Supreme Court E-Library

THIRD DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. TAXATION; APPEAL FROM THE COURT OF TAX APPEALS TO THE SUPREME COURT; CONCLUSIONS REACHED BY THE COURT OF TAX APPEALS ON TAX PROBLEMS ARE GENERALLY NOT SET ASIDE BY THE SUPREME COURT; CASE AT BAR AN EXCEPTION. – The rule of long standing is that the Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has, accordingly, developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. It is likewise settled that to a claimant rests the onus to establish the factual basis of his or her claim for tax credit or refund. In this case, however, petitioner does not dispute that a portion of the ₱180 Million PNB remitted to the BIR in 1991 as advance payment remains unutilized for the purpose for which it was intended in the first place. But petitioner asserts that respondent's right to recover the same is already time-barred. The CTA upheld the position of petitioner. The CA ruled otherwise. We find the CA's position more in accord with the facts on record and is consistent with applicable laws and jurisprudence.

2. ID.; TAX ON CORPORATIONS; TAX CREDIT; ADVANCE INCOME TAX PAYMENT UTILIZED AS TAX CREDIT AGAINST BANK'S FUTURE TAX OBLIGATIONS; PRESCRIPTIVE PERIOD FOR TAX REFUND CLAIMS NOT APPLICABLE IN CASE AT BAR. – Like the CA, this Court perceives no compelling reason why the principle enunciated in *Panay Electric* and *Commissioner vs. Phil-Am Life* should not be applied in this case, more so since the amount over which tax credit is claimed was theoretically booked as advance income tax payment. It bears stressing that respondent PNB remitted

Supreme Court E-Library

the ₱180 Million in question as a measure of goodwill and patriotism, a gesture *noblesse oblige,* so to speak, to help the cash-strapped national government. It would thus indeed, be unfair, as the CA correctly observed, to leave respondent PNB to suffer losing millions of pesos advanced by it for future tax liabilities. The cut becomes all the more painful when it is considered that PNB's failure to apply the balance of such advance income tax payment from 1992 to 1996 was, to repeat, due to business downturn experienced by the bank so that it incurred no tax liability for the period. x x x Records [also] show that petitioner's very own conduct led the bank to believe all along that its original intention to apply the advance payment to its future income tax obligations will be respected by the BIR. Notwithstanding respondent PNB's failure to request for tax credit after incurring negative tax position in 1992, up to taxable year 1996, there appears to be a valid reason to assume that the agreed carrying forward of the balance of the advance payment extended to succeeding taxable years, and not only in 1992. Hence, no reversible error was committed by the CA in holding that, upon basic considerations of equity and fairness, respondent's request for issuance of a tax credit certificate should not be subject to the two (2)-year limitation in Section 230 of the NIRC.

3. REMEDIAL LAW; APPEAL; FORUM SHOPPING; MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR. – It is evident that the issue of forum shopping is being raised for the first time in this appellate proceedings. Accordingly, the Court loathes to accommodate petitioner's urging for the dismissal of respondent's basic claim on the forum-shopping angle. As earlier ruled by this Court, a party ought to invoke the issue of forum shopping, assuming its presence, at the first opportunity in his motion to dismiss or similar pleading filed in the trial court. Else, he is barred from raising the ground of forum shopping in the Court of Appeals and in this Court. So it must be here.

APPEARANCES OF COUNSEL

Litigation Division (BIR) for petitioner.
Zambrano & Gruba Law Offices for respondent.

Supreme Court E-Library

D E C I S I O N

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[1] of the Court of Appeals (CA) in *CA-G.R. SP No. 76488* and its Resolution dated January 26, 2004[2] 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 ₱180,000,000.00. 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.[3]

Via separate letters dated April 19 and 29, 1991 and May 14, 1991[4] 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 ₱6,096,150.00 and ₱26,854,505.80, respectively, as shown in its corporate quarterly income tax

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[1] Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Mario L. Guarina III and Jose C. Reyes, Jr.; *Rollo*, pp. 37 *et seq.*

[2] *Rollo*, p. 59.

[3] Annexes "B" and "B-1", PNB's Petition for Review before the CA; *Rollo*, pp. 93 & 94.

[4] Annexes "A", "B" and "C", respectively, to Comment to Petition, *Rollo*, pp. 191, 192 & 193.

Supreme Court E-Library

return filed on May 30, 1991.[5] Inclusive of the ₱180 Million aforementioned, PNB paid and BIR received in 1991 the aggregate amount of ₱212,950,656.79.[6] This final figure, if tacked to PNB's prior year's excess tax credit (₱1,385,198.30) and the creditable tax withheld for 1991 (₱3,216,267.29), adds up to ₱217,552,122.38.

By the end of CY 1991, PNB's annual income tax liability, per its 1992 annual income tax return,[7] amounted to ₱144,253,229.78, which, when compared to its claimed total credits and tax payments of ₱217,552,122.38, resulted to a credit balance in its favor in the amount of *₱73,298,892.60*.[8] 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 ₱73,298,892.60.*"[9] 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*

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[5] Petition, p. 4; *Rollo*, p. 12.

[6] (₱180,000,00.00 + ₱26,854,505.80 + ₱6,096,150.00 = ₱212,950,656.79).

[7] *Rollo*, p. 63.

[8] (₱217,552,122.38 - ₱144,253,229.78 = ₱73,298,892.60).

[9] *Ibid.*, p. 69.

Supreme Court E-Library

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."[10] In her letter-reply dated August 8, 2008,[11] 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.
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> 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." (Italics supplied)

On August 14, 2001, PNB again wrote the BIR requesting that it be allowed to apply its unutilized advance tax payment of *₱73,298,892.60* to the bank's future gross receipts tax liability.[12]

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:[13]

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[10] *Id*., pp. 71-72.
[11] *Id*., p. 73.
[12] *Id*., p. 74.
[13] *Id*., pp. 76-77.

Supreme Court E-Library

1. The amount subject of claim for [TCC] is being carried over from your 1991 to 1996 Annual Income Tax Returns. x x x 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 italics 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,

[14] Amended by Rep. Act No. 8424 entitled "Tax Reform Act of 1997."

Supreme Court E-Library

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.[19]

In the herein assailed Decision dated October 14, 2003,[20] 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

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[15] 244 SCRA 446 [1995].

[16] Annex "B", Petition, *Rollo*, pp. 51 *et seq.*

[17] *Rollo*, pp. 105-106.

[18] *Id.*, pp. 107 *et seq.*

[19] *Id.*, pp. 121 *et seq.*

[20] See Note #1, *supra*.

Supreme Court E-Library

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 ₱180 million advanced by PNB in 1991 be considered as erroneously or illegally paid tax.[21]

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*.[22] 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.*

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[21] At p. 6 of the CA Decision.

[22] See Note #15, *supra*.

Supreme Court E-Library

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.[23]

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 of wrongful assessment and collection. According to petitioner, respondent PNB, after making a prepayment of taxes in 1991, had realized, upon filing, in 1992,

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[23] See Note #2, *supra*.

[24] *Rollo*, pp. 9 *et seq.*

[25] *NAPOCOR vs. Province of Albay,* 186 SCRA 198 [1990].

Supreme Court E-Library

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 ₱180 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 ₱180 Million was strictly not a payment of a valid and existing tax liability, let alone an

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[26] See Note #4, *supra*.

[27] *Philippine Basketball Association vs. CA,* 337 SCRA 358 [2000].

[28] 91 Phil. 371 [1952].

Supreme Court E-Library

erroneous payment, the refund of which is governed by Section 230 of the NIRC.

Taking a different tack, respondent PNB would also argue that, even assuming, *in gratia argumenti* that the two (2)-year limitation in Section 230 of the NIRC is of governing application, still the prescriptive period set forth therein is not jurisdictional. The suspension of the statutory limitation in this case, PNB adds, is justified under exceptional circumstance.

We rule for respondent PNB.

As may be recalled, both the CTA's and the BIR's refusal to grant PNB's claim for refund or credit was based on the proposition that such claim was time-barred. On the other hand, the CA rejected both the CTA's and BIR's stance for reasons as shall be explained shortly.

As we see it then, the core issue in this case pivots on the applicability hereto of the two (2)-year prescriptive period under in Section 230 (now Sec. 229) of the NIRC, reading:

"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 sum, alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun *after the expiration of two [(2)] years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Italics added.)

Here, respondent PNB requested the BIR to issue a TCC on the remaining balance of the advance income tax payment it made in 1991. It should be noted that the request was made

Supreme Court E-Library

considering that, while PNB carried over such credit balance to the succeeding taxable years, *i.e.,* 1992 to 1996, its negative tax position during said tax period prevented it from actually applying the credit balance of ₱73,298,892.60. It is fairly correct to say then that the claim for tax credit was specifically pursued to enable the respondent bank to utilize the same for future tax liabilities. However, petitioner ruled that the claim in question is time-barred, the bank having filed such claim only in 1997, or more than two (2) years from 1992 when the overpayment of annual income tax for 1991 was realized by the bank and the amount of excess payment ascertained with the filing of its final 1991 income tax return.

In rejecting petitioner's ruling, as seconded by the CTA, the CA stated that PNB's request for issuance of a tax credit certificate on the balance of its advance income tax payment cannot be treated as a simple case of excess payment as to be automatically covered by the two (2)-year limitation in Section 230, *supra* of the NIRC.

We agree with the Court of Appeals.

Section 230 of the Tax Code, as couched, particularly its statute of limitations component, is, in context, intended to apply to suits for the recovery of internal revenue taxes or sums erroneously, excessively, illegally or wrongfully collected.

Black defines the term *erroneous or illegal tax* as one levied without statutory authority.[29] In the strict legal viewpoint, therefore, PNB's claim for tax credit did not proceed from, or is a consequence of overpayment of tax erroneously or illegally collected. It is beyond cavil that respondent PNB issued to the BIR the check for ₱180 Million in the concept of tax payment in advance, thus eschewing the notion that there was error or illegality in the payment. What in effect transpired when PNB wrote its July 28, 1997 letter[30] was that respondent sought the

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[29] Black's *Law Dictionary*, 8th Ed., pp. 1496-1497.

[30] *See* Note #9, *supra*.

Supreme Court E-Library

application of amounts advanced to the BIR to future annual income tax liabilities, in view of its inability to carry-over the remaining amount of such advance payment to the four (4) succeeding taxable years, not having incurred income tax liability during that period.

The instant case ought to be distinguished from a situation where, owing to net losses suffered during a taxable year, a corporation was also unable to apply to its income tax liability taxes which the law requires to be withheld and remitted. In the latter instance, such creditable withholding taxes, albeit also legally collected, are in the nature of "*erroneously collected taxes*" which entitled the corporate taxpayer to a refund under Section 230 of the Tax Code. So it is that in *Citibank, N.A. vs. Court of Appeals,*[31] we held:

> The taxes thus withheld and remitted are *provisional* in nature. We repeat: five percent of the rental income withheld and remitted to the BIR pursuant to Rev. Reg. No. 13-78 is, unlike the withholding of final taxes on passive incomes, a creditable withholding tax; that is, creditable against income tax liability if any, for that taxable year.
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> In *Commissioner of Internal Revenue vs. TMX Sales, Inc.*, this Court ruled that the payments of quarterly income taxes (per Section 68, NIRC) should be considered mere installments on the annual tax due. These quarterly tax payments . . . should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. The same holds true in the case of the withholding of creditable tax at source. Withholding taxes are "deposits" which are subject to adjustments at the proper time when the complete tax liability is determined.
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> In this case, the payments of the withholding taxes for 1979 and 1980 were creditable to the income tax liability, if any, of petitioner-bank, determined after the filing of the corporate income tax returns on April 15, 1980 and April 15, 1981. *As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, the taxes withheld during the course of the taxable year, while collected legally under the aforecited revenue*

[31] 280 SCRA 459 [1997].

Supreme Court E-Library

regulation, became untenable and took on the nature of erroneously collected taxes at the end of the taxable year. (italics added)

Analyzing the underlying reason behind the advance payment made by respondent PNB in 1991, the CA held that it would be improper to treat the same as erroneous, wrongful or illegal payment of tax within the meaning of Section 230 of the Tax Code. So that even if the respondent's inability to carry-over the remaining amount of its advance payment to taxable years 1992 to 1996 resulted in *excess credit,* it would be inequitable to impose the two (2)-year prescriptive period in Section 230 as to bar PNB's claim for tax credit to utilize the same for future tax liabilities. We quote with approval the CA's disquisition on this point:

Thus, in no sense can the subject amount of advance income tax voluntarily remitted to the BIR by the [respondent], not as a consequence of prior tax assessment or computation by the taxpayer based on business income, 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 for the right to its recovery. When the ₱180 million advance income tax payment was tendered by [respondent], no tax had been assessed or due, or actually imposed and collected by the BIR. Neither can such payment be considered as illegal having been made in response to a call of patriotic duty to help the national government . . . We therefore hold that the tax credit sought by [respondent] is not simply a case of excess payment, but rather for the application of the balance of advance income tax payment for subsequent taxable years *after failure or impossibility to make such application or carry over the preceding four (4)-year period when no tax liability was incurred by petitioner due to losses in its operations*. It is truly inequitable to strictly impose the two (2)-year prescriptive period as to legally bar any request for such tax credit certificate considering the *special circumstances under which the advance income tax payment was made and the unexpected event (four years of business losses) which prevented such application or carry over*. Ironically, both the [petitioner] and CTA would fault the [respondent] for electing to credit or carry over the excess amount of tax payment advanced instead of choosing to refund any such excess amount, holding that *such decision on the part of petitioner caused the two (2)-year period*

Supreme Court E-Library

to lapse without the petitioner filing such a request for the issuance of a tax credit certificate. They emphasized that the advance tax payment was made with the understanding that any excess amount will be either carried over to the next taxable year or refunded. It appears then that the request for issuance of a tax credit certificate was arbitrarily interpreted by respondent as a simple claim for refund instead of a request for application of the balance (excess amount) to tax liability for the succeeding taxable years, as was the original intention of [respondent] when it tendered the advance payment in 1991."[32] (Emphasis in the original; words in bracket added)

Petitioner insists that a prior tax assessment in this case was unnecessary, the excess tax payment having already been ascertained by the end of 1992 upon the filing by respondent of its adjusted final return. Thus, petitioner adds, the two (2)-year prescriptive period to recover said excess credit balance had begun to run from the accomplishment of the said final return and, *ergo*, PNB's claim for tax credit asserted in 1997 is definitely belated. Additionally, petitioner, citing Revenue Regulation No. 10-77, contends that the carrying forward of any excess or overpaid income tax for a given taxable year is limited to the *succeeding taxable year only.*

We do not agree.

Revenue Regulation No. 10-77[33] governs the method of computing corporate quarterly income tax on a cumulative basis. Section 7 thereof provides:

SEC. 7. *Filing of final or adjustment return and final payment of income tax.* — A final or an adjustment return . . . 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 x x x. 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.

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[32] CA Decision, pp. 43-44.

[33] Effective October 8, 1977.

Supreme Court E-Library

"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 or claim for automatic tax credit to be applied against its income tax liabilities for the quarters of the succeeding taxable year by filling the appropriate box on the corporate tax return. (B.I.R. Form No. 1702) [Italics and emphasis added]

As can be gleaned from the above, the mandate of Rev. Reg. No. 10-77 is hardly of any application to PNB's advance payment which, needless to stress, are not "*quarterly payments*" reflected in the adjusted final return, but a lump sum payment to cover future tax obligations. Neither can such advance lump sum payment be considered overpaid income tax *for a given taxable year*, so that the carrying forward of any excess or overpaid income tax for a given taxable year is limited to the succeeding taxable year only.[34] Clearly, limiting the right to carry-over the balance of respondent's advance payment only to the immediately succeeding taxable year would be unfair and improper considering that, at the time payment was made, BIR was put on due notice of PNB's intention to apply the entire amount to its future tax obligations.

In *Commissioner vs. Phil-am Life,*[35] the Court ruled that an availment of a tax credit due for reasons other than the erroneous or wrongful collection of taxes may have a different prescriptive period. Absent any specific provision in the *Tax Code* or special laws, that period would be ten (10) years under Article 1144 of the *Civil Code*. Significantly, *Commissioner vs. Phil-Am* is partly a reiteration of a previous holding that even if the two (2)-year prescriptive period, if applicable, had

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[34] *Paseo Realty & Development Corporation vs. Court of Appeals,* 440 SCRA 235 [2004].

[35] *See* Note # 15, *supra*.

Supreme Court E-Library

already lapsed, the same is not jurisdictional[36] and may be suspended for reasons of equity and other special circumstances.[37]

While perhaps not in all fours because it involved the refund of overpayment due to misinterpretation of the law on franchise, our ruling in *Panay Electric Co. vs. Collector of Internal Revenue,*[38] is apropos. There, the Court stated:

"x x x (L)egally speaking, the decision of the Tax Court [on the two-year prescriptive period for tax refund] is therefore correct, being in accordance with law. However, one's conscience does not and cannot rest easy on this strict application of the law, *considering the special circumstances that surround this case.* Because of his erroneous interpretation of the law on franchise taxes, the Collector, from the year 1947 had illegally collected from petitioner the respectable sum of . . . From a moral standpoint, the Government would be enriching itself of this amount at the expense of the taxpayer. (Words in bracket added and italics added.)

Like the CA, this Court perceives no compelling reason why the principle enunciated in *Panay Electric* and *Commissioner vs. Phil-Am Life* should not be applied in this case, more so since the amount over which tax credit is claimed was theoretically booked as advance income tax payment. It bears stressing that respondent PNB remitted the ₱180 Million in question as a measure of goodwill and patriotism, a gesture *noblesse oblige*, so to speak, to help the cash-strapped national government. It would thus indeed, be unfair, as the CA correctly observed, to leave respondent PNB to suffer losing millions of pesos advanced by it for future tax liabilities. The cut becomes all the more painful when it is considered that PNB's failure to apply the balance of such advance income tax payment from 1992 to 1996 was, to repeat, due to business downturn experienced by the bank so that it incurred no tax liability for the period.

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[36] *Oral & Dental College vs. CA,* 102 Phil. 912 [1958].

[37] *Panay Electric Co. vs. Collector,* 103 Phil. 819 [1958].

[38] *Ibid*.

Supreme Court E-Library

The rule of long standing is that the Court will not set aside lightly the conclusions reached by the CTA which, by the very nature of its functions, is dedicated exclusively to the resolution of tax problems and has, accordingly, developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[39] It is likewise settled that to a claimant rests the onus to establish the factual basis of his or her claim for tax credit or refund.[40] In this case, however, petitioner does not dispute that a portion of the ₱180 Million PNB remitted to the BIR in 1991 as advance payment remains unutilized for the purpose for which it was intended in the first place. But petitioner asserts that respondent's right to recover the same is already time-barred. The CTA upheld the position of petitioner. The CA ruled otherwise. We find the CA's position more in accord with the facts on record and is consistent with applicable laws and jurisprudence.

Verily, the suspension of the two (2)-year prescriptive period is warranted not solely by the objective or purpose pursuant to which respondent PNB made the advance income tax payment in 1991. Records show that petitioner's very own conduct led the bank to believe all along that its original intention to apply the advance payment to its future income tax obligations will be respected by the BIR. Notwithstanding respondent PNB's failure to request for tax credit after incurring negative tax position in 1992, up to taxable year 1996, there appears to be a valid reason to assume that the agreed carrying forward of the balance of the advance payment extended to succeeding taxable years, and not only in 1992. Thus, upon posting a net income in 1997 and regaining a profitable business operation, respondent bank promptly sought the issuance of a TCC for the reason that its credit balance of ₱73,298,892.60 remained

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[39] *Sea-land Service, Inc. vs. CA,* 357 SCRA 441 [2001]; *Commissioner of Internal Revenue vs. Cebu Toyo Corporation,* 451 SCRA 447 [2005].

[40] *Commissioner of Internal Revenue vs. Tokyo Shipping Co. Ltd.,* 244 SCRA 332, 336.

Supreme Court E-Library

unutilized. If ever, petitioner's pose about respondent PNB never having made a written claim for refund only serves to buttress the latter's position that it was not out to secure a refund or recover the aforesaid amount, but for the BIR to issue a TCC so it can apply the same to its future tax obligations.

Lest it be overlooked, petitioner peremptorily denied the request for tax credit on the ground of its having been filed beyond the two (2)-year prescriptive period. In the same breath, however, petitioner appears to have glossed over an incident which amounts to an earlier BIR ruling that "*there is no legal question to be resolved but only a factual investigation*" in the processing of PNB's claim. Even as petitioner concluded such administrative investigation, it did not deny the request for issuance of a tax credit certificate on any factual finding, such as the veracity of alleged business losses in the taxable years 1992 to 1996, during which the respondent bank alleged the credit balance was not applied. Lastly, there is no indication that petitioner considered respondent's request as an ordinary claim for refund, the very reason why the same was referred by the BIR for processing to the Operations Group of the Bureau.

Hence, no reversible error was committed by the CA in holding that, upon basic considerations of equity and fairness, respondent's request for issuance of a tax credit certificate should not be subject to the two (2)-year limitation in Section 230 of the NIRC.

With the foregoing disquisitions, the Court finds it unnecessary to delve on the question of whether or not mistakes of tax officers constitute a bar to collection of taxes by the BIR Commissioner.

The procedural issue presently raised by petitioner, *i.e.,* respondent PNB's alleged non-compliance with the forum shopping rule when its petition for review filed with the CTA did not contain the requisite authority of PNB Vice President Ligaya R. Gagolinan to sign the certification, need not detain us long.

Supreme Court E-Library

Petitioner presently faults the CA for not having taken notice that PNB's initiatory pleading before the CTA suffers from an infirmity that justifies the dismissal thereof. But it is evident that the issue of forum shopping is being raised for the first time in this appellate proceedings. Accordingly, the Court loathes to accommodate petitioner's urging for the dismissal of respondent's basic claim on the forum-shopping angle. As earlier ruled by this Court, a party ought to invoke the issue of forum shopping, assuming its presence, at the first opportunity in his motion to dismiss or similar pleading filed in the trial court. Else, he is barred from raising the ground of forum shopping in the Court of Appeals and in this Court.[41] So it must be here.

WHEREFORE, the petition is *DENIED* for lack of merit and the assailed decision and resolution of the Court of Appeals in CA-G.R. SP No. 76488 *AFFIRMED*.

No pronouncement as to costs.

SO ORDERED.

Panganiban (Chairman), Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.,* concur.

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[41] *Young vs. Keng Seng,* 398 SCRA 629.