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SECOND DIVISION

[G.R. No. 119286, October 13, 2004]

PASEO REALTY & DEVELOPMENT CORPORATION, PETITIONER, VS. COURT OF APPEALS, COURT OF TAX APPEALS AND COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

TINGA, J,:

The changes in the reportorial requirements and payment schedules of corporate income taxes from annual to quarterly have created problems, especially on the matter of tax refunds.[1] In this case, the Court is called to resolve the question of whether alleged excess taxes paid by a corporation during a taxable year should be refunded or credited against its tax liabilities for the succeeding year.

Paseo Realty and Development Corporation, a domestic corporation engaged in the lease of two (2) parcels of land at Paseo de Roxas in Makati City, seeks a review of the Decision[2] of the Court of Appeals dismissing its petition for review of the resolution[3] of the Court of Tax Appeals (CTA) which, in turn, denied its claim for refund.

The factual antecedents[4] are as follows:

> On April 16, 1990, petitioner filed its Income Tax Return for the calendar year 1989 declaring a gross income of P1,855,000.00, deductions of P1,775,991.00, net income of P79,009.00, an income tax due thereon in the amount of P27,653.00, prior year's excess credit of P146,026.00, and creditable taxes withheld in 1989 of P54,104.00 or a total tax credit of P200,130.00 and credit balance of P172,477.00.
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> On November 14, 1991, petitioner filed with respondent a claim for "the refund of excess creditable withholding and income taxes for the years 1989 and 1990 in the aggregate amount of P147,036.15."
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> On December 27, 1991 alleging that the prescriptive period for refunds for 1989 would expire on December 30, 1991 and that it was necessary to interrupt the prescriptive period, petitioner filed with the respondent Court of Tax Appeals a petition for review praying for the refund of "P54,104.00 representing creditable taxes withheld from income payments of petitioner for the calendar year ending December 31, 1989."
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> On February 25, 1992, respondent Commissioner filed an Answer and by way of special and/or affirmative defenses averred the following: a) the petition states no cause of action for failure to allege the dates when the taxes sought to be refunded were paid; b) petitioner's claim for refund is

still under investigation by respondent Commissioner; c) the taxes claimed are deemed to have been paid and collected in accordance with law and existing pertinent rules and regulations; d) petitioner failed to allege that it is entitled to the refund or deductions claimed; e) petitioner's contention that it has available tax credit for the current and prior year is gratuitous and does not ipso facto warrant the refund; f) petitioner failed to show that it has complied with the provision of Section 230 in relation to Section 204 of the Tax Code.

After trial, the respondent Court rendered a decision ordering respondent Commissioner "to refund in favor of petitioner the amount of P54,104.00, representing excess creditable withholding taxes paid for January to July1989."

Respondent Commissioner moved for reconsideration of the decision, alleging that the P54,104.00 ordered to be refunded "has already been included and is part and parcel of the P172,477.00 which petitioner automatically applied as tax credit for the succeeding taxable year 1990."

In a resolution dated October 21, 1993 Respondent Court reconsidered its decision of July 29, 1993 and dismissed the petition for review, stating that it has "overlooked the fact that the petitioner's 1989 Corporate Income Tax Return (Exh. "A") indicated that the amount of P54,104.00 subject of petitioner's claim for refund has already been included as part and parcel of the P172,477.00 which the petitioner automatically applied as tax credit for the succeeding taxable year 1990."

Petitioner filed a Motion for Reconsideration which was denied by respondent Court on March 10, 1994.[5]

Petitioner filed a *Petition for Review*[6] dated April 3, 1994 with the Court of Appeals. Resolving the twin issues of whether petitioner is entitled to a refund of P54,104.00 representing creditable taxes withheld in 1989 and whether petitioner applied such creditable taxes withheld to its 1990 income tax liability, the appellate court held that petitioner is not entitled to a refund because it had already elected to apply the total amount of P172,447.00, which includes the P54,104.00 refund claimed, against its income tax liability for 1990. The appellate court elucidated on the reason for its dismissal of petitioner's claim for refund, thus:

In the instant case, it appears that when petitioner filed its income tax return for the year 1989, it filled up the box stating that the total amount of P172,477.00 shall be applied against its income tax liabilities for the succeeding taxable year.

Petitioner did not specify in its return the amount to be refunded and the amount to be applied as tax credit to the succeeding taxable year, but merely marked an "x" to the box indicating "to be applied as tax credit to the succeeding taxable year." Unlike what petitioner had done when it filed its income tax return for the year 1988, it specifically stated that out of the P146,026.00 the entire refundable amount, only P64,623.00 will be made available as tax credit, while the amount of P81,403.00 will be refunded.

> In its 1989 income tax return, petitioner filled up the box "to be applied as tax credit to succeeding taxable year," which signified that instead of refund, petitioner will apply the total amount of P172,447.00, which includes the amount of P54,104.00 sought to be refunded, as tax credit for its tax liabilities in 1990. Thus, there is really nothing left to be refunded to petitioner for the year 1989. To grant petitioner's claim for refund is tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government.

The Court of Appeals denied petitioner's *Motion for Reconsideration*[7] dated November 8, 1994 in its *Resolution*[8] dated February 21, 1995 because the motion merely restated the grounds which have already been considered and passed upon in its *Decision*.[9]

Petitioner thus filed the instant *Petition for Review*[10] dated April 14, 1995 arguing that the evidence presented before the lower courts conclusively shows that it did not apply the P54,104.00 to its 1990 income tax liability; that the Decision subject of the instant petition is inconsistent with a final decision[11] of the Sixteenth Division of the appellate court in C.A.-G.R. Sp. No. 32890 involving the same parties and subject matter; and that the affirmation of the questioned *Decision* would lead to absurd results in the manner of claiming refunds or in the application of prior years' excess tax credits.

The Office of the Solicitor General (OSG) filed a Comment[12] dated May 16, 1996 on behalf of respondents asserting that the claimed refund of P54,104.00 was, by petitioner's election in its Corporate Annual Income Tax Return for 1989, to be applied against its tax liability for 1990. Not having submitted its tax return for 1990 to show whether the said amount was indeed applied against its tax liability for 1990, petitioner's election in its tax return stands. The OSG also contends that petitioner's election to apply its overpaid income tax as tax credit against its tax liabilities for the succeeding taxable year is mandatory and irrevocable.

On September 2, 1997, petitioner filed a *Reply*[13] dated August 31, 1996 insisting that the issue in this case is not whether the amount of P54,104.00 was included as tax credit to be applied against its 1990 income tax liability but whether the same amount was actually applied as tax credit for 1990. Petitioner claims that there is no need to show that the amount of P54,104.00 had not been automatically applied against its 1990 income tax liability because the appellate court's decision in C.A.-G.R. Sp. No. 32890 clearly held that petitioner charged its 1990 income tax liability against its tax credit for 1988 and not 1989. Petitioner also disputes the OSG's assertion that the taxpayer's election as to the application of excess taxes is irrevocable averring that there is nothing in the law that prohibits a taxpayer from changing its mind especially if subsequent events leave the latter no choice but to change its election.

The OSG filed a *Rejoinder*[14] dated March 5, 1997 stating that petitioner's 1988 tax return shows a prior year's excess credit of P81,403.00, creditable tax withheld of P92,750.00 and tax due of P27,127.00. Petitioner indicated that the prior year's excess credit of P81,403.00 was to be refunded, while the remaining amount of

P64,623.00 (P92,750.00 - P27,127.00) shall be considered as tax credit for 1989. However, in its 1989 tax return, petitioner included the P81,403.00 which had already been segregated for refund in the computation of its excess credit, and specified that the full amount of P172,479.00* (P81,403.00 + P64,623.00 + P54,104.00** - P27,653.00***) be considered as its tax credit for 1990. Considering that it had obtained a favorable ruling for the refund of its excess credit for 1988 in CA-G.R. SP. No. 32890, its remaining tax credit for 1989 should be the excess credit to be applied against its 1990 tax liability. In fine, the OSG argues that by its own election, petitioner can no longer ask for a refund of its creditable taxes withheld in 1989 as the same had been applied against its 1990 tax due.

In its *Resolution*[15] dated July 16, 1997, the Court gave due course to the petition and required the parties to simultaneously file their respective memoranda within 30 days from notice. In compliance with this directive, petitioner submitted its *Memorandum*[16] dated September 18, 1997 in due time, while the OSG filed its *Memorandum*[17] dated April 27, 1998 only on April 29, 1998 after several extensions.

The petition must be denied.

As a matter of principle, it is not advisable for this Court to set aside the conclusion reached by an agency such as the CTA which is, by the very nature of its functions, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of its authority.[18]

This interdiction finds particular application in this case since the CTA, after careful consideration of the merits of the Commissioner of Internal Revenue's motion for reconsideration, reconsidered its earlier decision which ordered the latter to refund the amount of P54,104.00 to petitioner. Its resolution cannot be successfully assailed based, as it is, on the pertinent laws as applied to the facts.

Petitioner's 1989 tax return indicates an aggregate creditable tax of P172,477.00, representing its 1988 excess credit of P146,026.00 and 1989 creditable tax of P54,104.00 less tax due for 1989, which it elected to apply as tax credit for the succeeding taxable year.[19] According to petitioner, it successively utilized this amount when it obtained refunds in CTA Case No. 4439 (C.A.-G.R. Sp. No. 32300) and CTA Case No. 4528 (C.A.-G.R. Sp. No. 32890), and applied its 1990 tax liability, leaving a balance of P54,104.00, the amount subject of the instant claim for refund.[20] Represented mathematically, petitioner accounts for its claim in this wise:

P172,477.00	Amount indicated in petitioner's 1989 tax return to be applied as tax credit for the succeeding taxable year
- 25,623.00	Claim for refund in CTA Case No. 4439 (C.A.-G.R. Sp. No. 32300)
P146,854.00	Balance as of April 16, 1990
- 59,510.00	Claim for refund in CTA Case No. 4528 (C.A.-G.R. Sp. No. 32890)
P87,344.00	Balance as of January 2, 1991
- 33,240.00	Income tax liability for calendar year

	1990 applied as of April 15, 1991
P54,104.00	Balance as of April 15, 1991 now subject of the instant claim for refund[21]

Other than its own bare allegations, however, petitioner offers no proof to the effect that its creditable tax of P172,477.00 was applied as claimed above. Instead, it anchors its assertion of entitlement to refund on an alleged finding in C.A.-G.R. Sp. No. 32890[22] involving the same parties to the effect that petitioner charged its 1990 income tax liability to its tax credit for 1988 and not its 1989 tax credit. Hence, its excess creditable taxes withheld of P54,104.00 for 1989 was left untouched and may be refunded.

Note should be taken, however, that nowhere in the case referred to by petitioner did the Court of Appeals make a categorical determination that petitioner's tax liability for 1990 was applied against its 1988 tax credit. The statement adverted to by petitioner was actually presented in the appellate court's decision in CA-G.R. Sp No. 32890 as part of petitioner's own narration of facts. The pertinent portion of the decision reads:

> It would appear from petitioner's submission as follows:
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> > xxx since it has already applied to its prior year's excess credit of P81,403.00 (which petitioner wanted refunded when it filed its 1988 Income Tax Return on April 14, 1989) the income tax liability for 1988 of P28,127.00 and the income tax liability for 1989 of P27,653.00, leaving a balance refundable of P25,623.00 subject of C.T.A. Case No. 4439, the P92,750.00 (P64,623.00 plus P28,127.00, since this second amount was already applied to the amount refundable of P81,403.00) should be the refundable amount. But since the taxpayer again used part of it to satisfy its income tax liability of P33,240.00 for 1990, the amount refundable was P59,510.00, which is the amount prayed for in the claim for refund and also in the petitioner (sic) for review.
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> That the present claim for refund already consolidates its claims for refund for 1988, 1989, and 1990, when it filed a claim for refund of P59,510.00 in this case (CTA Case No. 4528). Hence, the present claim should be resolved together with the previous claims.[23]

The confusion as to petitioner's entitlement to a refund could altogether have been avoided had it presented its tax return for 1990. Such return would have shown whether petitioner actually applied its 1989 tax credit of P172,477.00, which includes the P54,104.00 creditable taxes withheld for 1989 subject of the instant claim for refund, against its 1990 tax liability as it had elected in its 1989 return, or at least, whether petitioner's tax credit of P172,477.00 was applied to its approved refunds as it claims.

The return would also have shown whether there remained an excess credit refundable to petitioner after deducting its tax liability for 1990. As it is, we only have petitioner's allegation that its tax due for 1990 was P33,240.00 and that this was applied against its remaining tax credits using its own "first in, first out" method of computation.