REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UCPB SAVINGS BANK,
Petitioner,

- versus - C.T.A. CASE NO. 4650

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 30 1996

x - x

DECISION

Presented before Us, by way of a petition for review, is a claim for tax refund in the amount of P2,287,465.71 allegedly representing overpaid income and creditable withholding taxes for the year ended December 31, 1990.

Petitioner is a domestic corporation, organized and existing under the laws of the Philippines. It is primarily engaged in the general business of savings and mortgage banking.

Pursuant to a "Plan of Merger" executed on June 21, 1988, between and among the United Savings Bank, Inc. (now UCPB Savings Bank), the absorbed United Bicol Savings Bank, Inc., United Eastern Savings Bank, Inc., United Mindoro Savings Bank, Inc., and Domestic Savings and Loan Association, Inc., herein petitioner being the surviving corporation shall acquire and absorb all assets and operating facilities of the four absorbed corporations in exchange for its (United Savings Bank) share of stocks as well as the assumption of all the liabilities of the latter. Said Plan was duly approved by the Securities and Exchange Commission on September 25, 1989.

Petitioner filed its corporate annual income tax return (Form 1702) for the year ended December 31, 1989 on April 10, 1990. However, on September 20, 1991, it filed an amended return, declaring a net taxable income of P7,980,551.00 and a corresponding tax due of P2,793,193.00. The said return reflected quarterly payments for a total amount of P3,763,708.00 and tax credits of P378,927.82 (Exh. "E"). Thus, showing a returnable amount of P1,349,442.82.

On April 12, 1991, petitioner filed with the Bureau of Internal Revenue its Form 1702 for the year 1990, which was subsequently amended. This amended Form was filed on September 20, 1991, reflecting a net loss for the year 1990 in the amount of P2,844,609.00. It also showed the following deductions, to wit: the prior year's excess credit of P1,349,442.82 (from the year 1989), a quarterly payment amounting to P533,022.80 (paid during the 1st quarter of 1990) and a creditable withheld tax of P400,000.00.

The petitioner alleged that the P400,000.00 creditable tax withheld arose out of a sale of one real property acquired by the petitioner in the course of its business.

On May 7, 1991, the petitioner filed a claim with the Appellate Division of the Bureau of Internal Revenue for a tax credit in the amount of P2,287,465.71 representing the above-mentioned accumulated overpaid taxes.

And on September 6, 1991, petitioner filed another letter-request advising the BIR of the former's intention to shift from automatic tax credit to a refund thereof.

Due to the Bureau's inaction on the request, petitioner filed this petition for review on September 27, 1991 to suspend the running of the prescriptive period for judicially claiming refunds pursuant to sec. 230 of the Tax Code.

The sole issue presented before Us is whether or not the petitioner is entitled to the tax refund being sought?

The respondent refuted the claim of petitioner on the initial tax credit of P378,927.82 on the ground that it represented the alleged tax credit of the absorbed corporations, namely United Bicol Savings Bank, Inc. and

United Mindoro Savings Bank, Inc. for the year ended December 31, 1989.

In a merger, Sec. 80(4) of B.P. 68 provides, that the surviving corporation shall possess all the rights, privileges, immunities and franchises of each of the constituent corporations, and all property, real or personal, and <u>all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to or due to each constituent corporation, shall be deemed transferred and used on such surviving corporation without further act or deed</u> (underscoring supplied).

As amplified by the "Plan of Merger", Exh. "A") to Wit:

a) The **ABSORBED CORPORATIONS** will transfer all their assets and operating facilities consisting of, where applicable, the following:

1. All cash, checks and other cash items due from the banks;

2. All loans and discounts;

3. All investments in bonds and other debt instruments;

4. Bank premises, leasehold rights and improvements;

5. All furniture, fixture and equipment;

6. All transportation equipment and other miscellaneous equipment;

7. All real and other properties owned including improvements made on leased premises;

8. All sales contract receivable;

9. All assets due from allied undertakings;

10. All other assets that will be included in the approval of the Securities and Exchange Commission of this "Plan of Merger".

b) On the date of the merger, the ABSORBED CORPORATIONS shall assign to the SURVIVING CORPORATION all his rights and interests under real estate and chattel mortgages, pledges, surety and fidelity bonds, guarantees, deposits and other security arrangement, contracts of leases and insurance policies."

Thus, the tax credit that may be received by the absorbed corporation would redound to the benefit of the surviving corporation which, in this case, is the petitioner. However, as correctly pointed out by the respondent a tax credit may be assigned provided only after an investigation/examination was conducted on the said claim for tax credit and the corresponding tax credit certificate as duly approved and issued; ergo, if no such tax credit certificate was issued in favor of the taxpayer claiming the same, no such tax credit may be assigned to any other person, and, in this case, herein petitioner.

It is a fallacy that once a taxpayer opts either for a refund or automatic tax credit scheme and signify his option in accordance with the regulation it will _ipso facto_ confer on him the right to avail of the same immediately. An investigation, as a matter of procedure, is necessary to enable the Commissioner to determine the correctness of the petitioner's returns and the tax amount to be credited.

As aptly pointed out by the Supreme Court in San Carlos Milling Co., Inc. vs. CIR, (228 SCRA 135), "Prior approval by the Commissioner of Internal Revenue of the tax credit under then Sec. 86 (now Sec. 69) of the Tax Code would appear to be the most reasonable interpretation to be given to said action. An opportunity must be given the internal revenue branch of the government to investigate and confirm the veracity of the claims of the taxpayer. The desolute freedom that petitioner seeks to automatically credit tax payments against tax liabilities for a succeeding taxable year, can easily give rise to confusion and abuse, depriving the government of authority and control over the manner by which the taxpayers credit and offset their tax liabilities, not to mention the resultant loss of revenue to the government under such a scheme."

We also agree with the respondent that the amount of P400,000.00 should not form part of the tax credit refund being claimed by the petitioner pursuant to revenue regulation 6-85 (10) which states that "it will be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743.1), showing the amount paid and the amount of tax withheld therefrom."

Petitioner's return (Exh. G-1) reflecting the amount of P400,000.00 does not show that the income received from the alleged sale of real property was shown nor any confirmation/official receipts (CR/OR) as covered by BIR Form No. 1743 W and 1743-B reflected on section c(5.c) of the return. Hence, petitioner not having fully subscribed to the provision of the law to warrant the granting of a tax credit, the aforesaid amount should be denied.

However, We disagree with respondent when she said that Petitioner was not able to substantiate by positive proof its claim for refund representing the overpaid income tax for the year 1990. Petitioner submitted the following documents to substantiate its claim to wit:

1. 1989 corporate annual income tax return (Exh. "D") together with its attachments, consisting of:

   a) audited financial statement (Exh. D1-D12) and

b) schedule of tax credits claimed for the year 1989; (Exh. E2)

2. 1989 amended corporate annual income tax return (Exh. E) and correspond attachments (Exh. E-1);

3. Quarterly income tax returns for the 1st Quarter of 1989 (Exh. H) with attached confirmation receipt no. B-13248689 (Exh. H-1) and payment order no. C-5248083 (Exh. H-2) reflecting an amount of P1,021,015.28;

4. Quarterly income tax return for the 2nd Quarter of 1989 (Exh. I), with attached confirmation receipt no. B-17737635 (Exh. I-1), and payment order No. C-598437 (Exh. I-1) showing an amount of P1,120,352.21;

5. Quarterly income tax return for the third quarter of 1989 (Exh. J), with attached confirmation receipt No. B 18319863 (Exh. J-1) and payment order no. C 6290985 (Exh. J-2) with an amount of P1,622,340.88;

6. 1990 corporate annual income tax return (Exh. F) with accompanying audited financial statement (F1 + F12);

7. 1990 amended income tax return (Exh. G) and accompanying list of attachments (Exh. G-1);

8. Quarterly income tax return for the 1st Quarter of calendar year 1990 (Exh. K) with attached confirmation receipt no. B 188009 (Exh. K-1) and payment order no. C 7963436 (Exh. K-2) for P538,022.49;

9. letter request dated May 7, 1991 addressed to the BIR for a tax credit amounting to P2,287,465.71 (Annex E); or

10. letter request dated September 6, 1991 to the BIR shifting its former request from auto tax credit to a tax refund (Annex E-1).

Having established its entitlement to the refund in accordance with law and evidence, the amount which may be refunded to petitioner with regard to its 1990 claim may thus be computed as follows:

a.	Prior year's excess tax credit	970,515.00
b.	1st quarter payment for 1990	538,022.89
	Total	P1,508,537.89

WHEREFORE, judgment is hereby rendered directing respondent Commissioner of Internal Revenue to refund to petitioner UCPB Savings Bank the amount of P1,508,537.89 representing overpaid withholding taxes.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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