REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 5792

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 05 2001

x - x

DECISION

This is a petition filed by the Petitioner on April 14, 1999, seeking for a refund of the amount of P5,301,403.00 representing alleged overpaid unutilized creditable income tax for the taxable year 1996.

The antecedent facts of the case are as follows:

Petitioner is a private commercial bank organized and existing under and by virtue of the laws of the Philippines.

In the Joint Stipulation of Facts and Issues, the parties stipulated on the following jurisdictional facts:

> 1. On April 15, 1997, PNB reported its income for 1996 and filed its Tentative Annual Income Tax Return for 1996, consisting of the following documents:
>
> a) Tentative Annual Income Tax Return for 1996, Schedule of Gross Income, Schedule of Depreciation, Reconciliation of net

income and analysis of changes in retained earnings/computation of tax due (Exhs. C, C-1 to C-4, inclusive);

b) List of attachments to the annual income tax return for 1996, Comparative balance sheets and income statements for the year ended December 31, 1996 accompanied by the auditor's report, Schedule of Taxes and Licenses, First page of 1995 annual income tax return (Exhs. C-5, C-6, C-6-a to C-6-e, C-6-e-1, C-6-f, C-6-f-1 to C-6-f-9, D, and H);

2. Quarterly returns for the 1st, 2nd and 3rd quarters of 1996 were also duly filed by petitioner (Exhs. E, E-1 to E-6, F, F-1 to F-7, G, G-1 to G-16);

3. On November 19, 1997, PNB filed an Amended Annual Income Tax Return (Final Adjustment Return) for 1996, consisting of the following documents:

a) Amended Annual Income Tax Return for 1996, with List of attachments (Exhs. B, B-1, B-2, B-3);

b) Copy of PNB's Tentative Annual Income Tax Return for 1996 (consisting of the documents listed in paragraph 1 above), and

c) Revised schedule of creditable withholding taxes with certificates of creditable income tax withheld at source (Exhs. I, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK);

4. On April 13, 1999, PNB under letter dated April 12, 1999 (Exh. A, A-1), filed with the Commissioner of Internal Revenue a claim for refund of the amount of P5,301,403.00, representing PNB's excess payment of its income tax liability for the year 1996.

5. PNB's claim for refund with the Bureau of Internal Revenue under letter dated April 12, 1999, as well as the above-entitled petition, were filed by petitioner PNB within the two-year reglementary period provided under the Revenue Code.

Petitioner alleged that its claim for refund represents the creditable taxes withheld from PNB's income from sale of real property, rental income and professional fees pertaining to taxable year 1996 after excluding prior year's excess credits.

In an Answer filed on June 18, 1999, the Respondent interposed the following Special and Affirmative Defenses, to wit:

> "4. Petitioner has applied for tax credit to the next succeeding year the amount of P5,301,403.00 subject matter of the petition, hence, no longer refundable;
>
> 5. The amendment made on the 1996 return on November 19, 1997 has no bearing in the instant case since three taxable quarters for the year 1997 had already elapsed and Petitioner has not shown whether the amount claimed was not utilized in the said quarters;
>
> 6. The petition states no cause of action as it does not allege the date/s when the amount sought to be refunded were actually paid;
>
> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for refund;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with rules and regulations, hence, not refundable; and
>
> 9. Well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation. (Resins, Inc. vs. General Auditor, 75 SCRA 754, 1968).

In its Memorandum filed on January 25, 2001, Petitioner asserts that it is entitled to the refund of the amount sought based on Section 69 of the National Internal Revenue Code, thus:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, 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.

To support its stance, Petitioner alleged that, on the basis of its final adjustment return or amended income tax return for 1996 (Exhs. B, B-1, B-2) which disclosed that it suffered a negative income of P936,657,987.00 and refundable tax credits in the amount of P5,301,403.00, which credits remained unutilized in the years 1996 and 1997 since it was at a net loss position in both periods, the grant of the refund sought is ineluctable.

As agreed upon by the contending parties, the issue in this case is whether or not Petitioner PNB overpaid its income tax for the year 1996 in the amount of P5,301,403.00 and is entitled to a tax refund or issuance of a tax credit certificate for the aforesaid amount.

After thoroughly evaluating all the relevant documents on hand and the applicable jurisprudence on the issue raised by the parties, We find for the Petitioner.

Well-settled is the rule that the grant of refund of overpaid, unutilized creditable taxes of a taxpayer is dependent upon its compliance with the following requisites set forth by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals, Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997,** to wit:

1) That the claim for refund is filed within the two-year period pursuant to Section 230 of the Tax Code, as amended;

2) that the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient; and

3) that the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

A close scrutiny of the records of this case show that Petitioner has substantially complied with all the aforesaid requirements.

First, as stipulated by the contending parties, the judicial and administrative claims for refund were both filed within two-years from April 15, 1997, the date the Petitioner filed with the Respondent its final adjustment return for the year 1996. Record shows that the written claim for refund was filed with the BIR on April 13, 1999 (Exh. A) while the Petition for Review was filed with this Court on April 14, 1999.

Anent the second requisite, this Court is convinced that Petitioner's income from sale of properties, rental, professional and management services and from which taxes were withheld were included as part of its income declared in the annual income tax return. As duly explained by the Petitioner in its "Notes to Parent Company Financial Statements" (Exh. C-6-f), income derived from the aforementioned transactions were under the caption "Other Income" in the parent company's (Petitioner) statement of income.

Proceeding now to the last requirement, Petitioner, in support of its claim for refund, presented in evidence various Certificates of Creditable Tax Withheld at Source, the payor's Monthly Remittance Returns of Income Taxes Withheld and the Deeds of Absolute Sale to prove the fact of withholding (Exhs. J to Z and AA to KK) as follows:

WITHHOLDING AGENT	EXHIBIT	SOURCE OF INCOME		INCOME PAYMENT		TAX WITHHELD
PNB Forex, Inc.	GG, GG-1,	Management fee	P	852,655.70	P	42,632.78
PNB Forex, Inc.	HH, HH-1	Management fee		928,632.22		46,431.61
PNB Forex, Inc.	II, II-1	Management fee		1,751,857.03		87,592.85
		Subtotal	P	**3,533,144.95**	P	**176,657.24**
PNB Forex, Inc.	J, J-1	Professional fee	P	**795,000.74**	P	**39,750.04**
Gulf Express Corp.	CC	Rental		3,345,900.00		66,918.00
Gulf Express Corp.	CC-2	Rental		100,000.00		2,000.00
Gulf Express Corp.	DD, DD-1, DD-2	Rental		689,180.00		34,459.00
		Subtotal	P	**4,135,080.00**	P	**103,377.00**
Irene Briones	AA, AA-1 to AA-3	Sale of property		420,000.00		6,300.00
Bay Area Phil. Ind.	BB, BB-1, BB-2	Sale of property		62,400,000.00		3,120,000.00
James Gemzontan	EE, EE-1, EE-2	Sale of property		12,000,000.00		600,000.00
Edison Gemzontan	FF, FF-1, FF-2	Sale of property		2,200,000.00		66,000.00
Jennie Rose Fernando	JJ, JJ-1 to JJ-6	Sale of property		205,000.00		15,475.50
Rufino Jasmin	K, K-1, K-2	Sale of property		540,000.00		20,550.00
Virginia Caballero	KK, KK-1, KK-2	Sale of property		428,000.00		34,765.20
Freida G. Glacildo	L, L-1 to L-3	Sale of property		480,000.00		36,000.00
Crispin C. Sarmiento	M, M-1, M-2	Sale of property		179,400.00		2,691.00
Ma. Luz Declaro	N, N-1, N-2	Sale of property		238,640.00		17,898.00
Romeo Jamerlan	O, O-1, O-2	Sale of property		994,500.00		74,587.50
Romeo Jamerlan	P, P-1, P-2	Sale of property		605,000.00		51,528.75
Pacita Flaminiano	Q, Q-1, Q-2	Sale of property		330,000.00		4,950.00
Albert Co	R, R-1, R-2	Sale of property		900,000.00		27,000.00
Maryline Ramos	S, S-1, S-2	Sale of property		2,380,300.00		119,015.00
Angel Laya	T, T-1,T-2	Sale of property		2,030,000.00		101,500.00
SKS Const. & Devl't	U, U-1 to U-3	Sale of property		2,843,333.33		142,166 67
Gerardo S. Rescober	V, V-1, V-2	Sale of property		4,205,000.00		315,375.00
Asterio Bernardo	W, W-1, W-2	Sale of property		688,000.00		34,400.00
Martin Abadiano	X, X-1, X-2	Sale of property		768,595.00		57,644.63
Nancy Lee Chua	Y, Y-1, Y-2	Sale of property		2,373,200.00		118,660.00

Rommel Pretta	Z, Z-1, Z-2	Sale of property		503,700.00		15,111.00
		Subtotal	P	97,712,668.33	P	4,981,618.25
		Total	P	106,175,894.02	P	5,301,402.53

Time and again, this Court has invariably held that these Certificates of Tax Withheld are the best evidence which a taxpayer can offer in order to prove the fact of withholding.

Equally important in Petitioner's claim for refund is the fact that the creditable taxes for taxable year 1996 amounting to P5,301,403.00 were never applied to any income tax liability in the succeeding taxable years 1997 and 1998, since Petitioner was at a net loss position in the year 1997 while in taxable year 1998, Petitioner disclosed a nil prior year's excess credits. Hence, We conclude that the amount now sought to be refunded remained unutilized and, therefore, must be refunded.

After fully substantiating by documentary exhibits its claim for refund, this Court finds the Petitioner to be entitled to the same.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE** a Tax Credit Certificate in the amount of P5,301,402.53 in favor of the Petitioner, representing overpaid unutilized creditable taxes for taxable year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate 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