September 4, 1984 - CTA Case No. 3839 (1983 ITR); December 27, 1985 - CTA Case No. 4013 (1984 ITR); and December 29, 1986 - CTA Case No. 4124 (1985 ITR).

Respondent, in answer to the petitions, alleged among others as special and affirmative defenses that: (a) the claims of petitioner that it had available tax credit does not warrant, ipso facto, for confirmation of said tax credits; (b) these cases does not involve erroneously or illegally collected taxes; (c) there is no need to file the petitions within the two-year period pursuant to Sections 292 and 295 of the Tax Code because a taxpayer may recover the excess income taxes paid from the Bureau of Internal Revenue within ten (10) years from the date of payments under Article 1144 of the New Civil Code; (d) the petitions state no cause of action because they do not allege the date(s) when the taxes were paid; and (e) it is incumbent upon petitioner to show that it has complied with the provisions of Sections 292 and 295 of the Tax Code.

While the cases were pending trial, petitioner applied as tax credit the alleged refundable amount of P1,883,260.00 as shown in its 1985 income tax return against its income tax liability for the taxable year 1986.

Put in simplier terms, the main issues presented for resolution are:

1. Whether or not petitioner may apply as tax credit the refundable amounts shown in its 1983, 1984 and 1985 corporate annual income tax returns against its income tax liabilities for the succeeding taxable year(s).

2. Assuming arguendo that petitioner cannot credit the refundable amounts against its income tax liabilities for the respective succeeding taxable year(s), whether or not petitioner is entitled to a refund or tax credit in the total amount of P1,883,260.00 representing excess creditable withholding taxes paid during taxable years 1984 and 1985.

Before we go to the main issues, we shall discuss first the other points raised by respondent.

Respondent alleged that the petitions involved herein do not cover erroneously or illegally collected tax pursuant to Section 292 of the Tax Code. This Court has ruled in **Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991**, that:

> "Although the title of Sec. 230 of the Tax Code is 'Recovery of Tax Erroneously or Illegally Collected', the title alone is not controlling. By the tenor of Sec. 230, the two-year limit applies to actions to recover -
>
> 1. any national internal revenue tax erroneously or illegally assessed or collected;
>
> 2. any penalty claimed to have been collected without authority; or
>
> 3. any sum alleged to have been excessive or in any manner wrongfully collected
>
> (See **Muller & Phipps v. Commissioner of Internal Revenue,** 103 Phils. 145, March 20, 1958). The overpaid income taxes in this case fall under #3 for although they were legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they were nonetheless 'excessive'. **(Affirmed by the Court of Appeals in Commr. of Internal Revenue v. Citytrust Banking Corp., CA-G.R. No. SP 26839, July 31, 1992.)**"

On the contention that petitioner need not file a petition to preserve its right to refund or tax credit since it has ten (10) years from date of payments to recover excess income taxes paid pursuant to Article 1144 of the New Civil Code again this Court in the case of **Citytrust Banking Corp. v. Commissioner of Internal Revenue, supra.,** said:

> "At the very least then, the automatic tax credit provision acts like a claim for refund for the year of overpayment because it serves the same purpose which is to put the BIR on notice that the collection of the tax is being contested. But settled is the rule that even when a claim for refund or tax credit is pending with the Commissioner, when the 2 year period from the date of payment is about to elapse the taxpayer need not await the Commissioner's decision and instead must file a petition for review in this court pursuant to Sec. 230 of the Tax Code. To opine therefore that there is no need to file a petition for review to preserve the right to claim for a refund or tax credit is to go against the positive mandate of Sec. 230. x x x. Therefore, the taxpayer should still file a claim for a refund or tax credit and the corresponding petition for review within the periods required in case of overpayment of income tax reflected in its returns otherwise his right to claim for a refund or tax credit will prescribe. xxx.
>
> x x x. The Tax Code being a special law, its provisions prevail over those under the Civil Code. And since the overpayments arose out of the application of the provisions of the Tax Code, the provisions of the same on prescriptive periods should necessarily govern. xxx.

Then in the most recent case of **Servicewide Specialists, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals, CA - G.R. SP No. 25893, February 14, 1992,** the Court of Appeals held:

> "The ruling was subsequently clarified by this Court in a later case, Commissioner of Internal Revenue vs. Insular Lumber Co., Dec. 11, 1967, 21 SCRA 1237. It was there held that Sections 306 and 309 of the Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the National Internal Revenue Code. In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2), of the Civil Code. xxx xxx. 'In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified.'"

Respondent further contends that the petitions state no cause of action because they do not allege the date(s) when the taxes were paid. Time and again this Court has ruled that "petitioner is not required to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in its operations." (**Sun Insurance Office Ltd. v. Acting Commr. of Internal Revenue, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. Commr. of Internal Revenue, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commr. of Internal Revenue, CTA Case No. 3976, October 18, 1989; and Paseo Realty & Dev. Corp. v. Commr. of Internal Revenue, CTA Case No. 4528, April 30, 1993.**)

Going now to the main issues, petitioner hinged its argument on Section 86 (now Section 69) of the National Internal Revenue Code which reads as follows:

> "**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 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."

Section 7 of Revenue Regulations No. 10-77 (Regulations governing the method of computing corporate quarterly income tax on a cumulative basis), dated October 7, 1977, provides:

"**Sec. 7.** ***Filing of final or adjustment return and final payment of income tax.*** - xxx xxx xxx.

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 succeeding taxable year by filling up the appropriate</u>

> box on the corporate tax return (BIR Form No. 1702). (Emphasis Ours.)
>
> x x x x x x x x x."

The Supreme Court, in the latest case of **San Carlos Milling, Co., Incorporated vs. Commissioner of Internal Revenue and Court of Appeals, G.R. No. 103379, November 23, 1993,** made this pronouncement:

> "The respondent Court held that the choice of a corporate taxpayer for an automatic tax credit does not ipso facto confer on it the right to immediately avail of the same. Respondent court went on to emphasize the need for an investigation to ascertain the correctness of the corporate returns and the amount sought to be credited. We agree.
>
> 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.

Petitioner points out that the <u>automatic</u> tax credit scheme under the law refers to the amount "shown" in the final adjustment return of the corporate taxpayer and not as determined by the Commissioner, thereby recognizing the computation made by the taxpayer. This contention is not impressed with merit. To reiterate, Section 7 of Revenue Regulation No. 10-77 provides that '(a)ny excess x x x computed and shown x x x shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities x x x.'

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.
>
> Further, the cited legal provision itself employs the word 'may' in the phrase 'may be credited', implying that the availability of the remedy of tax credit is not absolute and mandatory; it does not confer an absolute right on the taxpayer to avail of the tax credit scheme if it so chooses; neither does it impose a duty on the part of the government to sit back and allow an important facet of tax collection to be at the sole control and discretion of the taxpayer.
>
> x x x x x x x x x."

In the case at bar, petitioner in fact sought respondent's approval to apply the refundable amount as tax credit against its income tax liabilities for the succeeding taxable year or in the alternative to treat the request as a claim for refund or tax credit pursuant to Sections 292 (now Section 230) and 295 (now Section 204) of the Tax Code. However, due to respondent's failure to act on the request petitioner was constrained to apply the refundable amounts to its tax liabilities for the succeeding year.

Subsequently, while these cases were pending trial, respondent's revenue examiner recommended for a favorable action on the requests for confirmation with the alternative claim for refund or tax credit of P1,883,260.00. [Exhs. I-C and I-C-1] It seems that the revenue examiner was convinced that petitioner is indeed entitled to the refund claimed. Petitioner presented and offered in evidence its 1983, 1984, 1985 and 1986 Annual Income Tax Returns, Audited Financial Statements, various Certificates of Tax Withheld at Source, and CB Confirmation Receipts to prove entitlement to the refund claimed.

While it seems that petitioner is entitled to the alternative claim for tax refund or credit, this Court is constrained to DENY the claim for refund of the cumulative amount of P1,883,260.00. The records (supplemental petition) will show that the said amount was utilized as an automatic tax credit in 1986 pursuant to Section 69 (formerly Section 86) of the Tax Code. To permit petitioner to have a refund or tax credit for the excess tax credits which it had already applied against its 1986 income tax would, in effect, constitute a double refund in favor of the petitioner to the prejudice of the government.

WHEREFORE, this Court finds the petitions without merit. The alternative claim for refund of P1,883,260.00, representing overpaid income tax for the year 1985 is hereby **DENIED.**

SO ORDERED.

Quezon City, Metro Manila, January 20, 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