REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6276

Promulgated:
MAR 12 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the aggregate amount of Thirty Three Million Nine Hundred Forty-Seven Thousand and One Hundred One Pesos (P33,947,101.00) allegedly representing excess income and creditable withholding taxes for the taxable year 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office address at BPI Building, Ayala Avenue corner Paseo de Roxas, Makati.[1]

On April 15, 1999, petitioner filed with the Bureau of Internal Revenue (BIR) its corporate income tax return for the taxable year ended December 31, 1998, showing a taxable income of P1,773,236,745.00 with the corresponding total tax due for the

[1] Joint Stipulation of Facts, par. 1.

period in the amount of P602,900,493.00 and prior year's excess tax credits of P59,424,222.00 (*Exhibits A & 3*). Petitioner likewise filed its quarterly income tax returns for 1998, showing income payments as follows:

Quarter Covered	Date Filed	Quarterly Income Tax Paid	Exhibit
1st Quarter	06-01-98	P378,564,898.34	B
2nd Quarter	08-31-98	184,982,572.12	C
3rd Quarter	11-27-98	-0-	D
	TOTAL	P563,547,470.46	

In the course of its business operations for the year 1998, petitioner received income payments from various third persons which were subjected to expanded withholding taxes totalling P7,685,887.90, hereunder detailed, thus:

Quarter Covered	Amount of Taxes Withheld	Exhibit
1st Quarter	P2,678,299.09	B
2nd Quarter	2,738,141.81	C
4th Quarter	2,269,447.00	A
Total	P7,685,887.90	

For the same taxable year, as a result of the business operations of its New York Branch, petitioner paid taxes to the United States government in the sum of US$151,467.00 or Philippine peso equivalent of 6,190,014.46 (*Exhibits E-1, F-1, G-1 & H-1*).

It is the position of the petitioner that for the taxable year 1998, it incurred an overpayment of income taxes in the amount of P33,947,101.00, computed as follows:

Total Income Taxes Due			P	602,900,493.00
Less: Tax Credits/Payments				
Prior year's excess tax credits	P	59,424,222.00		
Quarterly payments		563,547,470.46		
Creditable taxes withheld		7,685,887.90		
Foreign tax credit		6,190,014.00		
Subtotal				636,847,594.00
Net Tax Payable/(Refundable)			**(P**	**33,947,101.00)**

Petitioner opted to carry over the said amount of P33,947,101.00 to the succeeding taxable year (*Exhibit A-2*). For the taxable year 1999, petitioner declared a net loss of P615,742,102.00. It also reflected the prior year's excess tax credits in the amount of P33,947,101.00 and the current year's tax credits in the sum of P12,975,750.00 or total tax credits amounting to P46,922,851.00, which petitioner opted to carry over as tax credit to the following year.[2] For the year 2000, petitioner declared a nil taxable income, prior year's excess tax credits in the sum of P46,922,851.00 and current year's tax credits in the amount of P25,207,939.00. In its return, petitioner did not indicate its choice of either carry over or claim for refund/tax credit certificate.[3]

On April 3, 2001, petitioner filed with respondent an administrative claim for refund in the amount of P33,947,101.00 representing its excess income and creditable withholding taxes for the taxable year 1998.[4]

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[2] Exhibit J.
[3] Exhibit K.
[4] Joint Stipulation of Facts, par. 3.

To date, despite successive follow-ups, petitioner's administrative claim for refund has not been acted upon nor approved by respondent.[5] Hence, the instant petition.

The parties jointly submitted the following issues for determination, to wit:

1) Whether or not petitioner is entitled to the claim for refund in the amount of Thirty Three Million Nine Hundred Forty Seven Thousand One Hundred and One Pesos (Php33,947,101.00) representing its alleged overpaid income taxes and excess creditable withholding taxes;
2) Whether or not income payments from which the taxes were withheld were included in petitioner's gross income for the year 1998;
3) Whether or not petitioner has unutilized excess income tax credits for the calendar year 1998;
4) Whether or not petitioner had carried over and utilized to the succeeding taxable years 1999 and over the alleged overpaid income taxes and excess creditable withholding taxes for the year 1998;
5) Whether or not petitioner is entitled to claim the amount of US$151,467.00 (or Php6,190,014.46 when converted to Philippine Currency) as allowable foreign tax credit for taxable year 1998;
6) Whether or not petitioner incurred a net operating loss for taxable year 1999; and

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[5] *Ibid.* par. 4.

7) Whether or not the aforesaid claim for refund is substantiated by documentary evidence.

Petitioner anchored its claim on the provisions of Sections 76 and 204(C), in relation to Section 229, of the 1997 Tax Code, quoted hereunder for easy reference:

> **Section 76.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

> **Section 204.** ***Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** - The Commissioner may:
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> x x x x x x x x x
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for

> use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

> **Section 229.** ***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 any sum alleged to have been excessively 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 filed after the expiration of two (2) 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 the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid.

In answer and by way of an affirmative defense, respondent states that petitioner's cause of action is already barred by the statute of limitations, considering that petitioner alleged to have paid the excess taxes in 1998 but only sought the refund or credit thereof on April 3, 2001. The judicial claim for refund was filed only on April 11, 2001, or more than two years from the alleged payment.

We do not agree with the respondent.

Under the aforecited Section 76 of the Tax Code, a corporation is required to file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. In the case at bar, petitioner had until April 15 of 1999 within which to file its final adjustment return for the taxable year ended December 31, 1998 as per Section 77(B) of the Tax Code. Petitioner, therefore, had two years from April 15, 1999 to file a claim for refund in accordance with Section 76 and not two years from the dates the quarterly payments were made. The Supreme Court declared that the filing of quarterly income tax returns and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments, which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. Consequently, the two-year prescriptive period should be counted from the filing of the Adjustment Return or Annual Income Tax Return and final payment of income tax,[6] the rationale being that it is only at this period when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.

We proceed to the stipulated issues. As they are interrelated, we will no longer discuss the same *in seriatim*.

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[6] Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184.

As to whether or not petitioner has unutilized income tax credits for the calendar year 1998 and whether or not petitioner incurred a net operating loss for taxable year 1999, we both rule in the affirmative.

Evidence will show that petitioner had total excess tax credits of P33,947,101.00 in the year 1998 (*Exhibit A*). For the years 1999 and 2000, the returns likewise disclose that indeed, petitioner incurred net losses (*Exhibits J & K*). Thus, it appears that said amount of tax credits which was carried over by the petitioner in 1999 and 2000 remained unutilized.

The crucial and remaining issue, therefore, is whether or not petitioner is entitled to the amount sought for.

We rule in the negative.

A close scrutiny of the 1998 annual income tax return of the petitioner reveals that it opted to carry over its excess tax credits, the amount subject of this claim, to the succeeding taxable year by placing an "x" mark in the corresponding box of said return (*Exhibits A-2 & 3-a*). For the year 1999, petitioner again manifested its intention to carry over to the succeeding taxable period the subject claim together with the current excess tax credits (*Exhibit J*). Still unable to apply its prior year's excess credits in 1999 as it ended up in a net loss position, petitioner again carried over the said excess credits in the year 2000 (*Exhibit K*).

This court already categorically ruled in a number of cases that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor *(Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, dated March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, dated April 19, 2002; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, dated May 2, 2002; The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6280, August 16, 2001).* Since petitioner already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000, it is, therefore, no longer entitled to claim for a refund or issuance of a tax credit certificate.

Accordingly, we find it no longer necessary to resolve the remaining issues.

IN VIEW OF ALL THE FOREGOING, the instant petition for review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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