REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ABN AMRO SAVINGS BANK
(formerly BA SAVINGS BANK and
GREAT PACIFIC SAVINGS BANK),
Petitioner,

- versus -

C.T.A. CASE NO. 6065

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 03 2002

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DECISION

Before Us is a petition seeking for refund or issuance of tax credit certificate in the amount of P16,402,195.00 representing its excess quarterly income tax payment and unutilized creditable taxes withheld at source for the taxable year 1997.

Based on the pleadings submitted, the antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing by virtue of Philippine laws, with principal office located at 116 Gamboa Street, Legaspi Village, Makati City (*par. 1, Joint Stipulation of Facts*). It is principally engaged in commercial banking.

On April 15, 1998, petitioner, then known as BA Savings Bank, filed its Annual Income Tax Return for the year ended December 31, 1997. The said return shows that petitioner incurred a net loss of P97, 154,418.00. Further, it reflects that petitioner had an excess income tax credits in the sum of P19,831,426.00 consisting of P18,696,053.00

representing excess income tax it had paid for the first quarter of 1997 *(Exhibit D)*, and the unutilized creditable tax withheld of P1,135,373.00 *(Exhibit A-5)*.

On April 15, 1999, petitioner, then already known as Great Pacific Savings Bank Corporation, filed its Annual Income Tax Return for the calendar year ended December 31, 1998, declaring an income tax due of P3,429,231.00 and total tax credits in the amount of P34,246,952.00 consisting of its prior year's excess credit amounting to P19,831,426.00 and its tax credits for the first three quarters of 1998 in the amount of P14,415,526.00. Thus, after deducting its income tax due of P3,429,231.00, petitioner's total excess creditable income taxes amounted to P30,817,712.00 for 1998. Again, petitioner signified its intention to carry-over the said amount as tax credit for the following year (*Exhibit B*).

On November 17, 1999, petitioner filed with the Bureau of Internal Revenue an administrative claim for the refund of its unutilized income tax credits for the taxable year 1997 in the amount of P16,402,195.00 (*par. 6, Joint Stipulation of Facts*), computed as follows:

Unutilized Income Tax Credits for 1997	P19,831,426.00
Income Tax Due for 1998	3,429,231.00
Net Unutilized Income Tax Credits for 1997	P16,402,195.00

Petitioner anchored its claim on Sections 69 and 204(3) of the then National Internal Revenue Code which provide:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay 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 net income of that year, the corporation shall either:

(a) Pay the 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 204. *Authority of the Commissioner to compromise, abate and refund or credit taxes*. – The Commissioner may –

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(3) Credit or refund taxes erroneously or illegally received or 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 change 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 (2) years after the payment of the tax or penalty."

On March 16, 2000, Regional Director Antonio Ortega of Revenue Region No. 8, Revenue District Office No. 47, East Makati, of the Bureau of Internal Revenue, issued Letter of Authority No. LOA 1999 00017797 authorizing Revenue Officer Manuel Baltazar and Group Supervisor Teofista Sevilla to examine petitioner's books of accounts and other accounting records relative to its claims for refund (income tax) for the year 1997. Said letter of authority was revalidated on June 15, 2000.

On April 13, 2000, petitioner filed this petition for review, claiming that the respondent has not favorably acted upon its claim for refund and the two-year prescriptive period within which to judicially claim the said refund is about to expire.

On April 17, 2000, petitioner filed its 1999 Annual Income Tax Return reflecting total tax credits in the amount of P34,625,838.00 consisting of its prior year's excess credits in the amount of P30,817,721.00 and creditable taxes withheld for the first three quarters of the year in the amount of P3,808,117.00. Likewise in the said return, petitioner declared an income tax due of P4,318,803.00. Thus, petitioner claims to have an overpayment of P30,307,035.00 for 1999. Again, petitioner opted to carry over the said amount for the next taxable year.

On September 1, 2000, the Revenue Officer of Revenue District Office No. 47 issued a memorandum for the Revenue District Officer recommending the denial of the claim for refund of P16,402,95.00 (*pages 295-296, BIR Records, Exhibit 1*), portions of which are hereunder reproduced:

> "Considering the following facts and circumstances, the undersigned regret not to approve the taxpayer's request for refund, considering that in its Annual or Final Income Tax Return filed for the year 1997, taxpayer selected the option to "To be applied to next year" and repeatedly in its Annual and Final Returns for the years 1998 and 1999 again and again selected the option " To be carried as tax credit next year."
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> Section 76 of NIRC, provides xxxx " Once the option to carry-over and apply the excess quarterly income tax against income tax 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."
>
> In view of the foregoing, the undersigned hereby recommends the denial of the said claim for refund of P16,402,195.00."

The respondent informed the court and the petitioner of the said recommendation for denial during the hearing on September 25, 2000 (*CTA Records, p.40*).

Subsequently, on December 14, 2000, petitioner amended its 1999 Annual Income Tax Return in order to prove that it no longer carried over the unutilized portion of its 1997 excess tax credits to the taxable year 1999 (*Exhibit I*).

In their Joint Stipulation of Facts and Issues, the parties submitted the following issues for this Court's resolution:

1. Whether or not the amount of P1,135,373.00 was withheld from income payments made to the Petitioner for the taxable year 1997.

2. Whether or not the income from which the amount of P1,135,373.00 was withheld was declared by the Petitioner as part of its taxable income.

3. Whether or not the petitioner paid quarterly income tax in the amount of P18,696,053.00 for the taxable year 1997.

4. Whether or not the amount of P19,831,426.00 which was carried forward to the succeeding taxable year (1998) was not fully utilized by the petitioner during the taxable year 1998.

5. Whether or not the creditable withholding taxes being claimed for refund are duly substantiated by the appropriate withholding tax certificates.

6. Whether or not the petitioner filed a claim for refund of the amount of P16,402,195.00 representing excess quarterly income tax payment and unutilized creditable withholding taxes for the taxable year 1997 with the Bureau of Internal Revenue within the two-year period prescribed by law.

7. Whether or not petitioner has proven by sufficient evidence that it is entitled to the refund and/or issuance of a tax credit certificate in the amount of P16,402,195.00 being applied for in the instant case.

Before We proceed to the resolution of the jointly stipulated issues, We shall resolve first the arguments raised by the respondent in his memorandum, to state:

I. The amendment made by the petitioner on December 14, 2000 on its 1999 Annual Income Tax Return should not be given credence and probative value because it was amended after petitioner had learned that the respondent denied its administrative claim for refund.

II. Applying Section 76 of the 1997 Tax Code, as amended, since petitioner had already opted to carry over and apply its 1998 total excess credits (including the 1997 excess creditable income tax sought to be refunded) against its 1999 tax liability, such option to carry over is now irrevocable.

Anent his first argument, respondent contended that under Section 6 of the 1997 Tax Code, as amended, a return may be modified, changed or amended within three (3) years from the date of such filing but there must be no notice for audit or investigation of such return, statement or declaration actually served upon the taxpayer in the meantime. According to respondent, when petitioner filed its claim for refund with the BIR and had knowledge of the results of the examination and investigation thereon, petitioner cannot anymore amend its 1999 annual income tax return pursuant to the aforesaid provision.

This Court rules that the amendment made by the petitioner on its 1999 Annual Income Tax Return is valid. We agree with the petitioner that the excess creditable tax subject of refund was the result of transactions, which occurred prior to the effectivity of the 1997 Tax Code. Hence, it is clear that the said law is not applicable in this case. Instead, the legal basis for the validity of the amendment is Section 16 of the 1995 Tax Code, to quote:

"**Section 16.** *Power of the Commissioner to make Assessment.*

> *A. Examination of returns and determination of tax*- After a return is filed as required under the provisions of this Code, the Commissioner shall examine it and assess the correct amount of the tax. The tax or the deficiency so assessed shall be paid upon notice and demand from the Commissioner. Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: Provided, that the same may be modified or changed by filing another amended return, statement or declaration.

Unlike in the 1997 Tax Code, the above-quoted provision does not set restrictions on the right of the taxpayer to amend its return. Thus, even if the amendment was made after the letter of authority to audit and examine its books was issued by the BIR and the report of the audit or investigation has been submitted, the same is still within the bounds of law. In addition, the mere filing of the amended return in 1999 does not change the fact that the excess unutilized income tax withheld occurred before the 1997 Tax Code became effective. What are involved are the excess quarterly income tax payment of P18,696,053.00 and the unutilized creditable taxes withheld at source of P1,135,373.00 for taxable year 1997.

With reference to the second argument, respondent averred that petitioner has nothing to claim as refund because the amount of P16,402,195.00 sought to be refunded became part and parcel of the 1998 total excess tax credit (P30,817,721.00) which petitioner also opted to carry over in 1999. Respondent cited Section 76 of the 1997 Tax Code, as amended, which provides for the irrevocability of the option to carry-over and bars the filing of the application for refund or issuance of a tax credit certificate.

However, petitioner argued that its claim for refund is governed by the substantive law existing at the time of its occurrence, thus, Section 69 of the National Internal Revenue Code of 1995 applies.

We agree with the petitioner.

Section 69 of the National Internal Revenue Code of 1995 provides:

> **Section 69**. *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 income 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 quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Clearly from the above, unlike in Section 76 of the 1997 Tax Code, as amended, there is no provision pertaining to the irrevocability of the exercise of the taxpayer of its option to carry-over its excess tax credits. Consequently, petitioner may still claim for a refund of its excess tax credits notwithstanding its previous declaration in its final adjustment return of its intention to carry-over such excess tax credits to the succeeding taxable year.

We now dwell on the jointly stipulated issues.

At the outset, it must be made clear that petitioner's claim for refund arose from the unutilized income tax credit for 1997 of P19,831,426.00 consisting of P18,696,053.00 representing the excess quarterly income tax paid during the year and P1,135,373.00 allegedly representing creditable tax withheld *(Exhibits A-4 and A-5)*.

The Court finds the portion of the claim pertaining to the unutilized creditable tax withheld in the amount of P1,135,373.00 cannot be given due course. All the Certificates of Creditable Taxes Withheld submitted by the petitioner were withheld in 1996, clearly outside the taxable period which is the subject of the claim. Thus, the documents offered by the petitioner cannot be considered to support the amount claimed as creditable taxes withheld for the year 1997.

Moreover, granted that petitioner asked this Court to refund the amount covered by the certificates of creditable taxes withheld in 1996, the same will still fail due to prescription. As earlier mentioned, all the certificates of creditable income taxes withheld at source submitted by petitioner showed that the same were withheld in 1996. Pursuant to Section 69 of the 1995 National Internal Revenue Code, the excess tax credit of a given taxable year may only be credited or applied to the succeeding year (*Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals, CA –G.R. SP No. 33589 promulgated on October 14, 1994 and reiterated in the case of Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6070, dated April 10, 2001).*

It can be inferred then that the excess creditable withholding taxes for the year 1996 can only be applied against petitioner's 1997 income tax liability. Considering that petitioner suffered a net loss for the taxable year 1997, then it had only until April 15, 1999 to claim for the refund of its excess quarterly income tax payments and unutilized creditable taxes withheld at source for the taxable year 1997. Unfortunately, petitioner filed its claim for refund only on November 17, 1999 and this petition for review on April 13, 2000, obviously beyond the period allowed by law.

As regards the excess quarterly income tax paid in 1997, this Court is convinced that petitioner's claim deserves merit. Petitioner was able to support its claim with substantial evidence.

Petitioner submitted to the Court its Quarterly Income Tax Return for the first quarter of 1997, which was filed on May 30, 1997. The return showed on its face the machine validation of the amount it had paid with the authorized collecting bank in the amount of P18,696,053.00 *(Exhibit D)*. Moreover, petitioner declared in its 1997 Annual Income Tax Return the said amount as excess quarterly income tax paid *(Exhibit A-4)*.

In addition, records reveal that for the taxable year 1998, the prior year's excess credit of P19,831,426.00 was not fully utilized by the petitioner as it suffered a net loss, hence, it paid only the Minimum Corporate Income Tax (MCIT) of P3,429,231.00. Moreover, for the taxable year 1998, petitioner had creditable taxes withheld for the first three quarters totalling P14,415,526.00.

With regard to the compliance with the two year period required under Section 230 (now Section 229) of the Tax Code, as amended, the Court finds that both the administrative and judicial claims for refund fall within the reglementary period. As shown in the records, petitioner filed on April 15, 1998 its 1997 Annual Income Tax Return . Thus, the allowable period to apply for refund ended on April 14, 2000. Petitioner filed its claim before the Bureau of Internal Revenue on November 17, 1999 and the petition for review with this Court on April 13, 2000, clearly before the reglementary period lapsed.

In summary, after applying the MCIT of petitioner in the amount of P3,429,231.00 against its prior year's excess credits of P19,831,426.00, We find the amount refundable to petitioner to be P15,266,822.00, computed as follows:

Amount claimed		P16,402,195.00
Less: Disallowances		
a.) Creditable Taxes Withheld in 1996	P1,134,828.32	
b.) Unsupported Creditable Taxes Withheld	544.68	1,135,373.00
Amount Refundable:		P15,266,822.00

WHEREFORE, in the light of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of P15,266,822.00, representing excess quarterly income tax paid for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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