REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus - C.T.A. CASE NO. 4309

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/20/93

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D E C I S I O N

This is a claim for tax credit or refund of alleged overpaid income tax for taxable years 1985 and 1986 in the amount of P5,299,749.95 and P234,077.69, respectively. The 1985 claim comprised of creditable income tax withheld at source in the amount of P282,795.50 plus the first and second quarterly income tax payments of P5,016,954.00. The 1986 claim represents taxes withheld at source on rental income received by petitioner.

The records of this case disclosed that the annual income return filed by petitioner for 1985 and 1986 reflected a total amount refundable of

P6,683,124.50 and P7,906,192.76, respectively. These were arrived at as follows:

	1985	1986
Net Income (Loss)	(P25,317,228.00)	(P14,129,602.00)
Tax Due	NIL	NIL
Prior Year's Excess Credit	-	6,683,124.50
Quarterly Tax Payments Made	5,016,954.00	-
Balance of Tax Due	(5,016,954.00)	(6,683,124.50)
Less: Tax Withheld At Source	1,666,170.50	1,223,068.26
TOTAL AMOUNT DUE (REFUNDABLE)	(P6,683,124.50)	(P7,906,192.76)

Petitioner formally requested from the Bureau of Internal Revenue (BIR) on August 7, 1987 for the issuance of a Tax Credit Memo in the total amount of P7,906,192.76, broken down into P6,683,124.50 for 1985 and P1,223,068.26 for 1986. (Annex "H", CTA records, pp. 55-56.) On July 25, 1988, petitioner filed a claim for refund of P282,795.50 and P234,077.69 representing creditable withholding taxes for 1985 and 1986, respectively. (Annex "I", CTA records, p. 57.) Due to inaction by respondent Commissioner of Internal Revenue on its claims, petitioner instituted the instant petition for review on November 18, 1988. It is prayed that respondent refund or issue tax credit memos to petitioner in the amount of P5,016,954.00, P282,795.50 and P234,077.69.

Respondent moves for the dismissal of the petition on, among other grounds, that petitioner's claim is pending investigation/verification by the

BIR, the instant case in not proper subject of a petition for review, the burden of proof is upon the taxpayer to show that the taxes paid were erroneously or illegally collected, taxes are presumed to have been paid or collected in accordance with law, the claim is self-serving, its right to claim the same has prescribed and petitioner has to show first that it has complied with the provisions of Sections 292 and 295 of the 1977 Tax Code.

The case was submitted for decision based on the pleadings and the records by respondent's counsel after the Court has acted on petitioner's "Formal Offer of Evidence" and respondent's comments thereto. (CTA records, p. 152.) A memorandum was filed by petitioner but respondent failed to file one in the time given him. Hence, the Court considered the case submitted for decision. (*Id.*, p. 174.)

The issue for the Court to resolve is whether or not petitioner is entitled to its claim for refund or tax credit of alleged overpaid income tax for 1985 and 1986.

At the core of the issue at bar is the

application of Section 292 of the Tax Code (now Section 230) quoted below:

> "Section 230. *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> In any case, no suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied.)

It is petitioner's contention that the case before Us does not fall within the purview of the aforequoted section inasmuch as this does not involve the recovery of tax erroneously or illegally collected. This is allegedly a simple case of overpayment of income tax. Cited as basis by petitioner is Revenue Memorandum Circular No. 7-85, the pertinent portions of which is reproduced below:

April 1, 1985

REVENUE MEMORANDUM CIRCULAR NO. 7-85

SUBJECT: PROCESSING OF REFUND OR TAX CREDIT OF EXCESS CORPORATE INCOME TAX RESULTING FROM THE FILING OF THE FINAL ADJUSTMENT RETURN

TO: All Internal Revenue Officers and Others Concerned

Sections 85 and 86 of the National Internal Revenue Code provides:

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The foregoing provisions are implemented by Section 7 of Revenue Regulations Nos. 10-77 which provide:

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It has been observed, however, that because of the excess tax payments, corporations file claims for recovery of overpaid income tax with the Court of Tax Appeals within the two-year period from the date of payment, in accordance with Sections 292 and 295 of the National Internal Revenue Code. It is obvious that the filing of the case in court is to preserve the judicial right of the corporation to claim the refund or tax credit.

It should be noted, however, that this is not a case of erroneously or illegally paid tax under the provisions of Sections 292 and 295 of the Tax Code.

> In the above provision of the Regulations, the corporation may request for the refund of the overpaid income tax or claim for automatic tax credit. To insure prompt action on corporate annual income tax returns showing refundable amounts arising from overpaid quarterly income taxes, this Office has promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, containing the procedure in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures of the return. After which, the refund or tax credit is granted, and, this procedure was adopted to facilitate immediate action on cases like this.
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> In this regard, therefore, there is no need to file petitions for review in the Court of Tax Appeals in order to preserve the right to claim refund or tax credit within the two-year period. As already stated, actions hereon by the Bureau are immediate after only a cursory pre-audit of the income tax returns. Moreover, a taxpayer may recover from the Bureau of Internal Revenue excess income tax paid under the provisions of Section 86 of the Tax Code within 10 years from the date of payment considering that it is an obligation created by law (Article 1144 of the Civil Code).
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> TOMAS C. TOLEDO
> Acting Commissiner

This case is not one of first of impression. In a similar case, the court ruled that a taxpayer should still file a claim for a refund or tax credit and the corresponding petition for review within the two year period prescribed under section 230 in case of overpayment of income tax reflected in its returns otherwise, his right to claim for a refund or tax credit will prescribe. (Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991.)

The discussion of the Court's decision in the above-mentioned case is presented below:

> "Although the title of Section 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 -
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> 1. any national internal tax revenue erroneously or illegally assesed or collected
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> 2. any penalty claimed to have been collected without authority, or
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> 3. any sum alleged to have been excessive or in any manner wrongfully collected
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> (See Muller & Phipps v. Commissioner of Internal Revenue, 103 Phil. 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 nevertheless "excessive".

Sections 85 and 86 (now Secs. 68 and 69) of the Tax Code and Revenue Regulations No. 10-77 give the taxpayer the option, in case of a tax overpayment shown in its final adjustment return to ask for a refund or to have the overpayment credited against the estimated quarterly tax liability for the succeeding year. Nowhere is it stated therein that there is no longer any need to file a petition for review with respect to such overpayment. Sec. 86 of the Tax Code and Sec. 7 of Rev. Reg. 10-77 merely give the petitioner the right to signify his intention to opt for a refund or automatic tax credit because "the authorization for a kind of set-off of creditable income tax against future tax liabilities conferred the corporate taxpayer in no wise lessens or muffles the respondent's power of ascertaining the correctness of any tax return" for "Any entitlement thereof must prove compliance with the terms and conditions peremptorily required by law xxx A fortiori, respondent must have to examine the returns and determine the tax xxx (San Carlos Milling v. Commissioner of Internal Revenue, CTA Case No. 3811, February 28, 1990.) Thus the taxpayer is not assured that by signifying his intent to have the overpaid tax credited in the succeeding year by the BIR. More so, 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.

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 two-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 Section 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. An administrative interpretation out of harmony or contrary to the express provision of a statute cannot be given weight for to do so would in effect amend the statute (Utah Hotel Co. v. Industrial Com., 151 P 2d 467, 153 ALR 1176 [1944] as cited in footnote no. 4, 2 Am Jur 2d 76). 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 refund or tax credit will prescribe. In Chemical Bank NY Trust Co. v. US, (275 F Supp 26 aff'd per curiam 386 F 2d 995), it was held that "xxx an overpayment may not be credited against estimated tax for the following year and be deemed to have paid in following year for the purpose of the statute".

A fortiori, the statement in the memorandum circular that "a taxpayer may recover the excess income tax paid under the provisions of Section 86 within 10 years from date of payment because this is an obligation created by law" is erroneous. 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. As held in Commissioner of Internal Revenue v. Insular Lumber Co. (21 SCRA 1237, Dec. 11, 1967),

> "Secs. 306 and 309 of the National Internal Revenue Code govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the National Internal Revenue Code. Thus, this Court stated that "this provision" referrring to Sec. 306 "which is mandatory, and is not subject to qualification, and, hence, it applies regardless of the conditions under which payment has been made (Guagua Electric Light v. Collector of Internal Revenue and Court of Tax Appeals L-14421, April 29, 1961, 59 OG [Supp. 27] 4207, 4210 cited in Gonzales v. Court of Tax Appeals and Collector of Internal Revenue, L-14532-33, May 26, 1961).
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> Moreover, public policy demands that tax adjustments be made as early and expeditiously as possible. The reason is that it is on taxes that the government depends for its operation and that any uncertainty or controversy on those matters will somehow impair the smooth functioning of the governmental machinery. <u>Lengthening, therefore, of the</u>

period of limitations on refund from two to ten years would be adverse to public policy.

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More importantly, as the circular states the tax credit or refund is granted after a pre-audit which consists only in checking the mathematical accuracy of the figures in the return. Taxation being vital to the sustenance of government, claims for refund or tax credit require more than a "cursory pre-audit". The Bureau of Internal Revenue has the duty to determine not only the mathematical accuracy of the figures in the return but also the validity of the claimed deductions and correctness of the expenses claimed as well as the amount of income reported. Pursuant to such duty, it must be noted that under Secs. 235 and 203 of the Tax Code, the taxpayer is required to keep his books and records for only 3 years (5 years prior to 1984). The Commissioner will then have difficulty in verifying a claim filed after the 3rd year if indeed claims for refund were allowed to be filed within ten years. (Underscoring supplied.)

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In the case at bar, petitioner filed an amended final adjusted corporate annual income tax return for calendar year 1985 on April 15, 1987, which is the same date on which it filed its final adjusted corporated annual income tax return for the calendar year 1986. Counsel for petitioner conveniently did not present or make mention of the original final adjusted corporate income tax return for 1985, specifically as to when the same was filed. It can reasonably be inferred however, that the 1985 final adjusted ITR was filed on or before the last day of filing on April 15, 1986 since petitioner has always filed its tax returns within the reglementary period based on the various returns offered as evidence. Following the ruling in the case of Commissioner of Internal Revenue v. Asia Australia Express LTD (G.R. No. 85956 April 10, 1989), the two-year period within which it may claim a refund/tax credit commenced to run, at the earliest, on April 15, 1986 when it filed its original adjusted final tax return for 1985, and would have expired on April 15, 1988. The filing of the petition for refund/tax credit with the Court on November 18, 1988 is therefore time barred insofar as taxable year 1985 is concerned. As to taxable year 1986, the adjusted final tax return was filed on April 15, 1987 and would have expired on April 15, 1989. The filing of the petition for refund/tax credit with the Court on November 18, 1988 was well within the two-year limitation fixed by Section 230 of the Tax Code.

However, before We dwell any farther on whether petitioner has proven entitlement to the refund/tax credit of the 1986 excess withholding tax. We should note Revenue Regulations No. 10-77 which petitioner cited in its petition and memorandum. It provides that:

> "Any excess of the total quarterly payment over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporated, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. 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 quarter of the succeeding taxable year by filling up the appropriate box on the corporate tax return (BIR Form No. 1702)". (Underscoring supplied.)

A cursory examination of the adjusted final corporate annual income tax return for taxable year 1986 (Exhibit "G") which petitioner filed with the BIR would undisputably show that it opted to apply as refundable as indicated therein. Verily, We can rely on petitioner's own representation that it chose automatic tax credit to the succeeding year since the 1987 annual corporate income tax return was not offered as evidence for purposes of verification. Since Revenue Regulations No. 10-77 provide only for alternative options, petitioner cannot be allowed to claim refund when it has already availed of the automatic tax credit to the succeeding year. To countenance the same would be akin to petitioner, having its cake and eat it too.

WHEREFORE, petitioner's claim for refund/tax credit of overpaid income tax for 1985 in the amount of P5,299,749.95 is hereby denied for having been filed beyond the reglementary period. The 1986 claim for refund amounting to P234,077.69 is likewise denied since petitioner has opted and in all likelihood automatically credited the same to the succeeding year. The petition for review is dismissed for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, May 20, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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 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