REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL AND INVESTMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5245

Promulgated:
SEP 13 1996

x - x

DECISION

This case involves petitioner's claim for refund or tax credit in the amount of P7,599,186.88, representing overpaid income taxes for the years 1990 to 1992.

On April 15, 1993, petitioner filed with the Bureau of Internal Revenue (BIR) its Corporate Annual Income Tax Return for the year ending December 31, 1992, showing a refundable income tax in the amount of P7,592,558.00, computed as follows (Exh. A):

Gross Income (1992)		P140,933,647.00
Less: Deductions		141,050,557.00
Net Income		(P 116,910.00)
Tax Due		NIL
Less:		
a) prior year's (1990 & 1991) excess credit (Exh. A-5)	P3,399,481.00	

b) quarterly payments (Exh. A-4)	2,645,441.00	
c) creditable tax withheld (Exh. A-6)	1,547,636.00	7,592,558.00
*Tax Refundable		(P7,592,558.00)

*To be applied as tax credit to succeeding taxable year.

On April 15, 1994, petitioner filed its 1993 Income Tax Return (Exh. N) showing a net loss of P7,747,658.00 and an income tax refund of P4,520,817.00, computed as follows:

Gross Income		P150,593,613.00
Less: Deductions		158,341,271.00
Net Loss (Exh. N-3)		(P 7,747,658.00)
Tax Due		- NIL -
Less:		
a) prior year (1992) excess credit	P4,193,077.00	
b) quarterly payments	-	
c) creditable tax withheld	327,740.00	4,520,817.00
Tax Refundable		(P4,520,817.00)

On April 13, 1994, petitioner filed a written claim for refund with the BIR in the amount of P7,592,558.00, representing overpaid income tax for the calendar years 1990 to 1992 (Exh. M). Respondent did not act on said claim. Hence, on April 12, 1995, petitioner filed a petition for review with this Court praying for the refund/tax credit of the amount of P7,599,186.88 (instead of the lower amount of P7,592,558.00).

For failure to file an answer and upon motion filed by petitioner, respondent was declared in default. Petitioner presented its evidence ex-parte, consisting of:

a) 1992 Annual Income Tax Return (Exh. A);

b) Summary of its 1992 Income Tax Payments (Exh. B);

c) 1991 Annual Income Tax Return (Exh. C);

d) Corporate Quarterly Income Tax Return for June 1992 (Exh. D);

e) List of Creditable Taxes Withheld for 1992 (Exh. E);

f) Certificates of Creditable Income Tax Withheld at Source for the year 1992 issued by various payors (withholding agents) on behalf of petitioner (Exhs. F to K, inclusive);

g) Certification, dated April 14, 1993, issued by The Philippine American Life Insurance Company, to the effect that it paid petitioner the total amount of P482,436.40, representing Investment Management Agreement Fees for 1992, and the total amount of P24,121.83 has been withheld therefrom (Exh. L);

h) Letter-claim for refund, dated April 13, 1994, filed on April 14, 1994 by petitioner's counsel, claiming for the refund/tax credit of the amount of P7,592,558.00; and

i) 1993 Annual Income Tax Return (Exh. N).

The main issue presented for resolution is whether or not petitioner is entitled to the refund/tax credit of P7,599,186.88 representing overpaid income taxes for the years 1990 to 1992.

Petitioner's request for refund/tax credit with the BIR amounting to P7,592,588.00 (not P7,599,186.88) is broken down as follows:

Prior years excess credit:	
1990 (Exh. C)	2,259,802.75
1991 (Exh. C)	1,139,678.25
	3,399,481.00
Quarter income tax payment for June 1992 (Exh. A)	2,645,441.00
Creditable tax witheld-1992 (Exh. A)	1,547,636.00
	4,193,077.00
Total amount of claim	7,592,558.00

Petitioner alleged in its petition for review that:

> "22. Second, the only possible reason that a refund could be denied is that the claim therefor has prescribed. This is not correct because a simple and literal application of a circular issued by the Respondent will already show the validity of Petitioner's claim for refund of taxes paid for taxable years 1990 and 1991.
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> 23. Revenue Memorandum Circular No. 7-85 issued on April 1, 1985 (or, more than ten (10) years ago) and still good law, very clearly states that "a taxpayer may recover from the Bureau of Internal Revenue excess income tax paid under the provisions of Section 86 (now Section 69) **within ten (10) years from the date of payment** considering that it is an obligation created by law."
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> 24. As a matter of fact, the same circular even stated that 'there is no need to file petitions for review in the Court of Tax Appeals in order to preserve the right to claim refund or tax credit within the two-year period.' However, the instant Petition is being filed, in the abundance of caution, so that Petitioner may not be time-barred under

any possible ground, from seeking relief from this Honorable Court."

The two-year period for judicially claiming for a refund/tax credit pursuant to Section 230 of the Tax Code, instead of the ten (10) year period under Rev. Memo. Cir. No. 7-85, has already been settled by this Court and was affirmed by the Court of Appeals in the case of **Philippine Bank of Communications vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 31714, September 22, 1993.** The Fourth Division of the Court of Appeals has ruled in this wise:

> "The findings of the Court of Tax Appeals that herein petitioner is not entitled to refund or tax credit of alleged overpaid income tax for 1985 and 1986, has sufficient basis, both in fact and in law.
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> In ruling that the filing of the petition for refund/tax credit with the Court of Tax Appeals is time barred insofar as taxable year 1985 is concerned - the Court of Tax Appeals applied the 2-year prescription period mandated by Section 230 of the National Internal Revenue Code, which states, in part, that: "In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment x x x".
>
> <u>The two-year period in Section 230, NIRC, is mandatory</u>. (Such that) if the Commissioner of Internal Revenue denies the claim for refund, there is no question that the taxpayer can appeal to the Court of Tax Appeals. But if the Commissioner fails to act on the refund and the two-year period is about to lapse, the

taxpayer should institute the appeal to the Court of Tax Appeals, without waiting for the decision of the Commissioner. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering the decision does not extend peremptory period fixed by the statute. (The National Internal Revenue Code of the Philippines Annotated by Nolledo, 1989-13th and Revised Edition, p. 688; Citing Gibbs vs. Collector of Internal Revenue and CTA - 107 Phil. 232; also Bar Reviewer in Taxation by Nolledo, 1990 Revised Ed., p. 610 and 611).

Petitioner argues that the two-year prescription period provided for in Section 230 of the NIRC does not apply to claim for the recovery of overpaid internal revenue tax. We do not agree. The overpaid income taxes in this case falls under the category of 'any sum alleged to have been excessive or in any manner wrongfully collected', because, although they were legally collected under the withholding tax system and the requirement for quarterly income tax payments, they were nevertheless 'excessive'. This, notwithstanding the fact that the title of Section 230, NIRC is 'Recovery of Tax erroneously or illegally collected'. Tax credits/refund, being in the nature of tax exemptions, are construed strictly against the claimant.

It is likewise argued that the Commissioner of Internal Revenue, after promulgating RMC No. 7-85, is estopped by the principle of non-retroactivity of BIR rulings. Again We do not agree. The Memorandum Circular, stating that a taxpayer may recover the excess income tax paid within 10 years from date of payment because this is an obligation created by law, was issued by the Acting Commissioner of Internal Revenue. On the other hand, the decision, stating that the taxpayer should still file a claim for a refund or tax credit and the corresponding petition for review within the two-year prescription period, and that the lengthening of the period of limitation on refund from two to ten years would be adverse to public policy and run counter to the positive mandate of Section 230, NIRC, - was the ruling and judicial interpretation of the Court of Tax Appeals. Estoppel has no application in the case at bar because it was not the Commissioner of Internal Revenue who denied petitioner's claim of refund or tax credit. Rather, it was the Court of Tax Appeals who denied (albeit correctly) the claim and in effect, ruled that the RMC No. 7-85 issued by the Commissioner of Internal Revenue is an administrative interpretation which is out of harmony with or contrary to the express provision of a statute (specifically Section 230, NIRC), hence, cannot be given weight for to do so would in effect amend the statute."

In the same manner, the Fifteenth Division of the Court of Appeals has affirmed our decision in the case of **Commissioner of Internal Revenue vs. Standard Chartered Bank (Phil. Branch) and the Court of Tax Appeals, CA-G.R. SP No. 27671, September 30, 1992,** pertinent portion of which reads as follows:

"But petitioner would make an issue of the correct interpretation of the phrase 'erroneously or illegally assessed or collected' as the taxes subject of refund under Sec. 292 of the Code also aforequoted, insisting that it is only where there is an erroneous or illegal assessment or collection of tax that tax refund is allowed under said provision, and that as there had been no erroneous or illegal assessment or collection of taxes in the instant case, no tax refund can be allowed the private respondent. Such strained and restrictive interpretation of said provision of the Tax Code is, however, clearly unwarranted and erroneous, for as we have already stated before, Sec. 292 of the Tax Code should be read and applied together with Sec. 69 thereof which expressly provides that excess taxes paid by a corporation may be refunded to the latter. Besides, Sec. 292 allows tax refunds for 'any sum alleged to have been excessive', which obviously refers to the payment of excess tax by the taxpayer, and the facts of this case indeed show that there was excess payment of income tax on the part of private respondent for the taxable year 1986. Petitioner also relies on CTA Case No. 3486 entitled 'China Banking Cor[p]. v. Commissioner of Internal Revenue' (wherein the Supreme Court denied the petition for certiorari filed by the taxpayer bank from the decision of the CTA), but as aptly held by the respondent court in its assailed decision herein, said earlier decision is not applicable to this case because the capital gains tax paid in that case by the petitioner bank was legally and lawfully due and payable to the government, so that although paid by the mortgage bank who is not the party required by the law to pay the same, said bank cannot ask for a refund thereof from the government as obviously, it should ask reimbursement from the mortgagor, the party required by law to pay the same."

From the facts established in the petition, petitioner is claiming for excess income tax payments for the years 1990, 1991 and 1992 totalling P7,599,186.88, itemized as follows:

Excess Income Tax Paid	Amount
FY 1990	P2,259,802.75
FY 1991	1,139,678.25
FY 1992	4,199,705.88
TOTAL	P7,599,186.88 *

* The claim for refund/tax credit filed with the BIR amounted to P7,592,558.00.

Petitioner's excess income tax payment for the year 1990 in the amount of P2,259,802.75 was carried over to the next succeeding year (1991). Unfortunately, petitioner suffered losses from its operations in 1991. The quarterly income tax payment and the creditable taxes withheld for the year 1991, totalling P1,139,678.25, was not applied to any income tax due for that year. Hence, petitioner opted to apply the excess income tax payments of P2,259,802.75 (1990) and P1,139,678.25 (1991) to its 1992 income tax liability. Having incurred losses for the year 1992, petitioner's prior years excess income tax payments of P3,399,481.00 (Exh. A-5) and the current year (1992) in the amount of P4,193,077.00 (Exhs. A-4 and A-6) were also not applied to any income tax liability. The excess tax payments for 1992 amounting to P4,193,077.00 was carried over to the succeeding year (1993) but the same remained unapplied due to the loss incurred by petitioner in its business (Exh. N).

Petitioner filed a claim for refund or tax credit with the BIR amounting to P7,592,558.00, representing overpaid income taxes for the years 1990-1992, on June 2, 1994. Without waiting for the decision of respondent, petitioner filed a petition with this Court on April 12, 1995.

Section 230 of the Tax Code mandates that "no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; x x x. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment".

Since the petition for review was filed on April 12, 1995, petitioner's claim for refund/tax credit of overpaid income tax for the years 1990 and 1991 have already prescribed. Thus, insofar as taxable year 1992 is concerned, April 15, 1993 is the end of the taxable year. Following the ruling in **Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals, G.R. No. 85956, April 10, 1989**, where the Supreme Court has ruled that "when a tax is paid in installments, the prescriptive period of two years provided in Section 306 (now Section 292) of the National Internal Revenue Code should be counted from the date of the final payment. The 'final payment' is the last quarter payment at the end of the fiscal year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its business operations."

In claiming for the refund of excess creditable withholding taxes, the taxpayer must comply with the following requirements:

> "(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;
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> (2) that the income upon which the taxes were withheld were included in the return of the recipient; and
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> (3) the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom." (Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Hon. Court of Tax Appeals, and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994)

In the case at bar, petitioner has filed a claim for refund/tax credit (Exh. M) in the amount of P7,592,558.00 representing excess income tax payments for the years 1990-1992. The income on which the taxes were withheld for the year 1992 forms part of the income declared by petitioner in its income tax return. The withholding tax certificates issued by the payors for and in behalf of petitioner (BIR Form No. 1743-1) consisting of Exhs. F to K, inclusive, were offered in evidence to support its claim for refund or tax credit, together with the Corporate Quarterly Income Tax Return for June 30, 1992 evidencing payment of P2,645,441.37 (Exh. D-4).

From the evidence presented, petitioner has validly established and proven its claim for refund/tax credit with respect to its 1992 excess income tax payments, comprising of the following amounts:

Quarterly Payments			
June 30, 1992 (Exh. D-4)			P2,645,441.37
Creditable Taxes Withheld:			
Exh. F	P 90,890.28		
G	3,340.29		
H	12,500.00		
I	12,500.00		
J & K	1,404,283.50	*	1,523,514.07
1992 Income Tax Refundable			P4,168,955.44

* The certification from PR Holdings, Inc. showed a total withholding tax of P1,463,374.23 (Exhs. J & K). The difference of P59,090.73 represented withholding tax on the fees received by the other underwriters. The certification is issued under ABCIC's name because as lead underwriter, all payments are coursed thru ABCIC for distribution to the other participating underwriter.

WHEREFORE, in view of the foregoing, the petition is partially granted with respect to petitioner's 1992 excess income tax payments which was duly substantiated. Accordingly, respondent, Commissioner of Internal

Revenue, is hereby ordered to REFUND or in the alternative issue a Tax Credit Certificate in favor of petitioner in the amount of P4,168,955.44, without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals