

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. "I" & "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