

## THIRD DIVISION

[ G.R. NO. 161997, October 25, 2005 ]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
PHILIPPINE NATIONAL BANK, RESPONDENT.**

### DECISION

**GARCIA, J.:**

Thru this appeal by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Commissioner of Internal Revenue seeks to set aside the Decision dated October 14, 2003<sup>[1]</sup> of the Court of Appeals (CA) in *CA-G.R. SP No. 76488* and its Resolution dated January 26, 2004<sup>[2]</sup> denying petitioner's motion for reconsideration.

The petition is cast against the following factual setting:

In early April 1991, respondent Philippine National Bank (PNB) issued to the Bureau of Internal Revenue (BIR) PNB Cashier's Check No. 109435 for P180,000,000.00. The check represented PNB's advance income tax payment for the bank's 1991 operations and was remitted in response to then President Corazon C. Aquino's call to generate more revenues for national development. The BIR acknowledged receipt of the amount by issuing Payment Order No. C-10151465 and BIR Confirmation Receipt No. 22063553, both dated April 15, 1991.<sup>[3]</sup>

Via separate letters dated April 19 and 29, 1991 and May 14, 1991<sup>[4]</sup> to then BIR Commissioner Jose C. Ong, PNB requested the issuance of a tax credit certificate (TCC) to be utilized against future tax obligations of the bank.

For the first and second quarters of 1991, PNB also paid additional taxes amounting to P6,096,150.00 and P26,854,505.80, respectively, as shown in its corporate quarterly income tax return filed on May 30, 1991.<sup>[5]</sup> Inclusive of the P180 Million aforementioned, PNB paid and BIR received in 1991 the aggregate amount of P212,950,656.79.<sup>[6]</sup> This final figure, if tacked to PNB's prior year's excess tax credit (P1,385,198.30) and the creditable tax withheld for 1991 (P3,216,267.29), adds up to P217,552,122.38.

By the end of CY 1991, PNB's annual income tax liability, per its 1992 annual income tax return,<sup>[7]</sup> amounted to P144,253,229.78, which, when compared to its claimed total credits and tax payments of P217,552,122.38, resulted to a credit balance in its favor in the amount of **P73,298,892.60**.<sup>[8]</sup> This credit balance was carried-over to cover tax liability for the years 1992 to 1996, but, as PNB alleged, was never applied owing to the bank's negative tax position for the said inclusive years, having incurred losses during the 4-year period.

On July 28, 1997, PNB wrote then BIR Commissioner Liwayway Vinzons-Chato, Attention: Appellate Division, to inform her about the above developments and to reiterate its request for the issuance of a TCC, this time for the "*unutilized balance of its advance payment made in 1991 amounting to P73,298,892.60*".<sup>[9]</sup> This request was forwarded for review and further processing to the Office of the Deputy Commissioner for Legal and Inspection Group, Lilian B. Hefti, and then to the BIR's Large Taxpayers Service.

In a letter dated July 26, 2000, PNB sought reconsideration of the decision of Deputy Commissioner Hefti not to take cognizance of the bank's claim for tax credit certificate on the ground that the jurisdiction of the Appellate Division is limited to claims for tax refund and credit "*involving erroneous or illegal collection of taxes whenever there are questions of law and/or facts and does not include claims for refund of advance payment, pursuant to Revenue Administrative Order [RAO] No. 7-95 dated October 10, 1995*".<sup>[10]</sup> In her letter-reply dated August 8, 2008,<sup>[11]</sup> Deputy Commissioner Hefti denied PNB's request for reconsideration with the following explanations:

In reply, please be advised that upon review . . . of your case, this Office finds that the same presents no legal question for resolution. Rather, what is involved is the verification of factual matters, i.e., the existence of material facts to establish your entitlement to refund. Such facts were initially verified through the proper audit of your refund case by the investigating unit under the functional control and supervision of the Deputy Commissioner, Operations Group of this Bureau. It is therefore right and proper for the Operations Group to review, confirm and/or pass judgment upon the findings of the unit under it.

At any rate, sound management practices demand that issues as crucial as refund cases be subjected to complete staff work. There might be a little delay in the transition of cases but expect the new procedures to be well-established in no time. Allow us, however, to allay your concern about delayed processing of your claim. In fact, the undersigned has made representations with the Operations Group about your case and if you would check the status of your case again, you will find that the same has been duly acted upon." (Emphasis supplied)

On August 14, 2001, PNB again wrote the BIR requesting that it be allowed to apply its unutilized advance tax payment of **P73,298,892.60** to the bank's future gross receipts tax liability.<sup>[12]</sup>

Replying, the BIR Commissioner denied PNB's claim for tax credit for the following reasons stated in his letter of May 21, 2002, to wit:<sup>[13]</sup>

1. The amount subject of claim for [TCC] is being carried over from your 1991 to 1996 Annual Income Tax Returns. xxx. To grant your claim would result into granting it twice - first for tax carry over as shown in your 1991 amended Income Tax Return and second for granting a tax credit.
2. When you requested for a refund on April 19, 1991, reiterated on April 29, 1991 and again on May 14, 1991 on alleged *excess income*

taxes, the same was considered premature since the determination . . . of your income tax liability can only be ascertained upon filing of your Final or Adjusted Income Tax Return for 1991 on or before April 15, 1992.

3. When you carried over the excess tax payments from 1991 to 1996 Annual Income Tax Return, you had already abandoned your original intention of claiming for a [TCC]. Furthermore, the 1991 amended Income Tax Return you filed on April 14, 1994 clearly showed that the amount being claimed has already been applied as tax credit against your 1992 income tax liability.
4. Although there was already a recommendation for the issuance of a [TCC] by the Chief, Appellate Division and concurred in by the Assistant Commissioner, Legal Service, the recommendation was for . . . year 1992 and not for the taxable year 1991, which is the taxable year involved in this case.
5. *Even if you reiterated your claim for tax credit certificate when you filed your claim on July 28, 1997, the same has already prescribed on the ground that it was filed beyond the two (2) year prescriptive period as provided for under Section 204 of NIRC.* [Words in bracket and emphasis added]

On June 20, 2002, PNB, via a petition for review, appealed the denial action of the BIR Commissioner to the Court of Tax Appeals (CTA). There, its appellate recourse was docketed as C.T.A. Case No. 6487.

The Revenue Commissioner filed a motion to dismiss PNB's aforementioned petition on ground of prescription under the 1977 National Internal Revenue Code (NIRC) [14]. To this motion, PNB interposed an opposition, citing *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.* [15]

In its Resolution of October 10, 2002, [16] the CTA granted the Commissioner's motion to dismiss and, accordingly, denied PNB's petition for review, pertinently stating as follows:

To reiterate, both the claim for refund and the subsequent appeal to this court must be filed within the same two (2)-year period [provided in Sec. 230 of the NIRC]. This is not subject to qualification. The court is bereft of any jurisdiction or authority to hear the instant Petition for Review, considering that the above stated action for refund was filed beyond the two (2)-year prescriptive period as allowed under the Tax Code. (Words in bracket added)

PNB's motion for reconsideration was denied by the tax court in its subsequent Resolution of March 20, 2003. [17]

In time, PNB filed a petition for review with the Court of Appeals (CA), thereat docketed as *CA-G.R. SP No. 76488*, arguing that the applicability of the two (2)-year prescriptive period is not jurisdictional and that said rule admits of certain exceptions. [18] Following the filing by the Commissioner Internal Revenue of his

Comment to PNB's petition in CA-G.R. in SP No. 76488, respondent PNB filed a Supplement to its Petition for Review.<sup>[19]</sup>

In the herein assailed Decision dated October 14, 2003,<sup>[20]</sup> the appellate court reversed the ruling of the CTA, disposing as follows:

**WHEREFORE**, premises considered, the present petition is hereby **GIVEN DUE COURSE**. Consequently, the assailed Resolutions dated October 10, 2002 and March 30, 2003 of the Court of Tax Appeals in C.T.A. Case No. 6487 are hereby **ANNULLED** and **SET ASIDE**. The case is hereby **REMANDED** to the respondent Commissioner for issuance with deliberate dispatch of the tax credit certificate after completion of processing of petitioner's claim/request by the concerned BIR officer/s as to the correct amount of tax credit to which petitioner is entitled.

No pronouncements as to costs.

SO ORDERED.

In gist, the appellate court predicated its disposition on the following main premises:

1. Considering the "*special circumstance*" that the tax credit PNB has been seeking is to be sourced not from any tax erroneously or illegally collected but from advance income tax payment voluntarily made in response to then President Aquino's call to generate more revenues for the government, in no way can the amount of P180 million advanced by PNB in 1991 be considered as erroneously or illegally paid tax.<sup>[21]</sup>
2. The BIR is deemed to have waived the two (2)-year prescriptive period when its officials led the PNB to believe that its request for tax credit had not yet prescribed since the matter was not being treated as an ordinary claim for tax refund/credit or a simple case of excess payment.
3. *Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.* <sup>[22]</sup> instructs that even if the two (2)-year prescriptive period under the Tax Code had already lapsed, the same is not jurisdictional, and may be suspended for reasons of equity and other special circumstances. PNB's failure to apply the advance income tax payment due to its negative tax liability in the succeeding taxable years i.e., 1992-1996, should not be subject to the two (2)-year limitation as to bar its claim for tax credit. The advance income tax payment, made as it were under special circumstances, warrants a suspension of the two (2)-year limitation, underscoring the fact that PNB's claim is not even a simple case of excess payment.

In time, the BIR Commissioner moved for a reconsideration, but its motion was denied by the appellate court in its equally challenged Resolution of January 26, 2004.<sup>[23]</sup>

Hence, the Commissioner's present recourse on the following substantive submissions:

1. A prior tax assessment before respondent PNB can apply for tax credit is

unnecessary;

2. PNB's letter dated April 19, 29 and May 14, 1991 cannot be legally interpreted as claims for refund or tax credit as required by the NIRC;

3. PNB's claim for tax credit is barred by prescription; and

4. The equitable principle of estoppel does bar the BIR petitioner from collecting taxes due. [24]

Petitioner first scores the CA for concluding that "*the amount of advance income tax payment voluntarily remitted to the BIR by the [respondent] was not a consequence of a prior tax assessment or computation by the taxpayer based on business income*" and, therefore, it cannot "*be treated as similar to those national revenue taxes erroneously, illegally or wrongfully paid as to be automatically covered by the two (2)-year limitation under Sec. 230 [of the NIRC] for the right to its recovery.*" Petitioner invokes the all too-familiar principle that the collection of taxes, being the lifeblood of the nation, [25] should be summary and with the least interference from the courts.

Pressing its point, petitioner asserts that what transpired under the premises is a case of excessive collection not arising from an erroneous, illegal or wrongful assessment and collection. According to petitioner, respondent PNB, after making a prepayment of taxes in 1991, had realized, upon filing, in 1992, of its 1991 final annual income tax return, the excess payment by simple process of mathematical computation; hence, it was unnecessary to make any assessment of *overpaid taxes*. Moreover, petitioner points out that the tenor of PNB's letters of April 19, 29, and May 14, 1991 [26] indicated a mere request for an issuance of a TCC covering the advance payments of taxes, not a claim for refund or tax credit of overpaid national internal revenue taxes.

Citing *Revenue Regulation No. 10-77*, petitioner likewise argues that any excess or overpaid income tax for a given taxable year may be carried to the succeeding taxable year only. It cannot, petitioner expounds, go beyond, as what respondent PNB attempted to do in 1997, when, after realizing the inapplicability of the excess carry-forward scheme for its 1992 income tax liabilities owing to its negative tax position for the 1992 to 1996 tax period, it belatedly requested for a TCC issuance.

Lastly, petitioner urges the Court to make short shrift of the invocation of equity and estoppel, on the postulate that the erroneous application and enforcement of tax laws by public officers does not preclude the subsequent correct application of such laws. [27]

In its Comment, respondent PNB contends that its claim for tax credit did not arise from overpayment resulting from erroneous, illegal or wrongful collection of tax. And obviously having in mind the holding of this Court in *Juan Luna Subdivision Inc. vs. Sarmiento*, [28] respondent stresses that its P180 Million advance income tax payment for 1991 partakes of the nature of a deposit made in anticipation of taxes not yet due or levied. Accordingly, respondent adds, the P180 Million was strictly not a payment of a valid and existing tax liability, let alone an erroneous payment, the refund of which is governed by Section 230 of the NIRC.