REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK
(PHIL. BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 5063

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
OCT 03 1995

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DECISION

This is an action for the refund of the sum of P960,347.00, representing overpaid income tax for the year ended December 31, 1991.

Petitioner is a foreign corporation duly licensed to engage in the banking business in the Philippines in accordance with Philippine laws. It has the status of a resident foreign corporation with principal office at Petrophil Building, Makati Avenue, Makati, Metro Manila.

On August 27, 1992, petitioner filed its amended annual income tax return for the calendar year 1991 reflecting an income tax due to be paid by it in the sum of P7,737,097.00 and an overpaid income tax in the amount of P960,347.00, computed as follows: (Exh. "A")

Gross income				P553,099,417.00
Less: deductions				530,993,426.00
Net income				P 22,105,991.00
Tax due				P 7,737,097.00
Less: quarterly payments made this year				
Qtr.	CR/ROR No.	Date	Amount	
1st	B22892236	5.30.91	P7,492,039.00	
2nd	B23619790	8.29.91	1,205,405.00	8,697,444.00
Tax Payable/(Refundable)				P 960,347.00

This overpayment was opted by petitioner to be carried over as tax credit to the succeeding taxable year 1992. However, petitioner suffered net loss from operation during the year 1992 in the amount of P36,298,449.00. Thus, petitioner's application of the overpayment in the year 1992 became nugatory since there was no income tax liability where the excess income tax payment can be applied of. (Exh. "F")

On June 25, 1993, petitioner filed, through its auditors, a letter claim for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the amount of P960,347.00 representing alleged overpaid income tax for the year 1991. (Exh. "G")

The inaction of respondent on its letter compelled petitioner to file the instant petition on February 8, 1994.

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund or credit of an alleged overpaid income tax for the year 1991.

Respondent in her special and affirmative defenses stated that:

> 5. The claim for refund filed by the petitioner is undergoing review/investigation.
>
> 6. Petitioner, by indicating in its Income Tax Return for 1992 that it opted to apply the alleged 1991 overpaid income taxes in the amount of ₱960,347.00 "as tax credit to the succeeding taxable year (1993)", in effect forfeited its right to claim for the refund of the aforesaid amount.
>
> 7. There is no showing that petitioner is entitled to the refund.
>
> 8. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation (**CIR v. Ledesma, 31 SCRA 95; Resins v. Auditor General, 25 SCRA 754**).

In support to its case, petitioner presented in evidence various documents which, among others, consist of [1] the annual income tax returns for the years 1991, 1992 and 1993 (Exhs. "A", "E", and "H"); [2] the auditor's report which accompanies the annual income tax returns and financial statements (Exhs. "B", and "F"); [3] the Central Bank Confirmation Receipt and the Bureau of Internal Revenue Payment Order (Exhs. "C" and "D"); and [4] the letter claim for refund with the respondent (Exh. "G"). On the other hand, respondent presented only one document which is the 1992 income tax return of petitioner (Exh. "1").

Both parties failed to submit their respective memoranda.

Petitioner alleged that under Section 69 of the Tax Code it is entitled to the refund for the overpaid income tax as of December 31, 1991 which was not applied or utilized in the succeeding taxable year (1992).

Section 69 of the tax Code reads as follows:

> Sec. 69. Final adjustment return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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 income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
>
> <u>(b) Be refunded the excess amount paid, as the case may be</u>.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, <u>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</u>. (Underlining supplied)

Respondent contends otherwise. Petitioner, by indicating in its Income tax Return for 1992 that it opted to apply the alleged 1991 overpaid income taxes in the amount of P960,347.00 "as tax credit to succeeding taxable year

(1993)", in effect forfeited its right to claim for the refund.

After a careful examination of the records of the case, this Court is convinced that petitioner was able to substantiate its claim for refund. The burden of proof was overturned by the petitioner. The 1991 income tax payments which petitioner indicated in the 1992 income tax return "to be applied as tax credit to succeeding taxable year" remain unutilized. Petitioner did not automatically apply said payments in 1993 as shown in its 1993 amended income tax return (see Exh. "H"). It is also clear that the payments made by petitioner are in deed excessive and well supported by evidence (Exhs. "C" and "D").

Further, the claim for refund (for both administrative and judicial level) was filed by petitioner within the two-year period as prescribed under Section 230 of the Code:

> **Sec. 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 <u>any sum alleged to have been excessive</u> 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.
>
> In any case, no such 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underlining supplied)

Thus, finding the petitioners claim for refund meritorious We grant petitioner's prayer.

WHEREFORE, respondent is hereby ordered to refund or, in the alternative, issue a tax credit certificate in favor of petitioner the sum of P960,347.00 representing overpaid income tax for the year 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals