REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIANBANK CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 6095

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 09 2001

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DECISION

At bar is a judicial claim for refund of the amount of P2,803,609.00 filed by the Petitioner on April 17, 2000 representing alleged overpaid income tax for calendar year ended December 31, 1997.

Pertinent to the resolution of the issues in this case are the following facts:

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

On April 15, 1998, Petitioner filed with the Bureau of Internal Revenue its Corporate Annual Income Tax Return for the calendar year 1997 reporting a net loss in the amount of P16,163,420.00 and a refundable amount of P2,803,609.00 (Exhibit A-5). In its return, Petitioner indicated its intention of applying its refundable amount as credit to next year. The refundable amount of P2,803,609.00 allegedly represents the sum of the first quarter income tax payments of P2,734,268.00 (Exhibit A-4-a) and creditable income taxes withheld of P9,341.00 (Exhibit A-4-5) in 1997.

On May 4, 1999, Petitioner filed its Amended Annual Income Tax Return for taxable year 1998 reflecting therein a net loss of P21,716,831.00 (Exhibit E-1). Irrespective of the fact that it was at a net loss position at the end of taxable year 1998, Petitioner allegedly paid P6,666,387.00 minimum corporate income tax (Exhibit E-3) from which the prior year's (1997) excess credits of P2,803,609.00 (Exhibit E-4) and creditable taxes withheld in 1998 of P349,436.00, were deducted resulting to an income tax payable of P3,513,342.00 (Exhibit E-6). Since it allegedly paid an amount of P6,666,387.00 instead of the income tax payable in the amount of P3,513,342.00, Petitioner now claims that it failed to utilize the prior year's (1997) excess tax credits of P2,803,609.00 as well as the 1998 creditable withholding taxes of P349,436.00. Hence, the claim for refund.

Believing as it does that it is entitled to a refund of what has been erroneously paid, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on April 17, 2000.

On even date, Petitioner elevated its grievance to this Court via Petition for Review.

On May 19, 2000, Respondent filed his Answer to the Petition for Review and denied Petitioner's assertions. By way of Special and Affirmative Defenses, Respondent interposed the following:

"4. The alleged claim for refund is subject to administrative investigation/examination by the Respondent;

5. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected;

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

7. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code, as amended;

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

The core of the problem the Court is called upon to resolve is whether or not Petitioner is entitled to the refund of the amount of P2,803,609.00 representing alleged overpaid income tax for the year 1997.

In his memorandum, Respondent raises for the first time the issue of prescription to defeat the claim of the Petitioner. His contention hinges mainly on the alleged failure of the Petitioner to file its claim for refund within the two (2) year period of prescription provided under Section 229 of the Tax Code. Respondent anchors his argument on the decision of the Supreme Court in the case of **National Marketing Corporation (NAMARCO vs. Tecson, L-29131, August 27, 1969, 29 SCRA 70)**, where the High Court explained the procedure in the computation of the prescriptive period in this wise:

> "Civil law; Application of laws; Article 13 of the Civil Code explained; Term "year" as used in our laws is limited to 365 days. - Prior to the approval of the Civil Code of Spain, the Supreme Court thereof

> held, on March 30, 1887, that, when the law spoke of months, it meant a "natural" month or "solar" month, in the absence of express provision to the contrary. Such provision was incorporated into the Civil Code of Spain, subsequently promulgated. Hence, the same Supreme Court declared that, pursuant to Article 7 of the said Code, "whenever months are referred to in the law, it shall be understood that the months are of 30 days", not the "natural", "solar" or "Calendar" months, unless they are "designated by name", in which case "they shall be computed by the actual number of days they have". This concept was later, modified in the Philippines, by Section 13 of the Revised Administrative Code, pursuant to which, "month shall be understood to refer to a calendar month". With the approval of the Civil Code of the Philippines (RA 386) we have reverted to the provisions of the Spanish Civil Code in accordance with which a month is to be considered as the regular 30-day month and not the solar or civil month with the particularity that whereas the Spanish Civil Code merely mentioned "months, days or nights", ours has added thereto the term "years" and explicitly ordains in Article 13 that it shall be understood that years are of three hundred sixty-five days." (Underscoring supplied)

Prescinding from the above, Respondent asserts that Petitioner had only 730 days from its filing of the Annual Corporate Income Tax Return on April 15, 1998 within which to file its legal remedies. And since the instant Petition for Review was only filed on April 17, 2000, Respondent concludes that it was filed out of time inasmuch as Petitioner had only until April 14, 2000 within which to file its administrative and legal remedies, year 2000 being a leap year.

To further bolster its stance, Respondent cited the ruling of this Court in the case of **Primetown Property Group, Inc. vs. Commissioner of Internal Revenue and Arturo V. Parcero, CTA Case No. 6113, dated December 15, 2000** where We ruled in this wise:

> "In the case at bar, Petitioner filed its final adjustment return on April 14, 1998. Supposedly, it had until April 14, 2000 the day the instant

> Petition for Review was filed within which to file the legal remedy. However, the year 2000 is a leap year, the two year period expired on April 13, 2000. It is then obvious that the claim was filed out of time."

To contradict Respondent's assertions, Petitioner, in its Reply To Memorandum of Respondent filed on March 16, 2001, advances the argument that the issue of prescription belatedly raised by the Respondent should not be considered at all by this Court since it was never raised as an issue in the Joint Stipulation of Facts arising out of the pre-trial conference. And be that as it may, Petitioner asseverates that the meaning of "years" under the Civil Code has already been <u>modified</u> and <u>superseded</u> by the Administrative Code of 1987 which provides, thus:

> "**Section 31.** ***Legal Periods.*** - <u>"Year" shall be understood to be twelve (12) calendar months; "months"</u> of thirty (30) days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; "day," to a day of twenty four (24) hours; and "nights," from sunset to sunrise." (Underscoring Ours)

Considering that under the above-cited provision the word "year" shall now be understood to mean twelve (12) calendar months, Petitioner opines that it had until April 15, 2000, not April 14, 2000, within which to file its administrative and judicial claims for refund.

Moreover, Petitioner places premium on the admission made by the Respondent in the Joint Stipulation of Facts and Issues dated July 21, 2000 that the Petitioner filed its administrative claim for refund of overpaid income taxes for calendar year 1997 with the

BIR on April 17, 2000 "within the prescriptive period allowed by law". Thus, Respondent is allegedly already estopped from claiming otherwise.

We deny the claim.

Apropos to the issue of prescription is the provision of Article 13 of the Civil Code which provides, thus:

> "**Article 13.** Where the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty five days each; months, of thirty days, days of twenty-four hours; and nights from sunset to sunrise.
>
> If months are designated by their name, they shall be computed by the number of days which they respectively have.
>
> In computing a period, the first day shall be excluded and the last day included." (Underscoring Ours)

Except for a bare allegation that the above-cited provision was already amended and/or superseded by the provisions of the Revised Administrative Code of 1987 on legal periods, Petitioner has not shown any proof that the High Court, from the time the Revised Administrative Code became effective, applied its provisions in resolving issues on prescription. In other words, the Supreme Court and other courts for that matter, continuously adhered to its previous interpretation of "year" as containing 365 days as provided under Article 13 of the Civil Code instead of 12 months provided under the Revised Administrative Code. Unfortunately for the Petitioner, this Court has yet to find any statute or decision in support of this pretense.

As correctly pointed out by the Respondent, Petitioner had only until April 14, 2000, which fell on a Friday, within which to file its claim for refund with this Court considering that year 2000 is a leap year following our ruling in the *Primetown Property Group* case.

This ruling finds support in the case of **State Investment House, Inc. vs. Court of Appeals, 215 SCRA 742, November 13, 1992,** where the Supreme Court emphatically ruled in this wise:

> "Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Thus, excluding the first day and counting from August 25, 1983 (under paragraph 3 of Article 13 of the New Civil Code), and bearing in mind that 1984 is a leap year, Cuenca had only until August 23, 1984, the 365[th] day after registration of the sale on August 24, 1983, within which to redeem the foreclosed property in accordance with law. It was thus already beyond the redemption period when Cuenca filed her suit below on August 24, 1984.
>
> It should be stressed in this regard that it is not proper to count, as Cuenca submits in her Rejoinder, the period on the basis of 30 days per month. The law speaks of a "one year" period within which to redeem, not twelve months as in the case of redemption by a judgment debtor under Section 30 of Rule 39. Applying Article 13 of the Civil Code, the period of one year within which to redeem in the case at bar is to count 365 days from August 24, 1983. Consequently, the last day to redeem would be and indeed fell on August 23, 1984, said year being a leap year (cf Go vs. Dizon, et al., G.R. No. 75915-16, September 18, 1992).

It appearing from the records of this case that the instant Petition for Review was filed only on April 17, 2000, three days beyond the prescriptive period, We are constrained to deny the claim on the ground of prescription.

Anent the peripheral issue of estoppel, it must be borne in mind that the state is not bound by the mistakes or inadvertence of its officials and employees **(Cudia vs. Court of Appeals, 284 SCRA 173).** Besides, the Joint Stipulation of Facts entered into by the parties specifically focused on the administrative claim for refund as being filed within the two-year period and did not delve on the judicial claim for refund (pls. read Paragraph 1.02 of Joint Stipulation of Facts and Issues, page 79, CTA records).

WHEREFORE, in view of all the foregoing, the instant claim for refund of alleged overpaid income taxes is hereby **DENIED** on the ground of prescription.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, 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