# REPUBLIC OF THE PHILIPPINES
# COURT OF TAX APPEALS
# QUEZON CITY

**BANCO FILIPINO SAVINGS AND MORTGAGE BANK,**
Petitioner,

- versus -

**C.T.A. CASE NO. 5743**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**
MAR 21 2001

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## DECISION

This is a judicial action for the refund of the amount of P23,032,951.00, representing unutilized creditable withholding taxes for the calendar year 1996.

Petitioner is a banking corporation duly organized and existing under the laws of the Republic of the Philippines with office address at 101 Paseo de Roxas, Makati City, Metro Manila.

On April 15, 1997, Petitioner filed its tentative Corporation Annual Income Tax Return for taxable year ended December 31, 1996, showing a net loss of P165,288,095.00 and a nil income tax liability but with a refundable income tax payment in the amount of P14,893,731.00, representing prior year's excess credit of P13,103.918.00 and P1,789,813.00 creditable taxes withheld (Exh. A). The aforementioned 1996 final adjustment return was amended on April 15, 1998, to correct the excess income tax payment to P24,672,772.00, representing prior year's excess tax credit of P1,639,821.00

and the creditable withholding taxes of P23,032,951.00 (Exh. B, inclusive of submarkings).

On May 8, 1998, Petitioner filed with the BIR Revenue District Office No. 47 East Makati a written claim for refund of unapplied creditable withholding taxes for the taxable year 1996 in the amount of P23,032,951.00 (Exhs. F and F-1).

The inaction of Respondent on its application for refund compelled Petitioner to file the instant Petition for Review on March 16, 1999, in order to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code, as amended.

In his Answer, Respondent advanced the following Special and Affirmative Defenses:

> 5. Petitioner's claim for refund is under verification/investigation by respondent Commissioner of Internal Revenue;
>
> 6. In an action for tax refund, petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
>
> 7. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation (**Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351**); and
>
> 8. Taxes are presumed to have been paid and collected in accordance with law.

To prove its entitlement to the claim for refund, Petitioner presented the following evidence:

1. The original and amended Corporation Annual Income Tax Returns for the calendar year 1996 with the independent auditor's report (Exhs. A, B, and B-1 to B-11);

2. Schedule of taxes withheld and summary of creditable capital gains taxes paid for the year ended December 31, 1996 (Exhs. C and D);

3. Various 1996 Certificates Authorizing Registration; Capital Gains Tax Returns; Monthly Remittance Returns of Income Tax Withheld; Withholding Tax Remittance Returns; Certification issued by Revenue District Officer, Antonio F. Montemayor; and Certificates of Creditable Tax Withheld At Source (Exhs. D-1 to D-118, E, and E-1 to E-13); and

4. The letter-claim for refund (Exhs. F and F-1).

This case was submitted for decision on January 26, 2001, sans the evidence of the Respondent.

As stipulated by the parties, the Court is now tasked to resolve the following issues[1]:

1. Whether or not Petitioner has an unutilized creditable withholding tax in the amount of P23,032,951.00 for calendar year ending December 31, 1996;

2. Whether or not the said unutilized creditable withholding tax for calendar year 1996 were applied as tax credit to the succeeding taxable year;

3. Whether or not the income from which the taxes were withheld was included as part of the gross income in the Petitioner's income tax return; and

4. Whether or not the Petitioner's claim for refund of alleged unutilized creditable withholding tax for calendar year 1996 is substantiated by documentary evidence.

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[1]Joint Stipulation of Facts and Issues, CTA records, pp. 55 to 56. Approved per Resolution, dated January 6, 2000, CTA records, p. 74.

After a careful analysis of the pleadings, records and evidence of the case, the Court rules against Petitioner because it failed to convince this Court by sufficient evidence that it has unutilized creditable withholding taxes for the year 1996.

As correctly observed by the Respondent, Petitioner failed to prove that its 1996 excess tax credits were not carried over nor applied to the succeeding year's (i.e., 1997) income tax liability. Petitioner failed to present its 1997 Corporation Annual Income Tax Return to prove that the excess creditable withholding taxes sought to be refunded were not applied against the income tax due.

Section 69 (now Sec. 76) of the Tax Code, as amended, provides:

> **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).

The afore-quoted provision of law is clear that Petitioner has the option to credit the 1996 refundable amount shown on its final adjustment return against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year (1997). The failure of Petitioner to present its 1997 final adjustment return prevents the Court to rule on the second stipulated issue of whether or not the amount sought to be refunded was applied against the tax due of 1997. Petitioner cannot expect this Court to make a wild conjecture on whether or not the same was applied or not to the succeeding taxable year (**Robinson's Incorporated vs. The Commissioner of Internal Revenue, CTA Case No. 4943, June 19, 1996**).

A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim (**Emmanuel & Zenaida Aguilar vs. Commissioner, CA-G.R. SP No. 16432, March 30, 1990; cited in Bank of America NT & SA vs. The Commissioner of Internal Revenue, CTA Case No. 5557, July 6, 2000**).

**WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby ***DENIED*** for insufficiency of evidence and lack of merit.

**SO ORDERED.**

**AMANCIO Q. SAGA**
Associate Judge

**I CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

## CERTIFICATION

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

**ERNESTO D. ACOSTA**
Presiding Judge