REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGP INDUSTRIAL CORPORATION (formerly AGP INVESTMENT CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5239

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 13 1999

x - x

DECISION

This case involves a claim for refund in the amount of P912,659.35 allegedly representing unutilized creditable withholding tax for taxable year 1992.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws; and is engaged in business as holding company that provides management services for various firms and construction companies nationwide (Exh A-2).

Petitioner alleges that in the course of its business during the year concerned, it received income payments in the form of management fees from various sources wherein the 5% withholding tax were withheld in the total amount of P912,659.35. It claimed that these creditable taxes were not utilized because Petitioner suffered a net loss in the amount of P18,146,395.00 for the aforesaid taxable year 1992, thus, resulting in an overpaid income tax of ₱912,659.35. Petitioner likewise claim to have incurred a net loss in 1993 as shown by its income tax return, therefore, the excess income tax payments of the previous year 1992 were not credited to the succeeding year. Consequently, Petitioner filed a claim for refund of such uncredited income tax payments made in 1992 in a letter, dated December 1, 1994, which was received by the Respondent on December 15, 1994 (Exh. G). Records show that Respondent did not act on the claim for refund. Subsequently, on April 12, 1995, a petition for review was filed before this Court.

In her Answer to the petition, Respondent asserted the following special and affirmative defenses, to wit:

SPECIAL AND AFFIRMATIVE DEFENSES

> 5. Petitioner's claim for refund/and or request for issuance of tax credit certificate is yet pending the requisite administrative investigation or verification by Respondent.
>
> 6. The amount alleged to have been withheld was collected in accordance with law and regulations, thus, not refundable.
>
> 7. It is well settled rule that claims for refund are construed strictly against claimants since they partake of the nature of exemption from taxation (Resins, Inc. vs. Auditor General, 25 SCRA 754 [1968]).

The issue for the consideration of this Court is whether or not Petitioner has substantiated its claim for refund or tax credit in the amount of ₱912,659.35

representing unutilized creditable income tax for the year 1992.

Petitioner presented as evidence its 1992 annual corporate income tax return filed on July 8, 1993 showing a net loss of P18,146,395.00 (Exhs. B and B-1). Also reflected in said return is the amount of P912,659.35 corresponding to the creditable income tax withheld for that same year. To further prove that it was unable to credit the overpaid amount of the previous year to the next succeeding quarters of the taxable year 1993, Petitioner presented its 1993 annual corporate income tax return showing a net loss of P12,387,461.00 (Exh. F-17). Copies of certificates of creditable income taxes withheld by its various agents in 1992 were also offered in evidence.

At this point, it is best to review the applicable provisions of the law and revenue regulations, plus the evidence presented by the Petitioner, to determine whether or not there has been compliance with the requirements to warrant the refund of the amount claimed for the taxable year 1992.

Section 69 of the Tax Code authorizes the application of excess income taxes paid for a particular taxable year on the quarterly income tax liabilities for the taxable quarters of the succeeding taxable year, thus:

> **Sec. 69.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be;
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

If the succeeding taxable year upon which the excess income taxes of the previous year likewise results in a loss, a claim for refund must be filed within the two-year period from payment in accordance with Section 230 of the Tax Code. As in the instant case, a refund of unutilized creditable income tax shall be granted if there is compliance with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85. Compliance with these requirements has been reiterated in a number of cases decided by this Court, namely: **Citytrust Finance Corp. vs. CIR, CTA Case No. 4143, November 11, 1991; Oranbo Realty Corp. vs. CIR, CTA Case No. 5082, January 16, 1997; Ayala vs. CIR, CTA Case No. 5081, March 31, 1997; PDCP vs. CIR, CTA Case No. 5237, March 23, 1997.** The Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. CTA and Paseo Realty and Development Corp., CA-G.R. SP No. 32927, dated February 28, 1994,** upheld the decision of this Court acknowledging compliance with the three basic requirements to warrant the refund of excess creditable income taxes.

These requirements are as follows:

> 1. That Petitioner filed a claim for refund within the two year period as prescribed by Section 230 of the Tax Code;
>
> 2. That the income upon which the taxes were withheld were included in the return of the recipient;
>
> 3. The fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

Records show that Petitioner filed a claim for refund with the BIR and with this Court within the two year prescriptive period as mandated by Section 230 of the Tax Code. The Supreme Court in the case of **Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989,** held that the "two year prescriptive period within which to claim a refund commences to run at the earliest on the date of filing of the adjustment final tax return" (see also **ACCRA Investments Corp. vs. CIR, G.R. No. 96322, dated December 20, 1991, 204 SCRA 957**) because it is only then that Petitioner can ascertain whether it made profits or incurred losses in its business operations. In the instant case, Petitioner filed its tentative annual income tax return for the calendar year 1992 on April 15, 1993 (Exhibit B-17), hence Petitioner had until April 15, 1995 within which to file its petition for review in this Court, pursuant to Section 230 of the Tax Code. Thus, when Petitioner filed with the BIR the said claim on December 15, 1994 (Exh. G) and with this Court on April 12, 1995, the two-year reglementary period had not yet lapsed, thereby showing compliance with the aforementioned requirement numbered one.

As to the second requirement, it has been established that Petitioner declared the income from which the taxes were withheld in its income tax return covering the taxable year 1992 (Exh. B). The management fees in the total amount of ₱18,253,179.50 from which a 5% income tax of ₱912,659.35 was withheld is also indicated in the aforecited 1992 income tax return of Petitioner (Exh. B-1).

A careful examination of the evidence presented by the Petitioner in compliance with the third requirement show that all of these documents presented by Petitioner warrant the refund of the amount prayed for. The proof of withholding is well established by the presentation of copies of Certificate of Creditable Income Tax Withheld at Source (BIR Form No. 1743.1) showing that the amount which is the subject of the claim was in fact withheld by the withholding agents and remitted to the BIR (Exhs. C, D).

Likewise, Petitioner incurred losses for both taxable years 1992 and 1993, thus, it had no income tax liabilities against which to credit the creditable taxes withheld as supported by its income tax returns and audited financial statements for 1992 and 1993 (see Exhibits B, E, F, inclusive of submarkings).

As regards the contention of Respondent that the alleged tax withheld must be shown to have been paid and remitted to Respondent's Bureau, this Court finds the same untenable. We believe that it is no longer necessary for the Petitioner to establish such fact since compliance with the aforementioned requirements is sufficient in granting the claim for refund. The withholding agent is not required to furnish each recipient a copy of the payment order and confirmation receipt, only the written statement, the BIR Form 1743.1, having been signed under the pain of perjury, can be taken on its face and as an admission of the withholding agent **(Filipinas Management & Leasing Services Corp. vs. CIR, CTA Case No. 4146, March 11, 1994).**

All told, We find Petitioner's claim for refund to be in order.

WHEREFORE, in view of the foregoing premises, Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of P912,659.35 as unutilized creditable withholding tax, detailed as follows:

Withholding Agent	Amount of Income Payment	Tax Withheld	Exh.
Royal Undergarment Corp. of the Phils., Inc.	P16,630,066.75	P831,503.35	C
Atlantic Gulf and Pacific Company of Manila, Inc.	1,623,112.75	81,156.00	D
		P912,659.35	

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge