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SECOND DIVISION

[G.R. No. 121666, October 10, 2007]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MANILA ELECTRIC COMPANY, RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

Assailed via Petition for Review is the Court of Appeals Decision[1] of August 23, 1995, affirming that of the Court of Tax Appeals dated January 6, 1995[2] which ordered petitioner, Commissioner of Internal Revenue, "to refund or, in the alternative, issue a tax credit certificate in favor of [respondent Manila Electric Company] the sum of P107,649,729.00 representing overpaid income taxes for the years 1987 and 1988."

Manila Electric Company (respondent), a grantee of a legislative franchise under Act No. 484, as amended by Republic Act No. 4159 and Presidential Decree No. 551,[3] had been paying a 2% franchise tax based on its gross receipts, in lieu of all other taxes and assessments of whatever nature. Upon the effectivity of Executive Order No. 72 on February 10, 1987, however, respondent became subject to the payment of regular corporate income tax.[4]

For the last quarter ending December 31, 1987, respondent filed on April 15, 1988 its tentative income tax reflecting a refundable amount of P101,897,741, but only P77,931,812 was applied as tax credit for the succeeding taxable year 1988.[5]

Acting on a yearly routinary Letter of Authority No. 0018064 NA dated June 27, 1988 issued by petitioner, directing the investigation of tax liabilities of respondent for taxable year 1987, an investigation was conducted by Revenue Officer Frederick Capitan which showed that respondent was liable for "1. deficiency income tax in the amount of P2,340,902.52; and 2. deficiency franchise tax in the amount of P2,838,335.84."[6]

On April 17, 1989, respondent filed an amended final corporate Income Tax Return ending

December 31, 1988 reflecting a refundable amount of P107,649,729.[7]

Respondent thus filed on March 30, 1990 a letter-claim for refund or credit in the amount of P107,649,729 representing overpaid income taxes for the years 1987 and 1988.[8]

Petitioner not having acted on its request, respondent filed on April 6, 1990 a judicial claim for refund or credit with the Court of Tax Appeals.[9]

It is gathered that respondent paid the deficiency franchise tax in the amount of P2,838,335.84. It protested the payment of the alleged deficiency income tax and claimed as an alternative remedy the deduction thereof from its claim for refund or credit.

After trial, the Court of Tax Appeals found for respondent by Decision of January 6, 1995, the pertinent portions of which read:

> Going now on the first issue, this Court was convinced that [respondent] proved its entitlement for [*sic*] the refund.
>
> As can be gleaned from the 1987 final income tax return (Exh. "N"), [respondent] had an income tax liability of P142,088,822.00 which was set-off against three quarter payments in the total sum of P243,986,563.00 (Exhs. "A", "A-1", "B", "B-1", "C", "C-1"). Thus, what remain[ed] was a refundable amount of P101,897,741.00 which [respondent] opted to be applied as tax credit to succeeding taxable year (i.e., 1988). However, in the year 1988[,] only the amount of P77,931,812.00 was utilized as tax credit therefore leaving an unapplied balance of P23,965,929.00 for 1987.
>
> For the year 1988, an annual income tax payable of P62,498,902.00 was due from [respondent]. This liability was settled by crediting the 1987 excess tax payment in the amount of P77,931,812.00 plus payments of P53,333,376.00 (Exhs. "1" & "J") and P14,917,514.00 (Exh. "M") for the first and third quarters of 1988. Thus, [respondent] in turn overpaid the income tax due by P83,683,800.00.
>
> It should be noted that [respondent] in the 1988 income tax return (Exh. "U") opted the preceding sums (P23,965,929.00 and P83,683,800.00) to be carried-over as tax credit in 1989 and eventually the 1989 to 1990 (Exh. "U"). However, upon examination of the records of the case, the business operation in 1989 bears unfruitful result. On the other hand, the 1990 income tax liability of P16,257,472.00 was paid by [respondent] (Exh. "AA)." Hence, the sums sought to be refunded herein were not utilized in both years.[10] (Underscoring

supplied)

The tax court thus ordered petitioner "to refund or, in the alternative, issue a tax credit certificate in favor of [respondent] the sum of P107,649,729.00 representing overpaid income taxes for the years 1987 and 1988."[11]

Petitioner thus elevated the case to the Court of Appeals on the sole issue of "WHETHER RESPONDENT HAS SUBSTANTIALLY PROVED ENTITLEMENT TO ITS ALLEGED CLAIM FOR TAX REFUND/CREDIT FOR THE YEARS 1987 TO 1988 IN THE AMOUNT OF P107,649,729.00." The appellate court affirmed the tax court's decision.

Hence, the present petition faulting the appellate court to have:

I

. . . BASED ITS DECISION SOLELY ON MERALCO'S CLAIM FOR TAX REFUND AS DECLARED IN ITS QUARTERLY AND CORPORATE ANNUAL INCOME TAX RETURNS FOR THE YEARS 1987 AND 1988 WITHOUT ANY FINDINGS OF FACT SUBSTANTIATING SUCH CLAIM.

II

. . . RELIED MERELY ON MERALCO'S CLAIM DESPITE FAILURE OF MERALCO TO EXPLAIN AND JUSTIFY THE DISCREPANCY (a) BETWEEN THE THREE QUARTERLY INCOME TAX RETURNS DECLARING A TAXABLE INCOME OF ALREADY P697,104,466.00 FOR THE PERIODS STARTING JANUARY 1, 1987 TO SEPTEMBER 30, 1987 AND THE ANNUAL INCOME TAX RETURN DECLARED AS OF DECEMBER 31, 1989 WHICH INDICATED AN ANNUAL INCOME OF ONLY P474,442,146.00 AND LATER AMENDED TO A MERE P405,968,083.00, AND (b) BETWEEN THE THREE QUARTERLY INCOME TAX RETURNS FOR THE PERIOD ENDING SEPTEMBER 30, 1988 AND THE ANNUAL INCOME TAX RETURN AS OF DECEMBER 31, 1988.

III

. . . RELIED MERELY ON MERALCO'S CLAIM NOTWITHSTANDING CONSISTENT FAILURE OF MERALCO TO SUBMIT DOCUMENTARY EVIDENCE TO SUBSTANTIATE THE CLAIM FOR TAX REFUND/CREDIT, AS A RESULT OF WHICH THE INVESTIGATION BEING CONDUCTED BY PETITIONER THRU ITS REVENUE OFFICER IS YET TO BE TERMINATED, AND DESPITE PRELIMINARY FINDING

> OF DEFICIENCY IN INTERNAL REVENUE TAX LIABILITIES AMOUNTING TO MILLIONS OF PESOS DUE FROM MERALCO.[12] (Underscoring supplied)

Petitioner argues that the appellate court failed to consider respondent's failure to substantiate by positive evidence its entitlement to a tax refund or credit in the amount of P107,649,729, and merely relied on the tax court's decision.[13] He asserts that a claim for tax refund is construed strictly against the claimant as it partakes of the nature of exemption from taxes.[14]

The petition fails.

Section 69[15] of the National Internal Revenue Code of 1986 provides:

> Sec. 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 net 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. (Emphasis supplied)

The pertinent provision of Revenue Memorandum Circular No. 7-85 on processing of refund or tax credit of excess corporate income tax resulting from the filing of the final adjustment return reads:

x x x x

> "Sec. 7. *Filing of final or adjustment return and final payment of income tax*. - A final or an adjustment return or B.I.R. Form No. 1702 covering the total taxable income of the corporation for the preceding calendar or fiscal year shall be filed on or before the 15th day of the fourth month following the close of the calendar or fiscal year. The return shall include all the items of gross income and deductions for the taxable year. **The amount of income tax to be paid**

shall be the balance of the total income tax shown on the final or adjustment return after deducting therefrom the total quarterly income taxes paid during the preceding first three quarters of the same calendar or fiscal year.

Any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of the overpaid income tax or claim for automatic tax credit to be applied against its income tax liabilities for the quarter of the succeeding taxable year by filling up the appropriate box on the corporate tax return. (BIR Form No. 1702)"

x x x x

In the above provision of the Regulations, the corporation may request for the refund of the overpaid income tax or claim for automatic tax credit. **To insure prompt action on corporate annual income tax returns showing refundable amounts arising from overpaid quarterly income taxes, this Office has promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, containing the procedures in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted;** and, this procedure was adopted to facilitate immediate action on cases like this.

In this regard, therefore, 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. **As already stated, actions hereon by the Bureau are immediate after only a cursory pre-audit of the income tax returns.** Moreover, a taxpayer may recover from the Bureau of Internal Revenue excess income tax paid under the provisions of Section 86 of the Tax Code within 10 years from the date of payment considering that it is an obligation created by law (Article 1144 of the Civil Code). (Emphasis and underscoring supplied)

Clearly, as Section 69 provides, if the sum of the quarterly tax payments made during a taxable year is not equal to the total tax due on the entire taxable income of that year as shown in its final adjustment return, the corporation has the option to either: (a) pay the excess tax still due, or (b) be refunded the excess amount paid. The returns submitted are

"merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return." After such checking, the purpose of which being to "insure prompt action on corporate annual income tax returns showing refundable amounts arising from overpaid quarterly income taxes," the refund or tax credit is granted.

A corporate taxpayer's option to avail of tax credit does not, however, mean that it is *ipso facto* granted. For petitioner has still to investigate and ascertain the veracity of the claim. [16]

As *Citibank, N.A. v. Court of Appeals*[17] instructs:

> A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. **However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC. (Emphasis supplied)

Petitioner anchors his opposition to respondent's claim for tax refund or credit on the Report of Revenue Officer Capitan that, although the investigation had not been terminated, "there were preliminary findings of deficiency in internal revenue tax liabilities amounting to millions due from [respondent]."[18]

As found by the tax court, however, the deficiency franchise tax was already paid by respondent, whereas the deficiency income tax was protested by respondent which wanted the same to be deducted from its present claim.[19] In fact, it appears that the deficiency income tax had in the interim already been settled. Thus, the appellate court observed:

> Anent Private Respondent's **deficiency income tax**, the same had already been the subject of "Manila Electric Company versus Commission of Internal Revenue, CTA-5005[,]" which case was withdrawn by the Petitioner herself in the heels of a "**Compromise Agreement**" between the parties therein which was the basis of the Resolution of the Respondent Court dated May 17, 1994,

quoted as follows:

> "Confirming the order in open court on May 12, 1994, Petitioner's `Motion to Withdraw Petition for Review[,]' filed on May 4, 1994, is GRANTED considering that Petitioner's application for compromise settlement of its tax deficiency in the amount of P1,206,592.00[,] subject matter of the case, ha[d] been approved and granted by Respondent Commissioner of Internal Revenue (see pp. 35-36, 37 CTA Rec.)
>
> Accordingly, let Petitioner's Petition for Review be considered withdrawn and this case deemed closed and terminated."[20] (Emphasis supplied; underscoring in the original)

The issue of whether respondent adduced sufficient evidence to prove its entitlement to a refund is a question of fact.[21] It bears noting that the tax court and the appellate court found respondent's claim for tax refund or credit meritorious on the basis of the testimonial and documentary evidence adduced by the parties. As the appellate court declared:

> We have minutiously [*sic*] examined and evaluated the testimonial and documentary evidence marshalled by the Private Respondent, through Renato Barieta, its accountant, and its documentary evidence, Exhibits "A" to "AA", as well as the Petitioner's testimonial evidence and lone documentary evidence, Exhibit "1". We find that the findings of the Respondent Court and its conclusions evolved from said findings in accord with the aforesaid evidence. x x x[22] (Underscoring in the original)

It bears noting too that petitioner did not dispute the validity and authenticity of respondent's quarterly income tax returns as well as the final adjustment returns for the years 1987 and 1988 and proofs of payment of its tax liabilities.[23] Neither did petitioner refute respondent's assertion that petitioner failed to cross-examine its (respondent's) accountant Renato Barieta who testified on the returns, and to object to its (respondent's) offer of evidence which included its quarterly and final adjustment returns and proofs of payment of its tax liabilities.

It is doctrinal that the factual findings of the Court of Tax Appeals, when supported by substantial evidence, will not be disturbed on appeal, unless it is shown that it committed gross error in the appreciation of facts.[24] Hence, as a matter of practice and principle, this Court will not set aside the conclusion reached by the said court, especially if affirmed by the Court of Appeals as in the present case. For by the nature of its functions, the tax court dedicates itself to the study and consideration of tax problems and necessarily develops expertise thereon, unless there has been an abuse or improvident exercise of authority on

its part.[25] None such is appreciated by this Court, however.

WHEREFORE, the petition is **DISMISSED**. The Court of Appeals Decision of August 23, 1995 is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and *Velasco, Jr., JJ.*, concur.

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[1] *Rollo*, pp. 25-32. Penned by Associate Justice Romeo Callejo, Sr. (who later became Associate Justice of this Court) and concurred in by Associate Justices Jorge Imperial and Pacita Cañizares-Nye.

[2] Id. at 36-44. Penned by Presiding Judge Ernesto Acosta and concurred in by Associate Judges Manuel Gruba and Ramon De Veyra.

Under Republic Act No. 9282, decisions of the Court of Tax Appeals *en banc* are directly appealable to this Court via Rule 45 of the 1997 Rules of Civil Procedure.

[3] Id. at 11.

[4] Id. at 36-37.

[5] Id. at 43.

[6] Id. at 38.

[7] Id. at 37.

[8] Ibid.

[9] Ibid.

[10] Id. at 39-40.

[11] Id. at 44.

[12] Id. at 16-17.

[13] Id. at 18.

[14] Id. at 21.

[15] Now, Section 76 of the NATIONAL INTERNAL REVENUE CODE of 1997 which reads:

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:

(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.

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)

[16] *1 De Leon,* THE NATIONAL INTERNAL REVENUE CODE ANNOTATED, 8th ed., 2003, p. 559.

[17] G.R. No. 107434, October 10, 1997, 280 SCRA 459, 472; *vide* also *BPI-Family Savings Bank, Inc. v. Court of Appeals*, G.R. No. 122480, April 12, 2000, 330 SCRA 507.

[18] *Rollo*, pp. 18-19.

[19] Id. at 38.

[20] Id. at 31.

[21] *Far East Bank and Trust Company v. Court of Appeals,* G.R. No. 129130, December 9, 2005, 477 SCRA 49, 52.

[22] Rollo, p. 28.

[23] Id. at 149.

[24] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 124043, October 14, 1998, 298 SCRA 83, 91 citing *Commissioner of Internal Revenue v. Mitsubishi Metal Corp.,* G.R. Nos. 54909 and 80041, January 22, 1990, 181 SCRA 214, 220; *Philippine Refining Company v. Court of Appeals,* G.R. No. 118794, May 8, 1996, 256 SCRA 667, 676.

[25] *Vide*: *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006, 499 SCRA 664, 669; *Commissioner of Internal Revenue v. General Foods (Phils.) Inc.,* G.R. No. 143672, April 24, 2003, 401 SCRA 545, 553.
