REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4212

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: MAR 17 1995

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RESOLUTION

This is a Resolution on the Motion for Reconsideration filed by both the Petitioner and the Respondent on Our Decision dated September 30, 1994 the dispositive portion of which is quoted, thus:

> WHEREFORE, in view of all the foregoing circumstances, respondent is hereby ORDERED to issue a Tax Credit Certificate in the amount of P12,512.75 in favor of the Petitioner. No pronouncement as to costs.
>
> SO ORDERED.

On October 19, 1994, Respondent filed her Motion for Reconsideration of said Decision bringing to this Court's attention the fact that the alleged refundable amount of P24,541.41 was marked "To be applied as Tax Credit to Succeeding Taxable Year" (Exh. "A"). Thus, according to her, "it is presumed that petitioner has applied the alleged refundable amount of P24,541.41 as tax credit to the Succeeding year 1986. Since it failed to present in evidence its 1986 income tax return in order to show that it did not in fact automatically credit the said amount to taxable year 1986, such presumption has not been overturned. Hence, Petitioner is not entitled to a refund; otherwise, it would be refunded twice for the same amount" (Motion for Reconsideration, p. 2, citing **Paseo Realty Development Corp. vs. Commissioner of Internal Revenue,** CTA Case No. 4693, Resolution dated October 21, 1993 and **BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 4694, December 24, 1993.)

In the above-cited cases by the Respondent, this Court held, thus:

> "Note should be taken that the amount of P54,104.00 is already part and parcel of P172,477.00 which presumptively was already applied as tax credit to the Succeeding taxable year 1990. Such presumption, of course, could have been overturned had the petitioner submitted its 1990 Corporate Income Tax Return showing that it did not automatically credit the said amount for the said taxable year 1990. Unfortunately, petitioner failed to submit that vital document which could have unlocked his entitlement for the elusive claim for refund sought for. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the time-

> tested doctrine that claims for refund are strictly construed against claimant (**Commissioner of Internal Revenue vs. Ledesma,** G.R. No. L-17509, January 30, 1970, 31 SCRA 95).

And rightly so.

We therefore deem it imperative for Us to reconsider the questioned Decision as We overlooked the fact that Petitioner failed to submit its 1986 income tax return which indeed would have determined whether or not the amount claimed had been applied for that year. Absent said return, We presume that the amount claimed has been indeed automatically credited for that year. It has been noted by this Court that the counsel of the present case was the same counsel who committed the same error of not presenting the much-important income tax return in the two previously cited cases, i.e., Paseo Realty Development Corp., vs. CIR, (CTA Case No. 4693) and BPI Family Savings Bank, Inc., vs. CIR, (CTA Case No. 4694).

In its Opposition to Respondent's Motion for Reconsideration filed on October 27, 1994, Petitioner intimated that this Court "take judicial notice" on the evidence presented in CTA Case No. 4325 involving the same parties which already became final and executory. In that case, it was established that "herein petitioner for the calendar year <u>1986</u> had a net loss of P10,493,300.00 and therefore <u>there was no income tax due.</u>

It also noted that petitioner has a '<u>prior year's excess credit</u> of P24,514.41 (which is the amount involved in this 1985 refund case at bar) and a 1986 creditable withholding tax of P95,190.53" (CTA Records, p. 134). In fine, Petitioner's counsel virtually placed this Court in a bind "forcing" Us to take judicial notice of the records of that case. We cannot do that. We refuse to fall into the trap clandestinely laid by Petitioner's counsel.

In the case of **Tabuena vs. Court of Appeals,** 196 SCRA 650, it was ruled that "Courts <u>are not authorized to take judicial notice</u> in the adjudication of case pending before them of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been heard or actually pending before the same judge."(Emphasis supplied) The fatal procedural flaw committed by the Petitioner's counsel cannot be cured by compelling this Court to submit to the records of another case in order to salvage his own case. Such legal maneuver is bereft of honesty and fair play.

Much as We wanted to grant every peso due and claimed by Petitioners seeking assistance from this Court, We are also equally bound to protect every centavo already in the coffers of the government.

WHEREFORE, in view of the foregoing discussions, the Motion for Reconsideration filed by the Petitioner on November 3, 1994, is hereby denied. Accordingly, the Decision dated September 30, 1994 is hereby **RECONSIDERED** and **SET ASIDE** and a new ruling entered **DISMISSING** this case for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

MANUEL K. GRUBA
Associate Judge