

SECOND DIVISION

[G.R. No. 112024, January 28, 1999]

**PHILIPPINE BANK OF COMMUNICATIONS, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX
APPEALS AND COURT OF APPEALS, RESPONDENTS.**

D E C I S I O N

QUISUMBING, J.:

This petition for review assails the Resolution^[1] of the Court of Appeals dated September 22, 1993, affirming the Decision^[2] and Resolution^[3] of the Court of Tax Appeals which denied the claims of the petitioner for tax refund and tax credits, and disposing as follows:

"IN VIEW OF ALL THE FOREGOING, the instant petition for review is DENIED due course. The Decision of the Court of Tax Appeals dated May 20, 1993 and its resolution dated July 20, 1993, are hereby AFFIRMED *in toto*.

SO ORDERED."^[4]

The Court of Tax Appeals earlier ruled as follows:

"WHEREFORE, petitioner's claim for refund/tax credit of overpaid income tax for 1985 in the amount of P5,299,749.95 is hereby denied for having been filed beyond the reglementary period. The 1986 claim for refund amounting to P234,077.69 is likewise denied since petitioner has opted and in all likelihood automatically credited the same to the succeeding year. The petition for review is dismissed for lack of merit.

SO ORDERED."^[5]

The facts on record show the antecedent circumstances pertinent to this case.

Petitioner, Philippine Bank of Communications (PBCom), a commercial banking corporation duly organized under Philippine laws, filed its quarterly income tax returns for the first and second quarters of 1985, reported profits, and paid the total income tax of P5,016,954.00. The taxes due were settled by applying PBCom's tax credit memos and accordingly, the Bureau of Internal Revenue (BIR) issued Tax Debit Memo Nos. 0746-85 and 0747-85 for P3,401,701.00 and P1, 615,253.00, respectively.

Subsequently, however, PBCom suffered losses so that when it filed its Annual Income Tax Returns for the year-ended December 31, 1985, it declared a net loss of P25,317,228.00, thereby showing no income tax liability. For the succeeding year,

ending December 31, 1986, the petitioner likewise reported a net loss of P14,129,602.00, and thus declared no tax payable for the year.

But during these two years, PBCom earned rental income from leased properties. The lessees withheld and remitted to the BIR withholding creditable taxes of P282,795.50 in 1985 and P234,077.69 in 1986.

On August 7, 1987, petitioner requested the Commissioner of Internal Revenue, among others, for a tax credit of P5,016,954.00 representing the overpayment of taxes in the first and second quarters of 1985.

Thereafter, on July 25, 1988, petitioner filed a claim for refund of creditable taxes withheld by their lessees from property rentals in 1985 for P282,795.50 and in 1986 for P234,077.69.

Pending the investigation of the respondent Commissioner of Internal Revenue, petitioner instituted a Petition for Review on November 18, 1988 before the Court of Tax Appeals (CTA). The petition was docketed as CTA Case No. 4309 entitled: "Philippine Bank of Communications vs. Commissioner of Internal Revenue."

The losses petitioner incurred as per the summary of petitioner's claims for refund and tax credit for 1985 and 1986, filed before the Court of Tax Appeals, are as follows:

	<u>1985</u>	<u>1986</u>
Net Income (Loss)	(P25,317,228.00)	(P14,129,602.00)
Tax Due	NIL	NIL
Quarterly tax		
Payments Made	5,016,954.00	---
Tax Withheld at	282,795.50	234,077.69
Source		
Excess Tax	P5,299,749.50*	P234,077.69
Payments		
	=====	=====

*CTA's decision reflects PBCom's 1985 tax claim as P5,299,749.95. A forty-five centavo difference was noted.

On May 20, 1993, the CTA rendered a decision which, as stated on the outset, denied the request of petitioner for a tax refund or credit in the sum amount of P5,299,749.95, on the ground that it was filed beyond the two-year reglementary period provided for by law. The petitioner's claim for refund in 1986 amounting to P234,077.69 was likewise denied on the assumption that it was automatically credited by PBCom against its tax payment in the succeeding year.

On June 22, 1993, petitioner filed a Motion for Reconsideration of the CTA's decision but the same was denied due course for lack of merit.^[6]

Thereafter, PBCom filed a petition for review of said decision and resolution of the

CTA with the Court of Appeals. However on September 22, 1993, the Court of Appeals affirmed in toto the CTA's resolution dated July 20, 1993. Hence this petition now before us.

The issues raised by the petitioner are:

- I. Whether taxpayer PBCom -- which relied in good faith on the formal assurances of BIR in RMC No. 7-85 and did not immediately file with the CTA a petition for review asking for the refund/tax credit of its 1985-86 excess quarterly income tax payments -- can be prejudiced by the subsequent BIR rejection, applied retroactively, of its assurances in RMC No. 7-85 that the prescriptive period for the refund/tax credit of excess quarterly income tax payments is not two years but ten (10).^[7]
- II. Whether the Court of Appeals seriously erred in affirming the CTA decision which denied PBCom's claim for the refund of P234,077.69 income tax overpaid in 1986 on the mere speculation, without proof, that there were taxes due in 1987 and that PBCom availed of tax-crediting that year.^[8]

Simply stated, the main question is: Whether or not the Court of Appeals erred in denying the plea for tax refund or tax credits on the ground of prescription, despite petitioner's reliance on RMC No. 7-85, changing the prescriptive period of two years to ten years?

Petitioner argues that its claims for refund and tax credits are not yet barred by prescription relying on the applicability of Revenue Memorandum Circular No. 7-85 issued on April 1, 1985. The circular states that overpaid income taxes are not covered by the two-year prescriptive period under the tax Code and that taxpayers may claim refund or tax credits for the excess quarterly income tax with the BIR within ten (10) years under Article 1144 of the Civil Code. The pertinent portions of the circular reads:

"REVENUE MEMORANDUM CIRCULAR NO. 7-85

PROCESSING OF REFUND OR TAX CREDIT OF EXCESS
SUBJECT: CORPORATE INCOME TAX RESULTING FROM THE
FILING OF THE FINAL ADJUSTMENT RETURN

TO: All Internal Revenue Officers and Others Concerned

Sections 85 and 86 of the National Internal Revenue Code provide:

x x x x x x x x x

The foregoing provisions are implemented by Section 7 of Revenue Regulations Nos. 10-77 which provide:

x x x x x x x x x

It has been observed, however, that because of the excess tax payments, corporations file claims for recovery of overpaid income tax with the Court of Tax Appeals within the two-year period from the date of payment, in accordance with Sections 292 and 295 of the National Internal Revenue Code. It is obvious that the filing of the case in court is to preserve the judicial right of the corporation to claim the refund or tax credit.

It should be noted, however, that this is not a case of erroneously or illegally paid tax under the provisions of Sections 292 and 295 of the Tax Code.

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 procedure in processing said returns. Under these procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures of 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).^[9] (Emphasis supplied.)

Petitioner argues that the government is barred from asserting a position contrary to its declared circular if it would result to injustice to taxpayers. Citing *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals*^[10] petitioner claims that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive effect if it would be prejudicial to taxpayers. In *ABS-CBN* case, the Court held that the government is precluded from adopting a position inconsistent with one previously taken where injustice would result therefrom or where there has been a misrepresentation to the taxpayer.

Petitioner contends that Sec. 246 of the National Internal Revenue Code explicitly provides for this rule as follows:

"Sec. 246. *Non-retroactivity of rulings*-- Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases:

- a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue;
- b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based;
- c) where the taxpayer acted in bad faith."

Respondent Commissioner of Internal Revenue, through the Solicitor General, argues that the two-year prescriptive period for filing tax cases in court concerning income tax payments of Corporations is reckoned from the date of filing the Final Adjusted Income Tax Return, which is generally done on April 15 following the close of the calendar year. As precedents, respondent Commissioner cited cases which adhered to this principle, to wit: *ACCRA Investments Corp. vs. Court of Appeals, et al.*,^[11] and *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*^[12] Respondent Commissioner also states that since the Final Adjusted Income Tax Return of the petitioner for the taxable year 1985 was supposed to be filed on April 15, 1986, the latter had only until April 15, 1988 to seek relief from the court. Further, respondent Commissioner stresses that when the petitioner filed the case before the CTA on November 18, 1988, the same was filed beyond the time fixed by law, and such failure is fatal to petitioner's cause of action.

After a careful study of the records and applicable jurisprudence on the matter, we find that, contrary to the petitioner's contention, the relaxation of revenue regulations by RMC 7-85 is not warranted as it disregards the two-year prescriptive period set by law.

Basic is the principle that "taxes are the lifeblood of the nation." The primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal.^[13] Due process of law under the Constitution does not require judicial proceedings in tax cases. This must necessarily be so because it is upon taxation that the government chiefly relies to obtain the means to carry on its operations and it is of utmost importance that the modes adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.^[14]

From the same perspective, claims for refund or tax credit should be exercised within the time fixed by law because the BIR being an administrative body enforced to collect taxes, its functions should not be unduly delayed or hampered by incidental matters.

Section 230 of the National Internal Revenue Code (NIRC) of 1977 (now Sec. 229, NIRC of 1997) provides for the prescriptive period for filing a court proceeding for the recovery of tax erroneously or illegally collected, viz.:

"Sec. 230. *Recovery of tax erroneously or illegally collected.* -- No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been