REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF COMMERCE,
Petitioner,

- versus -

C.T.A. CASE NO. 5101

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 17 1998

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DECISION

This is a petition for review instituted by Bank of Commerce (formerly Boston Bank) to seek from respondent a tax refund in the amount of ₱5,018,097.00 arising from and representing its alleged overpaid and unutilized quarterly income tax and creditable withholding taxes for taxable year 1991.

Petitioner is a domestic corporation duly organized and existing under Philippine law as a commercial banking institution. On April 16, 1991, the Board of Directors approved an amendment to the Bank's Article of Incorporation changing the corporate name from Boston Bank of the Philippines to Bank of Commerce (CTA records, pp. 85, 95-97).

For calendar year 1991, petitioner claims that it filed its first and second quarterly income tax returns on March 31 and June 30, 1991, respectively, and paid income tax in the amount of ₱4,860,567.67. Petitioner

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further alleges that it derived other sources of income from which a total of ₱166,564.00 creditable taxes were withheld and remitted to the BIR.

On April 15, 1992, petitioner filed its Corporate Annual Income Tax Return for taxable year ended December 31, 1991 declaring therein a refundable amount of ₱5,018,097.00, detailed as follows:

Income		₱2,360,570
Less: Deductions		2,334,756
Net Income		₱ 25,814
Tax Rate		35%
Tax Due		₱ 9,035
Less: Quarterly Payment During the Year		4,860,568
Creditable Taxes Withheld:		
Ramitex	₱25,087.92	
First National Bank of Boston	1,069.69	
J.M. Tuason & Co., Inc.	11,431.80	
Pilipino Telephone Corp.	24,865.50	
Filway Marketing, Inc.	546.98	
Marilou T. Arevalo	17,475.00	
Ronaldo A. Gonzalez	17,500.00	
Justo A. Padre	18,714.32	
Rosendo Z. Fernandez	12,060.00	
Justo A. Padre	31,285.70	
Jennifer S. Mendoza	6,527.50	166,564
Refundable Amount		(₱5,018,097)

In view of the aforesaid overpayment of income tax and creditable withholding tax for the calendar year 1991, petitioner signified its intention to carry-over and apply the excess and unutilized tax payment of ₱5,018,097.00 to the succeeding taxable year 1992, pursuant to Section 69 of the Tax Code, as amended.

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For the taxable year 1992, petitioner suffered net loss from operations in the amount of ₱19,939.731.00 as evidenced by its 1992 Annual Corporate Income Tax Return, (Exhibit "F", p. 114, CTA records). Thus, petitioner's application of its 1991 overpayment and unutilized creditable withholding tax against anticipated income tax liability in 1992 became nugatory.

On April 29, 1993, petitioner, through its auditors SGV & Co., filed a letter claim for refund with the Bureau of Internal Revenue in the amount of ₱5,018.097.00 representing alleged overpaid income tax and unutilized creditable withholding tax (Exhibit "G", CTA records p. 133).

The inaction of respondent on its letter claim for refund compelled petitioner to file the instant petition for review on April 15, 1994 pursuant to Section 230 of the National Internal Revenue Code, as amended. Petitioner by way of this petition is claiming for the refund of the same amount ₱5,018.097.00 as claimed in the administrative level.

Petitioner reasserts its stance *a quo* and adds that it has not claimed the overpaid income tax and creditable withholding tax as credit against income tax liabilities for any succeeding taxable quarters or taxable year.

Respondent, on the other hand, alleges in her Answer, inter alia, the special and affirmative defenses that petitioner's claim for refund/tax credit are strictly construed against the taxpayer and that petitioner is not entitled to the refund of alleged corporate income tax and creditable withholding tax as the request is pending administrative investigation and verification by the Bureau.

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of ₱5,018,097.00, representing allegedly overpaid and unutilized quarterly income tax and creditable withholding tax for the year 1991.

In support of its claim for refund, petitioner presented various documentary exhibits, which consists, among others, of:

a. Annual Corporate Income Tax Return for the year ended December 31, 1991 (Exhibit A)

b. Annual Corporate Income Tax Return for the calendar year ended December 31, 1992 (Exhibit F)

c. Quarterly Income Tax Return of petitioner for the quarter ended March 30, 1991, June 30, 1991; and September 30, 1991 together with the proof of income tax payments (Exhs. B, C, D, B-1, B-2, B-3);

d. The various Certificates of Creditable Withholding Tax at Source (BIR Form

No. 1743.1) (Exhibits E-2 to E-11, inclusive); and

e. Letter dated April 27, 1993 by Sycip, Gorres, Velayo & Co. (Exhibit G).

The legal basis of petitioner in claiming for the refund of its overpaid income tax is Section 69 of the Tax Code, as amended, which reads as follows:

> "**Section 69.** ***Final Adjustment return.***- Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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. (Underscoring supplied)

Based on the above proviso, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Since petitioner did not utilize the 1991 overpaid income tax in the succeeding years due to the losses

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incurred for those years, the amount of P5,018,097.00 appears on its face to be refundable. However, petitioner must prove its entitlement for refund by substantial evidence.

Section 230 of the Tax Code provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code is hereby quoted as follows:

> "**Section 230.** ***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 excessive 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 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: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied)

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Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following requisites, namely:

> 1. that it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 230 of the NIRC, as amended;
>
> 2. that the income upon which the taxes were withheld at source under Section 53 were included in the income tax return of the recipient;
>
> 3. that the fact of withholding is established by a copy of the 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; (Section 10, Rev. Regs. No. 6-85; see Citytrust Finance Corp. vs. CIR, CTA Case No. 4134, Nov. 11, 1991; Oranbo Realty Corp. vs. CIR, CTA Case No. 5082, January 16, 1997, Ayala vs. CIR, CTA Case No. 5081, March 31, 1997; PDCP vs. CIR, CTA Case No. 5237, March 25, 1997).

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within two years from the date of payment of the tax. Its claim for refund with the Bureau of Internal Revenue was filed on April 29, 1993 (Exh. G) and its Petition for Review with this Court on April 15, 1994. The two-year period commenced on April 15, 1992, the time required by law for the petitioner to file its final income tax return (**Commissioner of Internal Revenue vs.**

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TMX Sales, Inc. et. al., GR No. 837736, January 15, 1992).

The quarterly income tax payments for the year 1991 were duly proven to have been paid and remitted to the Bureau (Exhs. "B-2" and "B-3"). In addition, the creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source (BIR Form 1743-1) in accordance with the requirements of Rev. Regs. No. 6-85, as amended. Petitioner's final adjustment returns shows that the income upon which the taxes were withheld at source were included as part of the income declared in its income tax return.

The averment of respondent in her Memorandum (CTA records pp. 163-166) that "when petitioner opted to apply the said amount of ₱5,018,097.00 as tax credit for the succeeding year 1992 and subsequently filed the instant petition for review, there is really nothing more to be refunded to it" has no leg to stand on. A perusal of petitioner's Annual Corporate Income Tax Return (Exh. "F") for the year 1992 shows that petitioner really indicated its intention to further carry over and apply the said income tax credits for the year 1991 against its income tax liabilities for the taxable year 1993. However, during the hearing of the case on January 29, 1997, petitioner presented, by way of an additional evidence, the testimony of Ms. Ma. Socorro Abesamis, Accounting Manager of petitioner, as well as petitioner's Annual Income Tax Return for the calendar year ended December 31, 1993 (Exhibit H, Additional Evidence, CTA records, p. 201). The evidence submitted by petitioner satisfactorily established that although petitioner has indicated in its 1992 Income Tax Return (Exh. F) its intention to further carry-over and apply as credit to the succeeding year 1993 its unutilized income tax credit for 1991 amounting to ₱5,018,097.00, it did not, however, actually do so as it decided instead to claim a refund of the said amount with the BIR. This is evidently shown by the fact that the said amount no longer appeared in Section 5 of the said Income Tax Return for 1993, which is supposed to indicate the amount of "prior year's excess credit" which the taxpayer would opt to apply against its current year's income tax liability.

Clearly, from the evidence presented, petitioner has proven its overpaid and unutilized quarterly income tax and creditable withholding for 1991. There is, however, a deduction of ₱546.98 from the claim of ₱5,018,097.00 as petitioner failed to present the creditable withholding tax at source (BIR Form 1743.1) issued by Filway Marketing, Inc. Thus, the following is the computation of the amount to be refunded in favor of petitioner.

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Income	₱2,360,570.00
Less: Deductions	2,334,756.00
Net Income	25,814.00
Tax Due	9,035.00

Less:
a) Prior year's excess credit
b) Quarterly Payments made during the year

Quarter	CR ROR NO.	Date	Exh.	
1st	B. 22253884	5-30-91	B, B-2, B-3	₱4,860,567.67

c) Creditable Tax Withheld

Withholding agent	Exhibit	Amount	
Ramitex	E-2	₱25,087.92	
First National Bank of Boston	E-3	1,069.64	
J.M. Tuazon & Co. Inc.	E-4	11,431.80	
Pilipino Telephone Corp.	E-5	24,865.50	
Marilou Arevalo	E-6	17,475.00	
Ronaldo A. Gonzales	E-7	17,500.00	
Justo A. Padre	E-8	18,714.32	
Rosendo Z. Fernandez	E-9	12,060.00	
Justo A. Padre	E-10	31,285.70	
Jennifer S. Mendoza	E-11	6,527.50	166,017.38
AMOUNT REFUNDABLE			₱5,017,550.05

Respondent's defense which is anchored as usual on the principle that claims for refund are strictly construed, cannot be sustained as it is always vulnerable to overwhelming evidence which petitioner in this case was able to present before this Court to prove its claim. Respondent cannot be allowed to defeat an otherwise valid claim for refund on the strength alone of her denials of petitioner's allegations in its petition.

WHEREFORE, finding the petition meritorious and in accordance with law, justice and equity, the same is

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hereby **GRANTED** and respondent is hereby **ORDERED** to **REFUND** in favor of Bank of Commerce the amount of ₱5,017,550.05 for overpaid and unutilized quarterly income tax and creditable withholding taxes for the taxable year 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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
Court of Tax Appeals