Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

MERCK SHARP & DOHME (I.A) CORPORATION – PHIL. BRANCH
Petitioner,

- versus -

C.T.A. CASE NO. 6078

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 14 2001

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DECISION

This case involves a claim for refund or in the alternative the issuance of a tax credit certificate in favor of the Petitioner covering its excess or unutilized creditable income taxes withheld at source for the taxable year 1997 in the amount of P937,195.00.

Petitioner is a resident foreign corporation licensed to engage in business in the Philippines through its branch office located at Rufino Towers, Ayala Avenue, Makati City. It is engaged in the distribution of pharmaceutical products.

On April 15, 1998, Petitioner filed with the BIR its 1997 Corporate Annual Income Tax Return showing a net loss in its business operation in the amount of P156, 975,758.00 and an unutilized creditable income tax of P4,204,314.00. A more detailed computation is presented as follows (Exh "A"):

Gross Sales	P485,164,107.00
Less: Cost of Sales	292,074,765.00
Gross Profit	P193,089,342.00
Add: Other Income	692,944.00
Gross Income	P193,782,286.00
Less: Deductions	350,758,044.00
Net Loss	(P156,975,758.00)
Tax Credit	P4,204,314.00

For taxable year 1998, Petitioner filed its Corporate Annual Income Tax Return on April 16, 1999 declaring a tax due of P3,267,119.00 which was paid by partially crediting the amount of unutilized creditable taxes carried over from taxable year 1997. Thus, leaving a balance of P937,195.00 in the said 1997 creditable withholding tax. (Exh "B"). This balance was no longer carried over by the Petitioner to its 1999 Income Tax Return and what was carried over was the 1998 income tax credit of P5,626,798.00 which was applied against the minimum income tax return of the said corporation for the said 1999 taxable year (Exh "C").

Consequently on February 23, 2000, petitioner filed its administrative claim for refund into the Bureau of Internal Revenue. Respondent failed to act with finality upon said claim for refund. And considering that the two-year period within which to file the judicial claim for refund is about to expire, Petitioner is constrained to file the instant Petition for Review on April 14, 2000 pursuant to Section 230 of the Tax Code.

Respondent in his answer, raised the following Special and Affirmative defenses:

1. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
2. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
3. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
4. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
5. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 (now Section 229) of the Tax Code, as amended.
6. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**

However, after pre-trial, parties stipulated to submit to the Court the following issues for resolution:

1. Whether or not the amount of P4,204,314.00 was withheld from income payments made to the petitioner for the taxable year 1997.

2. Whether or not the income from which the amount of P4,204,314.00 was withheld was declared by the petitioner as part of its taxable income.

3. Whether or not the excess creditable income tax withheld at source for taxable year 1997 was not fully utilized during the succeeding taxable year (1998), thereby leaving an excess/unutilized portion amounting to P937,195.00

4. Whether or not the creditable withholding taxes being claimed for refund are duly substantiated by the appropriate withholding tax certificates.

5. Whether or not the petitioner filed a claim for refund of the amount of P937,195.00 representing excess/unutilized creditable income tax withheld at source for the taxable year 1997 with the Bureau of Internal Revenue within the two-year period prescribed by law.

6. Whether or not the amount of P937,195.00 representing excess/unutilized creditable income tax withheld at source for the taxable year 1997 was applied against any income tax liability for the succeeding taxable year/s.

After a careful scrutiny of the evidence adduced solely by Petitioner, we find the latter to be entitled to a partial refund.

To be entitled to a refund of excess creditable income taxes, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

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 payer (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994].**

The aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank, NA vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.**

With reference to the first requirement, that the aforementioned facts clearly shows that the administrative claim for refund as well as the Petition for Review were filed well within the two-year period prescribed by Section 230 of the Tax Code. On April 15, 1998, Petitioner filed its final 1997 Corporate Annual Income Tax Return while the instant Claim for Refund was filed with the BIR on February 23, 2000 and the Petition for Review on April 14, 2000.

On the second requirement, the 1997 Final Income Tax Return of Petitioner, shows that for the said taxable year it earned a total gross sales of P485,164,107 under Section "C" and P4,204,314 creditable withholding taxes under Section "E".

As testified by its Accounting Manager, Ms. Cecilla Castro, these taxes were withheld by its customers; Rizal Commercial Banking Corporation and Zuellig Pharma Corporation for its sales. It was reported as part of its gross sales (TSN dated November 29, 2000).

On the third requirement, the total amount of tax credits for the taxable year 1997 are duly substantiated by the necessary certificates issued by the withholding agent to the Petitioner, as follows:

Withholding Agent	Exhibit	Amount of Tax Withheld	Period Covered
Rizal Commercial Banking Corporation (RCBC)	E	P 589,035.27	Jan-Sept 1997
Zuellig Pharma Corporation	F	617,881.75	1st quarter of 1997
Zuellig Pharma Corporation	G	904,444.54	2nd quarter of 1997
Zuellig Pharma Corporation	H	819,401.52	3rd quarter of 1997
Zuellig Pharma Corporation	I	129,762.53	4th quarter of 1997
Zuellig Pharma Corporation	J	949,767.25	4th quarter of 1997
Rizal Commercial Banking Corporation (RCBC)	K	194,021.46	October 1997
TOTAL		**P4,204,314.32**	

Furthermore the records shows that the balance of the 1997 excess creditable withholding tax amounting to P937,195,000.00 after applying the original amount of

P4,204,314.00 against its tax obligation in 1998 in the amount of P3,267,119.00 was not carried further to the subsequent Taxable Year 1999, as clearly shown in Exhibit "C".

In view of all the foregoing and pursuant to Section 69 of the National Internal Revenue Code:

> "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 of the 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 year."

we find the claim meritorious.

WHEREFORE, finding the claim meritorious, this court hereby GRANT the claim but in a reduced amount of P937,195.00.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

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
Presiding Judge