REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BELLE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6070

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 10 2001

x - x

DECISION

This is a Petition for Review seeking for the refund or for the issuance of a Tax Credit Certificate in the amount of ONE HUNDRED SIX MILLION FOUR HUNDRED FORTY SEVEN THOUSAND THREE HUNDRED EIGHTEEN PESOS (P106,447,318.00) representing overpaid or excess income tax of Petitioner for the year ended December 31, 1997.

Petitioner is a domestic corporation duly registered and organized under Philippine laws, with principal office located at the 28th Floor, Philippine Stock Exchange Centre, East Tower, Exchange Road, Ortigas Center, City of Pasig. It is duly licensed to do business in the Philippines and principally engaged in the real estate and property business. (Joint Stipulation of Facts and Issues, CTA docket p. 146)

Records show that on May 30, 1997, Petitioner filed with the Bureau of Internal Revenue (BIR, for brevity) its Corporation Quarterly Income Tax Return for the quarter ended March 31, 1997 which reflected an income tax due of P236,679,254.00 computed as follows: (see Joint Stipulation, CTA docket p. 146).

Gross Income		P741,607,495
Less: Deduction		65,381,054
Taxable Income		676,226,441
Tax Rate		x 35%
Tax Due		P236,679,254
Less: Tax Credits/Payments		
(a) Prior year's excess Tax Credit	-0-	
(b) Tax payments for the Previous quarter	-0-	
(c) Creditable withholding tax	-0-	0
TAX PAYABLE		P236,679,254 (see Exhs. B, B-2)

Petitioner paid the above income tax due on May 30, 1997 with PCI Bank, Tektite Tower Branch, an Authorized Agent Bank of the BIR as shown by the machine validation appearing on the lower portion of the return and as supported by Official Receipt No. 005510. (Joint Stipulation of Facts, CTA docket p. 147)

On April 15, 1998, Petitioner filed with the BIR its Tentative Corporation Annual Income Tax Return for taxable year ended December 31, 1997 (Joint Stipulation of Facts, CTA docket p. 147).

On April 30, 1998, Petitioner filed its Final Corporation Annual Income Tax Return for the taxable year ended December 31, 1997 (Joint Stipulation of Facts, CTA docket p. 147) which reflects the excess or refundable income tax in the amount of P132,043,528.00 computed as follows: (Exh. E)

Gross Income		P1,182,473,910
Less: Deduction		879,485,278
Taxable Income		302,988,362
Tax Rate		x 35%
Tax Due		P 106,046,021
Less: Tax Credits/Payments		
(a) Prior year's excess Tax Credit	-0-	
(b) Quarterly payment	P236,679,254	
(c) Creditable tax withheld	1,410,295	238,089,549

REFUNDABLE AMOUNT	P 132,043,528 (see Exh. E-1)

On the said amended return, Petitioner indicated its option to apply above refundable income tax as credit to the succeeding taxable year of 1998 (See Exhibit E-3)

On April 15, 1999, Petitioner filed with the BIR its Tentative Corporation Annual Income Tax Return for Taxable year ended December 31, 1998 (Joint Stipulation of Facts, CTA docket p. 147)

On May 31, 1999, Petitioner filed its Final Corporation Annual Income Tax Return for taxable year ended December 31, 1998 (Joint Stipulation of Facts, CTA docket p. 147) which reflected a net loss of P66,743,057.00 and an overpayment of P106,447,318.00 computed as follows: (Exhibit I)

Gross Income	P1,279,810,489
Less: Deduction	1,346,553,546
Taxable Income (Loss)	(66,743,057)
Tax Rate	34%
Tax Due (Regular Income Tax)	NIL
Minimum Corporate Income Tax	P 25,596,210
Tax Due	25,596,210
Less: Tax Credits/Payments	
(a) Prior year's excess Tax Credits	P 132,041,528
(b) Quarterly payment	0
(c) Creditable tax withheld	0
Tax Payable/Overpayment	(P 106,447,318) (Exh. I)

On April 12, 2000, Petitioner through its auditor Sycip Gorres Velayo & Company, filed with the BIR an administrative claim for the refund or tax credit (Exh. K) of the excess or overpaid income tax for the taxable year ended December 31, 1997 amounting to P106,447,318.00 (Joint Stipulation of Facts, CTA docket p. 147).

Petitioner elevated the matter before this Court by way of Petition for Review on April 14, 2000.

In answer to Petitioner's assertions, Respondent advanced the following Special and Affirmative Defenses, to wit:

> "4. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by Respondent's Bureau;
>
> 5. Petitioner failed miserably to show that the total amount of P106,447,318.00 claimed as overpaid or excess income tax is refundable;
>
> 6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;
>
> 7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 8. It is incumbent upon Petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code;
>
> 9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions."

On September 14, 2000, Petitioner filed its "Formal Offer of Evidence" and presented the following relevant documentary exhibits in order to substantiate its claim, thus:

Exhibits	Description
B	Quarterly Corporate Income Tax Return for Quarter Ending March 30, 1997
D and H	Tentative Corporate Annual Income Tax Return for Calendar Year ended December 31, 1997 and December 31, 1998
E, I and J	Final Corporate Annual Income Tax Return for Calendar Year ended December 31, 1997, December 31, 1998 and December 31, 1999

K	Letter Claim for Refund filed with the BIR
C	Official Receipt issued by PCI Bank showing income tax payment made by the Petitioner in the amount of P236,679,254

On February 2, 2001, Petitioner submitted its Memorandum and further bolstered its stand that it made an overpayment of income tax for calendar year ended December 31, 1997. Respondent did not submit controverting evidence nor file memorandum to support his defenses.

The Parties in their "Joint Stipulation of Facts and Issues" submitted the following issues to be resolved by this Court, to wit:

1. Whether or not the excess or overpaid income taxes being claimed by Petitioner as a refund or tax credit are substantiated by documentary evidence;

2. Whether or not Petitioner overpaid its income taxes for the taxable year 1997;

3. Whether or not Petitioner's excess or overpaid income taxes for the taxable year ended December 31, 1997 were carried forward to the succeeding taxable year and applied against the income tax due for the succeeding periods; and

4. Whether or not Petitioner is entitled to a refund or tax credit of the excess or overpaid income tax for taxable year ended December 31, 1997 in the amount of P106,447,318.00 (see CTA docket p. 148).

Before we proceed to discuss the pivotal issues involved in the case at bar, it is necessary first to determine the specific provision of law applicable to the facts of the case. A perusal of the records of this case would reveal that the subject claim for refund covers calendar year ended December 31, 1997. Contrary to Petitioner's assertion, the more applicable provision of law is that which pertains to the old Tax Code because the provisions of the 1997 Tax Reform Act became effective only on January 1, 1998 (*Read*

Rite Philippines, Inc. (formerly Sunward Technologies, Phils., vs. CIR, CTA Case No. 5717, October 9, 2000). Thus, we do not subscribe to the Petitioner's contention that since the 1997 Tax Code was already effective when Petitioner filed its 1997 income tax return on April 15, 1998 then the 1997 Tax Code would be applicable. It is clear from the 1997 Tax Code itself that it would take effect only on January 1, 1998, and no retroactive application can be had if the law is silent on the matter. Section 69 of the old Tax Code explicitly provides:

> "**Section 69.** *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during 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
> (B) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return <u>may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding</u> taxable year." (underscoring supplied)

Based on the foregoing provision, if the corporate taxpayer is not able to utilize its overpaid income tax in the succeeding taxable year, such corporate taxpayer is entitled to the cash refund of the excess amount or in the alternative be issued a tax credit certificate for said amount. However, the said section also clearly provides that the taxpayer [illegible] carry over any of its unutilized income tax only to the next succeeding taxable year.

Going back to the issues involved in the case at bar, this Court, after going over the records of this case believes that all the allegations made by the Petitioner as well as the figures accompanying Petitioner's claim are substantiated by documentary evidence but noticed some flaws in Petitioner's application of the pertinent laws involved.

It bears stressing that the applicable provision in the case at bar is Section 69 of the old Tax Code and not Section 76 of the 1997 Tax Code. Settled is the rule that under Section 69 of the old Tax Code, the carrying forward of any excess/overpaid income tax for a given taxable year is limited only up to the succeeding taxable year.

A painstaking scrutiny of Petitioner's income tax returns would show that Petitioner carried over its 1997 refundable tax of P132,043,528.00 to the succeeding year of 1998 yielding an overpayment of P106,447,318.00 (Exhibit I-1) after deducting therefrom the minimum Corporate Income Tax of P25,596,210. However, Petitioner even went further to the taxable year 1999 and applied the Prior Year's (1998) Excess Credit of P106,447,318.00 to its income tax liability.

True enough, upon verification of Petitioner's 1999 Corporate Annual Income Tax Return (Exh. I), this Court found that the whole amount of P106,447,318.00 representing its prior year's excess credit (subject of this claim) was carried forward to its 1999 income tax liability, details of the 1999 Income Tax Return are shown below as follows:

Gross Income		P 708,888,638
Less: Deduction		1,328,101,776
Taxable Income		(619,213,138)
Tax Due		-
Minimum Corporate Income Tax		14,185,874
Less: Tax Credits/Payments		
(a) Prior year's excess Credit	P106,447,318	
(b) Tax Payments for the 1st & 3rd Qtrs.	0	
(c) Creditable tax withheld	0	106,447,318
TAX PAYABLE/REFUNDABLE		(P 92,261,444)

It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year. (*Paseo Realty and Devt. Corp. vs. CIR, CTA Case No. 4528, April 30, 1993*) True enough, implicit from the provisions of Section 69 of the NIRC, as amended, (*supra*) is the fact that the refundable amount may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year. (citing *ANSCOR Hagedorn Securities Inc. vs. CIR, CA-GR SP 38177, December 21, 1999*) To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for 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