REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus - **CTA Case No. 6087**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 12 2001

x - x

DECISION

The case at bar is a Petition for Review seeking for the refund, or in the alternative, for the issuance of a Tax Credit Certificate in the amount of FOUR HUNDRED TWENTY SEVEN THOUSAND THREE HUNDRED NINE PESOS (P427,309.00) allegedly representing the unutilized creditable income tax withheld at source for calendar year ended December 31, 1997.

The facts of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office located at 3/F Asian Bank Center, 328 Sen. Gil Puyat Avenue, Makati City.

On February 7, 2000, Petitioner filed with the Bureau of Internal Revenue (BIR, for Brevity) its Amended Corporate Annual Income Tax Return for the calendar year 1997 (Exhibit A) reporting a net loss amounting to P7,369,426.00. Earlier, on April

15,1998, Petitioner filed its original Corporate Annual Income Tax Return covering the same period. *(Joint Stipulation of Facts and Issues, Item No.2, CTA docket p.102)*

Records show that for taxable year 1997, Petitioner had an income tax overpayment of P693,270.00 (Exhibit A-4), broken down as follows:

Prior Year's Excess Credit	P 11,991.00
1st Quarter Income Tax Payment	599,484.00
Creditable Taxes withheld on Real Property Rental	81,795.00
	P 693,270.00

The prior year's excess credit of P 11,991.00 was the subject of a judicial claim for refund which obtained a favorable judgment from this Court. Thus, in the case of **Anscor Hagedorn Securities, Inc vs. CIR, docketed as C.T.A Case no 5797, promulgated on March 27, 2000**, Petitioner was able to refund the amount of P11,991.00 leaving a balance of unutilized, overpaid income tax for that year in the amount of P681,279.00.

Petitioner opted to have the aforesaid overpaid income tax to be carried over to the next succeeding taxable year. However, in the year 1998, Petitioner still suffered a net loss in its operations amounting to P 601,453.00 as evidenced by its Amended Corporate Annual Income Tax Return for the calendar year 1998 (Exhibit B-4). Since Petitioner did not have any tax due at the normal rate for the year 1998 (Exhibit B-5), Petitioner was made liable to pay the Minimum Corporate Income Tax (MCIT) of P253,970.00 (Exhibit B-6). Petitioner then applied the 1997 excess income tax in the amount of P681,279.00 to the 1998 MCIT of P253,970.00 leaving a balance of P427,309.00 which is now the subject of the instant claim for refund.

On April 6,2000, Petitioner filed with the BIR an application for the refund of its overpaid income tax for 1997. *(Joint stipulation of Facts, item no. 5, CTA docket p.103).* An amended application for refund was later filed with the BIR on April 13, 2000 *(Joint Stipulation of Facts, Item no. 6, CTA docket p.103).*

As the Respondent did not act on the said administrative claim for refund, Petitioner elevated the matter before this Court by way of Petition for Review on April 14, 2000 in order to toll the running of the two-year prescriptive period.

In answer to the instant Petition, Respondent set forth the following Special and Affirmative Defenses, to wit:

> "1. The Petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 2. Petitioner's claim for refund has partially, if not totally, prescribed;
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> 3. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);*
>
> 4. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute *(Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);*
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> 5. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

6. It is incumbent upon Petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable."

On February 21, 2001, Petitioner filed its "Formal Offer of Evidence" and presented the following relevant and documentary exhibits in order to substantiate its claim, thus:

Exhibits	Description
A, B and C	Amended Corporate Annual Income Tax Returns for calendar year ended 1997, 1998 and 1999, respectively
D, E and F	Corporation Quarterly Income Tax Returns for the 1st, 2nd and 3rd Quarters of 1997, respectively
G	Certificate of Creditable Tax Withheld at Source filed by Vickers Ballas Securities for taxable year 1997

On July 26, 2001, Petitioner submitted its Memorandum to support its claim for refund. Respondent, on the other hand, did not present controverting evidence and chose not to submit its memorandum to bolster his defenses.

This court is now confronted with the task of resolving the following issues jointly stipulated by the Parties, thus:

1. Whether or not Petitioner has overpaid income tax for the calendar year ended December 31, 1997 in the amount of P 427,309.00;

2. Whether or not the Petitioner is entitled to the refund of the said amount;

3. Whether or not the said overpaid income taxes are substantiated by evidence.

Petitioner cited Section 69 of the 1997 Tax Code, as amended as its legal basis for the claim for refund, thus:

> "**Section 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."

Explicit from the above provision is the option granted by law to a taxpayer to either refund or credit to the succeeding year the excess and overpaid income tax not utilized nor otherwise applied to the taxpayer's income tax liabilities. In the case at bar, Petitioner opted to refund its excess income tax because of the impossibility to carry it over to the succeeding year as it suffered a loss in its operations.

Records reveal that for calendar year 1997, Petitioner was in a net loss position with no income tax liabilities and an overpaid income tax amounting to P 693,270.00. An attempt of Petitioner to carry-over said excess income tax likewise proved futile as it again suffered a loss in 1998. These facts are clearly reflected in Petitioner's annual income tax returns for the years 1997 and 1998 (Exhibits A and B). The Respondent did not refute Petitioner's allegation of loss in its business operations, hence, we uphold the truthfulness of said averment and give credence to the aforesaid ITRs.

It can be gleaned from the foregoing that it is beyond doubt that Petitioner's overpaid income tax for 1997 was not fully utilized. While it is true that Petitioner carried over the 1997 overpaid income tax to the succeeding taxable year (1998), the 1997 tax overpayment was not fully applied and utilized against Petitioner's income tax liability consisting of the MCIT in the minimal amount of P253,970.00. Clearly, Petitioner still has unapplied 1997 Prior Year's Excess Credits of P427,309.00, computed as follows:

1997 Prior Year's Excess Credit			P 693,270.00
Less:	MCIT due for 1998	P 253,970.00	
	Prior Year's Excess Credit-refunded pursuant to CTA Case No. 5797	11,991.00	265,961.00
Total Unutilized income tax			P 427,309.00

In addition, the 1997 overpaid income tax was likewise not carried over to taxable year 1999 as no amount was reflected opposite the capt.on Prior Years Excess Credit in Petitioner's 1999 Corporate Annual Income Tax Return (Exhibit C). This goes to prove that Petitioner still has unutilized income tax for the year 1997.

We now proceed to the aspect of substantiation.

In a long line of cases decided by this Court and affirmed by the Supreme Court in the case of ***Citibank, N.A. versus Court of Appeals and Commissioner of Internal Revenue, G.R. No.107434, October 10, 1997***, three basic requirements must be complied with before a claim for refund and /or tax credit of creditable withholding taxes is granted, thus:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the NIRC, as amended;
2. that the income upon which the taxes were withheld were included in the return of the recipient; and
3. that the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

A perusal of the records of the case reveals that Petitioner complied with the aforesaid requirements. As reckoned from the date when Petitioner filed its 1997 Original Income Tax Return on April 15, 1998 *(Joint Stipulation of Facts, Item No.2, CTA docket p.105)*, it is evident that the two-year prescriptive period was properly observed, considering that the administrative claim for refund was filed on April 6, 2000 *(Joint Stipulation of Facts, item no.5, CTA docket, p.106)* and the instant Petition on April 14,2000.

With respect to the second requirement, the records also disclose that this was complied with. Petitioner declared in its income tax return for the calendar year ended December 31, 1997, a gross income in the amount of P 64,178,466.00 (Exhibit A-5).

Clearly the income payments from which the taxes were withheld, were included and reflected in the said return as part of Petitioner's gross income.

And lastly, the fact of withholding of Petitioner's income from the rental of real property is sufficiently proven by a copy of the Certificate of Creditable Taxes Withheld at Source (Exhibit G) issued by Petitioner's withholding agent Vickers Ballas Securities (Phils.), Inc.

It is likewise significant to note that the amount of P599,484.00 representing Petitioner's first quarter income tax payment for 1997 is supported by evidence. Said amount, which represents the portion of the claimed amount, subject of the instant petition, was proven to have been remitted to the government as evidenced by the machine validation of the Bureau's agent bank (Exhibits D-1 and D-3).

It would appear from the foregoing discussion that the 1997 income tax overpayment amounting to P 427,309.00 was fully substantiated by evidence hence we have no recourse but to grant the full amount claimed.

WHEREFORE, the instant Petition for Review is **GRANTED**. Respondent is hereby ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE in favor of Petitioner the total amount of FOUR HUNDRED TWENTY SEVEN THOUSAND THREE HUNDRED NINE PESOS (P 427,309.00) representing overpaid income tax for calendar year ended December 31, 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Amancio Q. Saga

AMANCIO Q. SAGA
Associate Judge

Juanito C. Castañeda, Jr.

JUANITO C. CASTAÑEDA, JR.
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

ERNESTO D. ACOSTA
Presiding Judge