REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC.,
Petitioner,

- versus -   C.T.A. CASE NO. 6134

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 16 2003

x - x

DECISION

This case involves a claim for refund in the amount of P1,061,266.00 allegedly representing unapplied creditable income tax withheld for the fiscal year ended March 31, 1998.

The facts of the case are as follows:

Petitioner is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, with principal office address at the 9th Floor, Philippine Airlines Center, Legaspi Street, Legaspi Village, Makati City.

On July 15, 1998, petitioner filed its tentative income tax return for the fiscal year (FY) ended March 31, 1998, reflecting a net loss of P3,753,048,090.00 and an income tax refundable of P1,028,248.00, computed as follows (*Exhibit A*):

Gross Income	P 38,261,198,168.00
Less: Deductions	42,014,246,258.00
Net Loss	P 3,753,048,090.00
Income Tax Due	P -
Less: Tax Credits/Payments	1,028,248.00
Tax Refundable	P 1,028,248.00

On May 20, 1999, petitioner filed its amended income tax return for the FY ended March 31, 1998 declaring a higher net loss of P7,555,393,804.00 but the same refundable income tax of P1,028,248.00, detailed as follows (*Exhibit B*):

Gross Income	P 36,140,959,159.00
Less: Deductions	43,696,352,963.00
Net Loss	P 7,555,393,804.00
Income Tax Due	P -
Less: Tax Credits/Payments	1,028,248.00
Tax Refundable	P 1,028,248.00

Petitioner indicated the excess amount of P1,028,248.00 in its amended FY 1998 income tax return as "To be carried as tax credit next year".

On July 26, 1999, petitioner filed with the Appellate Division of the Bureau of Internal Revenue an administrative claim for refund in the amount of P1,061,266.00 consisting of the unutilized tax credits of P1,028,248.00 reported in its amended FY 1998 income tax return and an additional amount of P33,018.00 which petitioner allegedly was unable to include in the return because the corresponding certificates were recovered much later (*Exhibit F*).

Since respondent did not act on the aforesaid claim, petitioner filed the instant Petition for Review on July 7, 2000 pursuant to Section 229 of the Tax Code.

In his Answer filed through registered mail on September 15, 2000, respondent interposed the following Special and Affirmative Defenses:

> "3. The amount of P1,028,248.00 was carried over to fiscal year 1999, hence, no application for cash refund shall be allowed therefor because the exercise of such option is considered irrevocable for that taxable period pursuant to Section 76 of the National Internal Revenue Code of 1997;
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> 4. Moreover, the same amount of P1,028,248.00 is subject to a double claim for refund because aside from the instant claim, it also formed part of the

petitioner's total claim for refund in the amount of P1,649,613.00 for the fiscal year ending March, 1999;

5. The additional creditable tax withheld at source in the amount of P33,018.00 is not refundable since the income from which it was withheld was not reported in petitioner's income tax return for fiscal year 1998;

8. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

9. 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 tax refund;

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

11. Well-settled is the rule that a claim for refund is strictly construed against the claimants since it partakes of the nature of an exemption from taxation."

To support its claim, petitioner presented testimonial and documentary evidence consisting of:

	Description	Exhibit
1.)	Tentative FY 1998 Income Tax Return	A
2.)	Amended FY 1998 Income Tax Return	B
3.)	Summary of Certificates of Withholding Taxes Supporting Unapplied Creditable Withholding Taxes for FY 1998 in the amount of P1,028,248.00 with the supporting certificates	C
4.)	Summary of Certificates of Withholding Taxes Supporting Unapplied Creditable Withholding Taxes for FY 1998 in the amount of P33,018.31 with the supporting certificates	C-1
5.)	Amended FY 1999 Income Tax Return	D
6.)	Amended FY 2000 Income Tax Return	E
7.)	Letter claim for refund filed with the BIR	F
8.)	Final Report of SGV & Co., commissioned CPA pursuant to CTA Circular 1-95, as amended by CTA Circular 10-97	G
9.)	Affidavit of Ma. Stella L. Diaz, Assistant Vice Pres. for Financial Planning and Analysis of PAL, as to the timing difference indicated in the final report of SGV & Co.	H
10.)	Testimonies of:	

Ms. Evelyn Taghap, Tax Manager of PAL
Mr. Ruben R. Rubio, Independent Commissioner
Ms. Ma. Stella L. Diaz, PAL's AVP-Financial
Planning and Analysis

Respondent, on the other hand, presented the following exhibits:

a.)	Petitioner's Amended Annual Income Tax Return for FY ended March 31, 1998 (page 10, CTA records)	1
b.)	Box marked "x" corresponding to the phrase "To be carried as tax credit next year"	1-a

The sole issue brought before us is whether or not, on the basis of the evidence presented, petitioner is entitled to a refund in the amount of P1,061,266.00 allegedly representing unapplied creditable income taxes withheld for the FY ended March 31, 1998.

Pertinent to the resolution of the issue at hand is Section 76 of the 1997 Tax Code, which became effective on January 1, 1998, to wit:

> **"SEC. 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." (Emphasis supplied)

Based on the foregoing provisions, the taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against its income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate corresponding thereto (***Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274 dated April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, dated April 3, 2003***). Thus, petitioner's reported excess tax credits for FY 1998 in the amount of P1,028,248.00 should be denied outright because the same was opted by petitioner "To be carried as tax credit next year" in its amended FY 1998 income tax return (*Exhibit B*). In fact, petitioner's amended income tax returns for fiscal years 1999 and 2000 show the actual carry-over of the excess amount of P1,028,248.00 (*Exhibits D & E*). Although petitioner incurred losses in the succeeding fiscal years 1999 and 2000 and was unable to apply the FY 1998 excess tax credits of P1,028,248.00, the option to carry-over/apply the same was already made in its amended FY 1998 income tax return and it is irrevocable. Petitioner is barred from claiming a cash refund or issuance of a tax credit certificate therefor. The only recourse left for the petitioner is to apply the FY 1998 excess tax credits of P1,028,248.00 (if duly substantiated) to the succeeding years until the same are fully utilized.

We now proceed to the remaining claimed FY 1998 excess tax credits of P33,018.00 (P1,061,266.00 less P1,028,248.00), which petitioner allegedly was unable to include in its FY 1998 income tax return because the corresponding certificates were recovered after it had already filed its return.

Petitioner, in its memorandum, prayed for the refund of only the amount of P868,034.59 which was allegedly found to be properly substantiated by the commissioned auditing firm, SGV & Co., out of the total claim of P1,061,266.00. The amount of P868,034.59 is broken down as follows (*Exhibits G & H*):

A.	Supported by certificates dated within the period of claim where the related income based on the invoice dates and the ORACLE System was reported in prior years and the related ORs are dated within the period of claim	P 374,700.55
B-1.	Supported by certificates dated outside the period of claim where the related income based on the invoice dates and the ORACLE System was reported in prior years and the related ORs are dated within the period of the claim	14,636.71
C.	Supported by certificates and ORs with overlapping periods (within and outside the period of claim) where the related income based on the invoice dates and the ORACLE System was reported in prior years	106,822.76
D.	Supported by a certificate with overlapping periods (within and outside the period of claim) where the posting date based on the applied receipts register indicates that the income was reported within the period of the claim and the related OR is dated outside the period of claim and the applied receipts register indicates that the taxes were withheld within the period of the claim	250,000.00
E-1.	Supported by certificates dated outside the period of claim and the credit memos are dated within the period of claim	43,837.91
E-2.	Supported by certificates dated within the period of	

	claim and the credit memo is dated within the period of claim	30,460.79
I.	Supported by certificates dated within the period of claim where the related income based on the invoice dates and the ORACLE System was reported within the period of claim and the related ORs are dated within the period of claim	47,575.87
	Total:	P 868,034.59

Nevertheless, a scrutiny of the SGV & Co. final report and the related documents submitted by petitioner (*Exhibits C, C-1; G & H, inclusive of sub-markings*) reveals that the creditable taxes of P106,822.76 and P250,000.00 as summarized in *letters C and D* above, respectively, should be further deducted from the amount of P868,034.59. Petitioner claims that it recognizes the creditable taxes withheld by its customers only upon payment by the latter (*Exhibit H-2*). Since the related OR of the creditable taxes of P250,000.00 is dated March 31, 1997 which is outside of the period of claim, petitioner should have reported the amount of P250,000.00 in its FY 1997 income tax return (*Exhibit G-6*). The same holds true with the creditable taxes of P106,822.76 where some of the corresponding ORs were dated outside of the period of claim (*Exhibit G-5*).

Further, as correctly noted by SGV & Co. in the lower portion of page 4 of its final report (*Exhibit G-1-d)* the creditable taxes of P3,387.14 withheld by Bangko Sentral ng Pilipinas (Cagayan) pertain to withholding percentage taxes and not income taxes. Hence, the amount of P3,387.14 which is included in the total creditable taxes of P47,575.87 summarized under *letter I* above should also be deducted from P868,034.59.

In sum, petitioner was able to properly substantiate out of the total claim of P1,061,266.00 only the amount of P507,824.69, computed as follows:

Claimed Excess Creditable Taxes for FY 1998 (per petitioner's memorandum)			P 868,034.59
Less:	Supported by certificates and ORs with overlapping periods (within and outside the period of claim) where the related income based on the invoice dates and the ORACLE System was reported in prior years	P 106,822.76	
	Supported by a certificate with overlapping periods (within and outside of the period of claim) where the posting date based on the applied receipts register indicates that the income was reported within the period of claim and the related OR is dated outside the period of claim and the applied receipts register indicates that the taxes were withheld within the period of claim	250,000.00	
	Withheld percentage taxes included in the total claim	3,387.14	360,209.90
Substantiated Excess Creditable Taxes Withheld for FY 1998			P 507,824.69

Inasmuch as the total substantiated FY 1998 excess tax credits amounting to P507,824.69 were even lower than the excess tax credits of P1,028,248.00 carried-over by petitioner to the succeeding fiscal years of 1999 and 2000, the additional excess creditable withholding taxes of P33,018.00 included in the total amount of P1,061,266.00 being claimed by petitioner for FY 1998 cannot be refunded.

WHEREFORE, petitioner's claim for refund in the amount of P1,061,266.00 allegedly representing unapplied creditable income tax withheld for the fiscal year ended March 31, 1998 is hereby **DENIED.**

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