REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB LEASING AND FINANCE CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 6085

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 19 2001

x - x

DECISION

At bar is a Petition for Review filed by the Petitioner on April 14, 2000, seeking for the refund of the amount of P774,321.25 representing alleged overpaid income tax arising from quarterly income tax payment for the calendar year ended December 31, 1997.

The controversy arose from the following antecedents:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines.

Records show that Petitioner had a taxable income of P2,212,347.86 for the first quarter of the calendar year 1997 and paid the corresponding income tax due thereon in the amount of P774,321.75.

On April 15, 1998, Petitioner filed its Corporate Annual Income Tax Return for the calendar year 1997 reporting a net loss in the amount of P22,295.00 (Exhibit "A"). Since it had no income tax liability for the said year, Petitioner opted to have the overpaid income tax "TO BE APPLIED AS CREDIT TO NEXT YEAR".

On April 6, 2000, Petitioner filed an administrative claim for the refund of its alleged overpaid quarterly income tax payments in the amount of P774,321.75 (Item No. 1.03, Joint Stipulation of Facts and Issues, page 70, CTA records).

To toll the running of the two-year prescriptive period, Petitioner elevated its case to this Court on April 14, 2000, via Petition for Review.

In an Answer filed on June 9, 2000, Respondent, by way of Special and Affirmative Defenses advanced the following arguments:

> "4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
>
> 5. Petitioner carried over as credits to the next succeeding year the amount claimed for refund/tax credit, hence, no longer refundable;
>
> 6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35)*;
>
> 7. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute *(Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs Court of Tax Appeals, 4 SCRA 304)*;
>
> 8. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 9. It is incumbent upon Petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

10. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

In a resolution promulgated on August 8, 2001, this case was considered submitted for decision sans the memorandum of the Respondent.

The sole issue in this case is whether or not Petitioner was able to present sufficient evidence to establish that it is entitled to the refund of alleged overpaid income tax for the year 1997 in the amount of P774,321.75.

Having correctly cited the basis of its claim coupled with relevant documents to support its cause, We resolve in favor of the Petitioner.

On the issue of the refund of overpaid quarterly income tax, Section 69 of the National Internal Revenue Code unequivocally provides, thus:

> "**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 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
> (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."

In the course of the trial, Petitioner was able to convince this Court that it is entitled to the refund of overpaid income tax by presenting in evidence, among others, its quarterly income tax return for the first quarter of 1997 (Exhibit "B") showing on its face the machine validation of payment and the amount received by the authorized collecting agent bank (Exhibit "B-1").

Inasmuch as the Petitioner incurred a net loss for taxable year 1998 in the amount of P5,314,813.00 (Exhibit "E") resulting to a nil tax liability, consequently, it was not able to apply the prior year's excess credit of P774,321.75.

Considering that the validity and authenticity of tax returns presented by the Petitioner were not rebutted by the Respondent, the said returns are presumed to be correct having been made under the penalty of perjury.

With respect to the issue of compliance with the two (2) year prescriptive period for claiming a refund, records also reveal that Petitioner's claims, both administrative and judicial, were both filed well within the said period. Petitioner filed its 1997 Annual Income Tax Return on April 15, 1998 and subsequently filed a claim for refund with the BIR on April 6, 2000 and the Petition for Review with this Court on April 14, 2000. The foregoing dates of filing these claims for refund counted from the date of filing of its 1997 Annual Income Tax Return on April 15, 1998, clearly show that said claims were filed within the two-year period prescribed under Section 230 of the Tax Code (Now Section 229).

After satisfying the requirements of the law on substantiation by seasonably filing its administrative and judicial claims for refund, and by presenting in evidence the fact of payment during the first quarter of 1997 (Exhibit "B") and that said payment was not applied in the year 1998 (Exhibit "E-2"), this Court believes Petitioner is entitled to the relief prayed for.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or in the alternative to ISSUE A TAX CREDIT CERTIFICATE in favor of the Petitioner in the amount of P774,321.75 representing overpaid income tax for taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
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