REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AUSTRALASIA CYLINDER CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 6269

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 16 2003

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate amounting to P1,369,411.00 allegedly representing excess or overpaid income tax for the year 1998.

The antecedent facts are as follows:

Petitioner is a domestic corporation engaged in the manufacture of steel drums and liquefied petroleum gas (LPG) cylinders with office address at Km. 21, Quirino Highway, Novaliches, Quezon City. *(par. 1, Joint Stipulation of Facts)*

For the taxable year 1998, petitioner filed its Annual Income Tax Return on April 16, 1999, declaring a gross income of P36,161,977.00 and an income tax due of P723,240.00, computed by applying the two (2%) percent Minimum Corporate Income

Tax (MCIT) *(Exhibit "A")*. For the first three quarters of 1998, petitioner's quarterly income tax payments amounted to P613,811.69, broken down as follows:

Exhibit	**Period Covered**	**Amount**
B-1, B-2	First Quarter	P301,294.06
C-1, C-2	Second Quarter	97,187.03
D-1, D-2	Third Quarter	215,330.60

	Total	P613,811.69
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Moreover, petitioner's creditable withholding taxes for the year 1998 amounted to P1,911,213.13. After applying petitioner's income tax due of P723,240.00 against its quarterly income tax payments of P613,811.69 and creditable withholding taxes of P1,911,213.13, the excess or overpaid income tax amounted to P1,801,784.82 which petitioner opted to carry over as tax credit on the following year.

On April 17, 2000, petitioner filed its Annual Income Tax Return for the taxable year 1999 declaring a gross income of P20,823,025.00 and an income tax due in the amount of P432,374.00 *(Annex "E", Petition for Review)*. However, on July 27, 2001, petitioner filed an amended 1999 Annual Income Tax Return declaring a gross income from operation of P20,823,012 and a minimum corporate income tax of P432,374.00 *(Exhibits "W", "W-1" and "W-2")*. Petitioner, however, ended up in a net loss position during the said year amounting to P535,634.00.

On March 29, 2001, petitioner filed a letter-request with the Appellate Division of the Bureau of Internal Revenue (BIR) claiming for the refund of the amount of P1,369,411.00 *(Exhibit "X")*, computed as follows:

1998 Excess Tax Credits	P1,801,784.82
Less: 1999 Minimum Corporate Income Tax Due	432,374.00
	P1,369,410.82
Amount to be refunded (rounded-off)	P1,369,411.00

Unable to obtain any response from the respondent, petitioner filed a petition for review with this court on April 6, 2001.

Respondent filed his Answer on June 6, 2001 and raised the following Special and Affirmative Defenses:

> "4. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;
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> "5. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;
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> "6. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> "7. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

In their Joint Stipulation of Facts, the parties stipulated that this petition for review is filed with this court to review and grant the refund in the amount of P1,369,411.00 representing excess or overpaid income tax for the year 1999. However, the court has noted that the amount claimed by petitioner is actually the 1998 excess credits as reflected in its 1998 Annual Income Tax Return reduced by the MCIT for the taxable year 1999.

On March 28, 2003, the case was submitted for decision sans evidence and memorandum of the respondent.

The sole issue to be resolved by the court is whether or not, on the basis of the evidence presented, petitioner is entitled to the refund of P1,369,411.00 as overpaid income tax for the year 1998.

We rule to deny the petition.

Relevant to the disposition of this case is Section 76 of the 1997 Tax Code which provides, viz:

> "**Section 76**. ***Final Adjustment Return***. – Every corporation liable to tax under Section 27 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 that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. *(Underscoring ours)*

Under the aforequoted provision of law, the taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against its income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

Petitioner's 1998 Annual Income Tax Return would reveal that petitioner has opted to carry-over its 1998 excess tax credits in the amount of P1,801,785.00 to the succeeding year, as shown by the "x" mark in the box "To be carried over as tax credit next year" *(Exhibit "A")*.

On the other hand, petitioner's 1999 Annual Income Tax Return showed that indeed, petitioner carried over the amount of P1,801,785.00 as Prior Year's Excess Credits. In the same return, petitioner again signified its intention to carry-over its excess tax credits by placing a check mark in the box "To be carried over as tax credit next year/quarter" *(Exhibit "W")*.

This court has categorically ruled in several cases that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor ***(Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, dated March 12, 2003; Philam Asset Management, Inc. vs. Commissioner Internal Revenue, CTA Case No. 6210, dated May 2, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, dated April 19, 2002; Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, dated March 1, 2002; and The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6280, August 16, 2001).*** The Court of Appeals has likewise ruled in the case of ***Commissioner of Internal Revenue vs. Honda Phil., Inc., CA-GR SP No. 68141,***

October 25, 2002, that "since the rule of irrevocability of the option to carry-over the tax credit applies to respondent, it cannot file a claim for cash refund for its unutilized tax credit."

Considering that petitioner has already exercised its option to carry-over the 1998 excess tax credits to the succeeding year, it is no longer entitled to claim for the refund or issuance of a tax credit certificate. However, petitioner may still claim the excess income tax payment as tax credit to future income tax liabilities (***Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, supra)***.

Accordingly, this court finds it no longer necessary to delve into the remaining issues.

WHEREFORE, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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