REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA
(Philippine Branch),
Petitioner,

- versus - C.T.A. CASE NO. 3642

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - x

12/27/91

D E C I S I O N

This case is a claim for refund by petitioner Bank of America NT & SA (Philippine Branch) in the amount of P729,738.00 as alleged overpaid income tax for the taxable year 1981. Said amount is computed as follows:

Net Offshore Income	P 21,749,528 x 15/365 x 5%		P 44,691.00
Gross Onshore Income	P221,894,457 x 10%		22,189,446.00
All Others	P5,098,474 x (25%/35%)		1,774,466.00
Total			P24,008,603.00
Less: Tax assumed by onshore borrowers			(22,189,446.00)
Net FCDU Tax Liability for 1981			P 1,819,157.00
Deduct Quarterly payments			
1st Qtr.		P 13,713.00	
2nd Qtr.		275,507.00	
3rd Qtr.		755,397.00	
Total Payments		P1,044,617.00	
Creditable Tax withheld on Government Securities		1,504,278.00	2,548,895.00
Refundable amount for 1981			P 729,738.00

Petitioner is a foreign banking corporation duly licensed to engage in regular commercial banking business in the Philippines. It is likewise duly authorized by the Central Bank of the Philippines to operate an expanded Foreign Currency Deposit Unit (FCDU) pursuant to the provisions of Presidential Decree No. 1035 and Central Bank Circular 547.

On May 31, 1983, petitioner through its external auditor SGV & Co., filed a formal claim for refund in a letter dated May 30, 1983 addressed to the Bureau of Internal Revenue and without waiting for respondent Commissioner's decision, petitioner filed on May 31, 1983 the instant petition for review regarding its 1981 claims for refund amounting to P729,738.00. (Exh. VV, p. 105-107, CTA records)

To date, respondent has not yet granted petitioner's claim for refund of the said amount of P729,738.00. Hence, this petition for review was instituted to interrupt the running of the two (2) year prescriptive period.

The sole issue presented in this case is whether or not petitioner has in fact overpaid its income tax for the taxable year 1981.

For the taxable year 1981, petitioner filed two separate corporate income tax returns, one for its regular commercial banking operations and another for its Foreign Currency Deposit Unit (FCDU).

Petitioner filed the following income tax returns for its regular commercial banking operations:

a) Corporate quarterly income tax return for the period ending March 31, 1981 (Exh. A, p. 54, CTA rec.),

b) Corporate quarterly income tax return for the period ending June 30, 1981 (Exh. D, p. 57, CTA rec.)

c) Corporate quarterly income tax return for the period ending September 30, 1981 (Exh. G, p. 60, CTA rec.)

d) Annual consolidated income tax return for the year 1981 (Exh. J, p. 63, CTA rec.). Under this return, petitioner declared a net loss and therefore had a zero income tax liability.

Likewise, petitioner filed the following income tax returns for its Foreign Currency Deposit Unit (FCDU) operation:

a.) For the first quarter ended March 31, 1981, petitioner filed its Quarterly Income Tax Return which showed a tax due in the amount of P13,713 (Exh. T, p. 77, CTA rec.). This amount was paid on June 1, 1981.(Exhs. X and Y, p. 81, CTA rec.)

b.) For the first and second quarters ended June 30, 1981, petitioner filed its cumulative Quarterly Income Tax Returns (Exh. Z, p. 82, CTA rec.) which showed a tax due in the amount of P275,507.00. This amount was paid on August 31, 1981.(Exhs. DD and EE, p. 86, CTA rec.)

c.) For the first, second and third quarters ended September 30, 1981, petitioner filed its cumulative Quarterly Income Tax Return which showed a tax due in the amount of P755,397.00. This amount was paid on December 1, 1981. (Exhs. JJ and KK, p. 91, CTA rec.)

d.) For the calendar ended December 31, 1981, petitioner filed its final adjustments income tax return on Foreign Currency Deposit Unit (FCDU), which return showed a tax liability of P1,819,157.00 (Exh. LL, p. 92, CTA rec.). Against said tax liability, the aforesaid quarterly tax payments aggregating P1,044,617.00 (Exh. LL, p. 92, CTA rec.) plus the sum of P1,504,278.00 (Exhs. WW to KKK, pp. 108-115, CTA rec.) representing creditable tax withheld on government securities were deducted, resulting to a refundable amount of P729,738.00.

In a memorandum dated June 14, 1985, the BIR examiner who investigated petitioner's claim for refund rendered the following report: (Exh. LLL, p. 28, BIR rec.).

> A recomputation of the income tax withheld on government securities and based on the various BIR Forms 1743 submitted, the total creditable amount should be P1,450,537.50 instead of P1,504,278.00, or a difference of P53,740.50. The total amount refundable is therefore P675,997.50.

However, respondent in his memorandum contends that the amount of P755,397.00 as alleged payment for the third quarter (Exhs. JJ and KK) was not actually received by the government per certification of the Revenue Accounting Division of the Bureau of Internal Revenue (p. 95 BIR rec.). This claim of respondent is untenable. The said certification merely states that the Revenue Accounting Division of the BIR has no record of the other confirmation receipt requested for verification, namely C.R. No. 7980411, dated December 1, 1981 for P755,397.00. It did not state that the BIR did not actually receive the payment. Said certification could simply imply that the said division does not have a record of the said confirmation receipt. Payment could have been actually received but there is fault in the recording system of the BIR. It is convenient for respondent to claim that such amount was not received nor actually paid in order not to grant the refund sought by petitioner. As a matter of fact, respondent did not object to the evidence submitted by petitioner and instead submitted this case based on the pleadings and records of this case (CTA rec. pp. 122 & 127). The Government must set an example of fairness and honest dealing. "To prove these excess income tax payments, petitioner presented in evidence its income tax returns for the year involved, the corresponding official receipts for its income tax payments. No controverting evidence was presented by respondent to disprove the existence of the official receipts of tax payment particularly Revenue Tax Receipt No. 7084746 and CB Confirmation Receipt No. 980411 dated December 1, 1981 showing actual payment of the amount of P755,397.00. As a matter of fact, as stated above, respondent submitted this case for decision on the basis of the pleadings and the records after petitioner has presented and offered its evidence. "Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations taken together with such of his own as are admitted" **(Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, et. al., 76 Phil. 115).** Respondent may be considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidences presented which were not disputed by respondent, sufficiently established petitioner's right to the refund **(Commonwealth Management and Service Corporation vs. Commissioner of Internal Revenue, CTA Case No. 3232, June 26, 1985).**

The circumstances obtaining in the case at bar compels Us to sustain the tenability of petitioner's right to the refund based on the evidence and pleadings **(Dataprep [Phils.], Inc., vs. BIR , CTA Case NO. 3600, March 30, 1984).**

However, as per our examination of the exhibits presented on taxes withheld on government securities and the certification of the Central Bank (p. 90, BIR rec.), it was found out that the amount is only P1,501,162.50, since a taxpayer can claim for a refund only so much as it can prove, petitioner is entitled only to the sum of P726,632.50 out of the total claim of P729,738.00.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund or grant tax credit in the amount of P726,632.50 to petitioner Bank of America NT & SA representing overpaid income tax for the taxable year 1981.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 27, 1991.

ERNESTO D. ACOSTA
Associate Judge

I CUNCUR:

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals