

## THIRD DIVISION

[ G.R. No. 122480, April 12, 2000 ]

**BPI-FAMILY SAVINGS BANK, INC., PETITIONER, VS. COURT OF APPEALS, COURT OF TAX APPEALS AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another.

#### The Case

Before us is a Petition for Review assailing the March 31, 1995 Decision of the Court of Appeals<sup>[1]</sup> (CA) in CA-GR SP No. 34240, which affirmed the December 24, 1993 Decision<sup>[2]</sup> of the Court of Tax Appeals (CTA). The CA disposed as follows:

"WHEREFORE, foregoing premises considered, the petition is hereby DISMISSED for lack of merit."<sup>[3]</sup>

On the other hand, the dispositive portion of the CTA Decision affirmed by the CA reads as follows:

"WHEREFORE, in [view of] all the foregoing, Petitioner's claim for refund is hereby

DENIED and this Petition for Review is DISMISSED for lack of merit."<sup>[4]</sup>

Also assailed is the November 8, 1995 CA Resolution<sup>[5]</sup> denying reconsideration.

#### The Facts

The facts of this case were summarized by the CA in this wise:

"This case involves a claim for tax refund in the amount of P112,491.00 representing petitioner's tax withheld for the year 1989.

In its Corporate Annual Income Tax Return for the year 1989, the following items are reflected:

Income	P1,017,931,831.00
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Deductions	P1,026,218,791.00
Net Income (Loss)	(P8,286,960.00)
Taxable Income (Loss)	P8,286,960.00
Less:	
1988 Tax Credit	P185,001.00
1989 Tax Credit	<u>P112,491.00</u>
TOTAL AMOUNT REFUNDABLE	P297,492.00

"It appears from the foregoing 1989 Income Tax Return that petitioner had a total refundable amount of P297,492 inclusive of the P112,491.00 being claimed as tax refund in the present case. However, petitioner declared in the same 1989 Income Tax Return that the said total refundable amount of P297,492.00 will be applied as tax credit to the succeeding taxable year.

"On October 11, 1990, petitioner filed a written claim for refund in the amount of P112,491.00 with the respondent Commissioner of Internal Revenue alleging that it did not apply the 1989 refundable amount of P297,492.00 (including P112,491.00) to its 1990 Annual Income Tax Return or other tax liabilities due to the alleged business losses it incurred for the same year.

"Without waiting for respondent Commissioner of Internal Revenue to act on the claim for refund, petitioner filed a petition for review with respondent Court of Tax Appeals, seeking the refund of the amount of P112,491.00.

"The respondent Court of Tax Appeals dismissed petitioner's petition on the ground that petitioner failed to present as evidence its Corporate Annual Income Tax Return for 1990 to establish the fact that petitioner had not yet credited the amount of P297,492.00 (inclusive of the amount P112,491.00 which is the subject of the present controversy) to its 1990 income tax liability.

"Petitioner filed a motion for reconsideration, however, the same was denied by respondent court in its Resolution dated May 6, 1994."<sup>[6]</sup>

As earlier noted, the CA affirmed the CTA. Hence, this Petition.<sup>[7]</sup>

#### Ruling of the Court of Appeals

In affirming the CTA, the Court of Appeals ruled as follows:

"It is incumbent upon the petitioner to show proof that it has not credited to its 1990 Annual income Tax Return, the amount of P297,492.00 (including P112,491.00), so as to refute its previous declaration in the 1989 Income Tax Return that the said amount will be applied as a tax credit in the succeeding year of 1990. Having failed to submit such requirement, there is no basis to grant the claim for refund. x x x

"Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. In other words, the burden of proof rests upon the taxpayer to establish by sufficient and competent evidence its entitlement to the claim for refund."<sup>[8]</sup>

#### Issue

In their Memorandum, respondents identify the issue in this wise:

"The sole issue to be resolved is whether or not petitioner is entitled to the refund of P112,491.00, representing excess creditable withholding tax paid for the taxable year 1989."<sup>[9]</sup>

#### The Court's Ruling

The Petition is meritorious.

#### **Main Issue:**

#### **Petitioner Entitled to Refund**

It is undisputed that petitioner had excess withholding taxes for the year 1989 and was thus entitled to a refund amounting to P112,491. Pursuant to Section 69<sup>[10]</sup> of the 1986 Tax Code which states that a corporation entitled to a refund may opt either (1) to obtain such refund or (2) to credit said amount for the succeeding taxable year, petitioner indicated in its 1989 Income Tax Return that it would apply the said amount as a tax credit for the succeeding taxable year, 1990. Subsequently, petitioner informed the Bureau of Internal Revenue (BIR) that it would claim the amount as a tax refund, instead of applying it as a tax credit. When no action from the BIR was forthcoming, petitioner filed its claim with the Court of Tax Appeals.

The CTA and the CA, however, denied the claim for tax refund. Since petitioner declared in its 1989 Income Tax Return that it would apply the excess withholding tax as a tax credit for the following year, the Tax Court held that petitioner was presumed to have done so. The CTA and the CA ruled that petitioner failed to overcome this presumption because it did not present its 1990 Return, which would have shown that the amount in dispute was not applied as a tax credit. Hence, the CA concluded that petitioner was not entitled to a tax refund.

We disagree with the Court of Appeals. As a rule, the factual findings of the appellate court are binding on this Court. This rule, however, does not apply where, *inter alia*, the judgment is premised on a misapprehension of facts, or when the appellate court failed to notice certain relevant facts which if considered would justify a different conclusion.<sup>[11]</sup> This case is one such exception.