REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4786

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED: MAY 15 1995

x - x

D E C I S I O N

This is a judicial claim for refund of alleged excess creditable withholding tax for the year 1989 in the amount of ₱323,316.28. The facts are as follows:

Petitioner is a licensed broker/dealer of securities in the Philippines with principal offfice at Asian Plaza Sen. Gil J. Puyat St. Makati, Metro Manila.

On April 16, 1990, petitioner filed with the BIR its corporate annual income tax return for calendar year 1989 (Exhibit "B" p. 36), which indicates an excess tax credit amounting to Three Hundred Twenty-Three Thousand Three Hundred Sixteen Pesos and Twenty Eight Centavos (₱323,316.28).

A.	Total Income		₱ 41,635,945.00
	Less: Deductions		₱ (34,797,458.00)
	Taxable Income		₱ 6,838,487.00
			===================
B.	Tax Due		₱ 2,393,470.00
	Less:		
	a) Prior Year's Excess Tax Credit	₱ 852.262.06	
	b) Quarterly Payments Made	₱1,853,668.72	2,705,930.72
C.	Credit Available for Succeding Quarter		(₱ 312,460.78)
	Less tax credit:		
	5% Creditable Withholding Tax on Commission As selling Agents		₱ 10,855.50
	Excess Tax Credit for 1989		₱ 323,316.28

On March 27, 1992, petitioner filed with the BIR's Appellate Division, its "Claim for Refund of Overpaid 1989 Income Taxes in the Amount of ₱323,316.28." (Exhibit "M", id., p. 47-48). No action has been taken thereon by respondent Commissioner. Thus, to toll the running of the two-year prescriptive period, petitioner instituted the instant petition on April 13, 1992.

On May 29, 1992, respondent filed his Answer (Records, pp. 11-13) setting forth the following affirmative defenses:

> 1. Petitioner's claim has prescribed since its 1988 annual income tax return was filed on April 14, 1989, more than two-years prior to the filing of the instant petition;

2. Petitioner failed to show that the taxes paid were erroneously or illegally collected;

3. Petitioner has not shown that the amount sought to be refunded was actually withheld and/or remitted to the BIR; and

4. Petitioner has not shown its strict compliance with Section 204 in relation to Section 270 of the Tax Code.

In his Memorandum (Records, pp.82-86) submitted July 13, 1994, respondent further argued that (1) petitioner had in fact applied the amount it now seeks to have refunded, as tax credit for the first quarter of calendar year 1990; and (2) that petitioner cannot claim/apply the tax withheld in Exhibit J since it belongs instead to Anscor Capital & Investment Corporation.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of the amount of ₱323,316.28 as creditable withholding tax for the year 1989.

We rule against the petitioner.

A perusal of the antecedent facts of the case, reveal that the refundable amount of ₱323,316.09 springs from 1987 when it incurred a refundable amount of ₱1,001,104.06. It shows that the whole amount was carried over to succeeding taxable year and partially satisfied the 1988 tax liability of ₱282,842 which leaves a balance of ₱778,262.06. Petitioner further applied said excess payment for the year 1987 to taxable year 1989 which partially satisfied a tax liability in the amount of ₱2,393,470.00, thus leaving a balance of ₱323,316.28.

Petitioner presented its Quarterly Income Tax Return for the year 1990, which shows that it applied as tax credit its 1989 refundable amount of ₱323,316.28 as against its income tax liability for the first quarter of 1990 which reflects a tax liability of ₱604,405.46 for the said quarter was paid on May 28, 1990.

In so far as material to the issue posed herein, Section 69 of the Tax Code is quoted in full:

> **SEC. 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 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.

It must be pointed out that the above provision speaks of a carry-over only to the quarters of the succeeding taxable year. As correctly put in the case of Citytrust Banking Corporation versus CIR, CTA Case No. 4099, May 28, 1991, then affirmed by the Court of Appeals in CIR vs. Citytrust Banking Corporation, C.A.-GR. Sp. 26839, July 13, 1992 which reads:

> "If the refundable amount for one year was not fully credited in the succeeding year, the excess uncredited amount can no longer be credited in the following year because the law limits the automatic tax credit to the "succeeding year only."

Although it may be correct for petitioner to carry-over to the next succeeding taxable quarter or year its 1987 excess tax credit, we find it erroneous for petitioner to further carry-over to the subsequent taxable quarter or year the balance of its 1987 excess tax credit or beyond 1988.

As culled from the records, it reveals that the 1989 final return displays that petitioner did apply as tax credit the amount subject of this claim for its First Quarter of 1990, to the succeeding taxable year 1991.

All told, petitioner is not entitled to the refund. The table below reveals that the amount sought to be refunded originated from 1987 excess income tax payments and were carried over for two successive years 1988 and 1989. There is no doubt that such move runs in violation of Sec. 69 of the Tax Code.

Even granting that the excess tax credit for 1987 may be carried over to all succeeding taxable years and thus the refundable amount of ₱323,316.28 is claimable, the 1989 final return shows that petitioner had carried over the said amount to 1990. Although the 1990 final return is a net loss, the same however shows that it carried over the entire excess tax credit including the herein claimable amount to its 1991 taxable quarters. Ironically, petitioner failed to present its 1991 income tax return to show that the said claimable amount was not applied to its tax liabilities for the said year.

WHEREFORE, in view of the foregoing premises, the claim for refund in the amount of ₱323,316.28 is hereby **DENIED** for lack of merit.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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.

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals