REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN MIGUEL FOODS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5622

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 20 2000

x - x

DECISION

This is a Petition for Review seeking for the refund or the issuance of a tax credit certificate in the total amount of NINE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND SIX HUNDRED SIX PESOS (P9,489,606.00), representing the alleged unutilized and excess creditable income tax for the calendar year ended December 31, 1995.

Petitioner is a domestic corporation engaged primarily in the feeds, livestock and poultry business (Exh. B). It is duly registered with the Securities and Exchange Commission with SEC Registration No. AS 091-195953 (Exh. B-1).

On April 17, 1995 and April 15, 1996, Petitioner filed with the Bureau of Internal Revenue (BIR, for brevity) its 1994 and 1995 Annual Income Tax Return, respectively, which showed the following details:

	ANNUAL INCOME TAX RETURN	
	1994 (Exhs. C to C-10)	1995 (Exhs. C-17 to C-25)
Taxable Income	P166,999,985.99	P 52,356,478.21

Tax due	P 58,449,995.00	P 18,324,767.37
Less: Tax Credits/Payments	27,529,901.94	24,990,472.27
Tax Payable/(Refundable)	P 30,920,093.06	(P 6,665,704.90)

As can be inferred from the said 1995 Tax Return (Exh. C-17), Petitioner intended to apply the 1995 income tax refundable as tax credit for the succeeding year 1996. However, the intended application became nugatory due to the fact that in calendar year 1996, Petitioner suffered a net loss from its operation in the amount of P9,525,376.71 (Exhibits C-30 to C-36), leaving no income tax liability from which the said overpayment could be applied. For the calendar year 1997, Petitioner again suffered a net operating loss in the amount of P186,777,982.82. Thus, the excess creditable income tax in 1995 was unutilized.

On November 21, 1997 and April 13, 1998, Petitioner filed with the BIR two separate administrative claims for refund of the 1995 excess unutilized income taxes withheld of P6,665,704.90 and P5,265,185.84 (Exhs. F to F-3 and F-4 to F-7, inclusive), respectively. The latter amount corresponds to the 1995 certificates of creditable withholding taxes which were not reflected in Petitioner's 1995 annual income tax return because Petitioner received the said certificates only after it had already filed its 1995 annual income tax return on April 15, 1996 (see TSN, December 10, 1998, pp. 11-12).

Since Respondent neither granted nor acted upon the claims for refund, Petitioner filed the instant Petition for Review on April 14, 1998 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

During the course of the trial, the Court commissioned an independent auditing firm to examine and verify Petitioner's claim for refund. In its final report dated October

10, 1998 (Exh. AA), said auditing firm, stated that out of the total claim for refund of P11,930,891.00 only the amount of P9,489,606.00 is adequately supported by certificates of creditable withholding tax at source and other documents. It also said that the remaining amount of P2,441,285.00 cannot be substantiated and was inadvertently included in the total claim for refund.

On the basis of said findings, Petitioner filed with the BIR on October 13, 1998 its 1994 and 1995 Amended Annual Income Tax Returns, wherein it corrected its 1994 and 1995 total amount of tax credits/payments leaving the amount of income, expenses and income tax due unchanged. The correction in the amount of tax credits was done in order to properly reflect the excess amount of creditable withholding tax payment for 1994 and 1995 of P1,549,384.52 and P9,489,606.16, respectively. The former amount was carried over to 1995 and included in the total creditable withholding tax payment of P27,814,373.53 which was applied against an income tax due of P18,324,767.37 resulting to an excess creditable withholding tax payment for 1995 of P9,489,606.16. Details of the said Amended Annual Income Tax Returns are as follows:

	AMENDED ANNUAL INCOME TAX RETURN	
	1994 (Exhs. C-11 to C-15)	1995 (Exhs. C-26 to C-28)
Taxable Income	P166,999,985.99	P 52,356,478.21
Tax due	P 58,449,995.00	P 18,324,767.37
Less: Tax Credits/Payments	59,999,379.52	27,814,373.53
Tax Payable/(Refundable)	P 1,549,384.52	(P 9,489,606.16)

Thus, in its Memorandum dated November 25, 1999, Petitioner prayed for the refund of P9,489,606.00 instead of the amount prayed for in the original Petition for Review of P11,930,890.74.

By way of Answer to the instant Petition for Review, Respondent interposed the following Special and Affirmative Defenses, to wit:

> "5. Petitioner's claim for refund is under verification/investigation by Respondent Commissioner of Internal Revenue;
>
> 6. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
>
> 7. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation (Manila Electric Co, vs. Commissioner of Internal Revenue, 67 SCRA 351);
>
> 8. Taxes are presumed to have been paid and collected in accordance with law."

In order to support its entitlement to the said claim, Petitioner presented the following documents:

1. Certificates of creditable withholding tax at source (Exhs. AA-1, A-3 to A-302);

2. Amended Articles of Incorporation and SEC Certificate of Registration (Exhs. B to B-1);

3. Corporation Annual Income Tax Return for the year 1994 (Exh. C-13); 1995 including the Amended Return (Exhs. C-17 to C-29a); 1996 (Exhs. C-30 to C-36); 1997 (Exh. H);

4. Audited Financial Statement with external Auditor's Report for 1994 and 1995; 1995 and 1996 (Exhs. D to D-8; D-9 to D-17);

5. Letter request for tax credit/refund to BIR (Exhs. F to F-7);

6. Results of BIR examinations for years 1994 and 1995 including payments of taxes due to said examination (Exhs. G to G-12a)

Respondent, on the other hand, presented the following documentary exhibits:

a. Memorandum Report showing the result of the investigation conducted by Respondent's examiner (Exh. 1);

b. List of withholding agents and the corresponding amount of taxes withheld (Exh. 2);

c. Revenue Officer's Audit Report on Income tax (Exh. 3);

d. Pre-Assessment Notice of the proposed deficiency assessment (Exh. 4);

e. Authority to Accept Payment (Exh. 5);

f. Transcript of Assessment (Exh. 4-a)

The only issue to be resolved by this Court is whether or not Petitioner is entitled to the refund of the sum of P9,489,606.00 representing the alleged overpaid creditable withholding tax for the calendar year ended December 31, 1995.

Petitioner anchored its claim for refund of the aforementioned excess creditable withholding tax on Section 69 (now Section 76) and Section 230 (now Section 229) of the Tax Code. For easy reference, said provisions are quoted hereunder as follows:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the 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.

Section 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 collected without authority, or of any sum alleged to have been excessively 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.

Although the 1995 excess tax credits of P6,665,704.00 shown per Petitioner's original 1995 annual income tax return were carried over to its 1996 annual income tax return, the same were not utilized since Petitioner incurred a net loss of P9,525,378.71 in 1996 (Exh. C-30). The 1996 excess tax credits were no longer carried over by Petitioner to 1997 since the excess tax credits of P42,165,752.73 shown in the Petitioner's 1997 annual income tax return corresponds only to the amount of income taxes withheld in 1997 (Exh. H). As the Petitioner was not able to utilize the 1995 overpaid income tax to the succeeding years due to the losses it incurred, it appears therefore that the amount claimed for refund is in order, pursuant to Section 69 of the Tax Code.

However, before a refund or credit of the tax withheld can be given due course, it is imperative for the claimant to show compliance with the three basic requisites for the claim for refund to be granted. Thus, as laid down by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** the following are the said requisites:

1) That the claim for refund was filed within two years as 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 duly issued by the payor (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**].

We now discuss Petitioner's compliance with the aforementioned requirements.

The first requirement calls for the strict compliance with the two-year prescriptive period as provided by Section 230 of the Tax Code (now Section 229 of the 1997 Tax Code). A careful perusal of the records of this case reveals that Petitioner was able to comply with this requirement. Counting from April 15, 1996 (Exh. C-25), the date when the 1995 original annual income tax return was filed, both Petitioner's administrative claims, which were filed on November 21, 1997 and April 13, 1998 and its judicial claim with this Court which was filed on April 14, 1998 all fall within the two-year prescriptive period as provided by law.

As to the second requisite, records show that Petitioner declared in its 1995 amended annual income tax return the income payments from which the excess income taxes of P9,489,606.00 were withheld as part of its gross income of P1,246,683,869.30 (Exh. C-26).

Finally, Petitioner likewise complied with the third requirement as evidenced by the Certificates of Creditable Tax Withheld at Source issued by various withholding agents to Petitioner for the year 1995 (Exhs. A-3 to A-302, inclusive).

However, this Court noted that out of the P9,489,606.00 excess creditable withholding taxes verified by the independent auditor to have been properly supported by certificates of withholding tax, there were certificates that were irregularly issued as the payee was not in the name of the Petitioner and were not duly signed by the withholding agents. These defective certificates amount to P7,582.99 detailed as follows:

1.) Certificates of Creditable Tax Withheld at Source not in the name of San Miguel Foods, Inc.

Exh.	Withholding Agent	Period Covered	Income Payment	Income Tax Withheld
A-32	CK Sy Comm'l Ind'l Mgt.	July '95	P 70,220.27	P 702.20
A-38	CK Sy Comm'l Ind'l Mgt.	July '95	43,608.73	436.09
A-205	Wenphil Corporation	May '95	48,434.00	484.34
A-258	Honestrading Corp.	Jul.-Sept. '95	257,041.83	2,570.42
		subtotal:	P 419,304.83	P 4,193.05

2.) Certificates of Creditable Tax Withheld at Source without signatures from the withholding agents

Exh.	Withholding Agent	Period Covered	Income Payment	Income Tax Withheld
A-55	CK Sy Comm'l Ind'l Mgt.	April '95	P 37,220.55	P 372.21
A-56	CK Sy Comm'l Ind'l Mgt.	Aug. '95	29,120.63	291.20
A-61	CK Sy Comm'l Ind'l Mgt.	Mar '95	8,513.73	85.14
A-63	CK Sy Comm'l Ind'l Mgt.	Aug. '95	43,218.09	432.18
A-81	CK Sy Comm'l Ind'l Mgt.	Sept. '95	82,903.50	829.04
A-82	CK Sy Comm'l Ind'l Mgt.	Sept. '95	41,875.00	418.75
A-85	CK Sy Comm'l Ind'l Mgt.	Aug. '95	95,493.52	954.94
A-106	Gant Diamond Corp.	Feb. '95	648.00	6.48
		subtotal:	P 338,993.02	P 3,389.94
		Grand Total:	P 758,297.85	P 7,582.99

In its Memorandum dated December 8, 1999, Respondent contends that the certificates of income taxes withheld are not the best proof of withholding tax remittances. Respondent argues that the Petitioner should have presented a certification from the Respondent's Revenue Accounting Division as to the fact of the remittance of the income taxes withheld.

We do not agree.

Contrary to the Respondent's allegation, the certificates of creditable tax withheld at source are sufficient proof of the actual withholding of the income tax provided under Revenue Regulations 6-85 as amended. And pursuant to Sections 50 and 51 of the then Tax Code, the withholding of income taxes and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Thus, as held in the recent case of **San Miguel Properties, Inc. (formerly Monterey – San Miguel Properties, Inc., formerly Monterey Farms Corp. vs. CIR, CTA Case No. 5621, August 12, 1999, citing the**

case of CIR vs. Citytrust Banking Corp., CA G.R. Sp No. 26839, July 31, 1992, We ruled:

> "All that is required by law and/or implementing regulations to show proof of withholding is the presentation of the Statements of Tax Withheld at Source (BIR Form 1743.1), showing the income received and the amount of tax withheld therefrom and that the income was included to form part of Petitioner's gross income as stated in its income tax return. The reason for this is simple. The withholding agent is not within the control of the payee-taxpayer but is considered an agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government."

Respondent likewise argues that even granting that the Petitioner is entitled to the refund sought for, it should only be in the amount of P6,665,704.00 as this was the only excess unutilized creditable taxes withheld per revenue examiner's report of investigation on the 1995 income tax liability of Petitioner.

While it is true that Respondent examined Petitioner's 1994 and 1995 books of accounts/accounting records regarding the latter's 1994 and 1995 income, business and withholding tax liabilities (Exhs. 6 to 6-12a; Exhs. 1 to 5), this has never been final as the Petitioner still amended its 1994 and 1995 annual income tax return. The examination conducted by Respondent was based on the original income tax return only and it failed to examine the amended excess creditable withholding taxes of P9,489,606.00 being claimed by Petitioner (see TSN, July 15, 1999). Inasmuch as the amendment was made only to reflect the correct amount of unutilized excess tax credits for 1994 and 1995, there is no reason why such amended returns cannot be considered in determining the correct refundable amount to be granted to Petitioner.

On the bases of the oral and documentary evidence presented, We find that Petitioner has adequately proven its case before this Court. Respondent's contention that tax refunds are in the nature of tax exemptions and as such should be construed in *strictissimi juris* against the entity claiming the exemption cannot be given merit especially if Respondent failed to manifest any effort to rebut or controvert the evidence presented by Petitioner, thus:

> "Respondent's defense which is anchored as usual on the principle that claims for refund are strictly construed cannot possibly withstand as it is always vulnerable to overwhelming evidence which Petitioner was able to present before this Court to prove its claim. As has always been stated in the number of cases decided by this Court, Respondent cannot be allowed to defeat an otherwise valid claim for refund on the strength alone of her denials of Petitioner's allegations in its petition. More so, when the evidence presented by the Petitioner were not disputed by the Commissioner (Shangri-La Plaza, Corp. vs. CIR, CTA Case No. 5346, January 9, 1998, citing Van Melle Phils., Inc. vs. CIR, CTA Case No. 4783, February 6, 1995)."

In view of the foregoing, this Court is inclined to grant the claim for refund prayed for by the Petitioner in the reduced amount of P9,482,023.17 computed as follows:

Tax Due per 1995 amended annual income tax return (Exh. C-26)		P 18,324,767.37
Less: Tax Credits/Payments		
1.) Prior year's excess tax credits	P 1,549,384.52	
2.) 1995 Creditable Tax Withheld (Exh. C-27)	26,264,989.01	27,814,373.53
Amount Refundable (Exh. C-28)		P (9,489,606.16)
Less: 1.) Certificates of Creditable Tax Withheld at Source not in the name of San Miguel Foods, Inc.	P 4,193.05	
2.) Certificates of Creditable Tax Withheld at Source not signed by the withholding agents	3,389.94	7,582.99
Net Refundable Unutilized Tax Credits		P (9,482,023.17)

WHEREFORE, premises considered, finding the petition meritorious, the same is hereby **GRANTED** and Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a Tax Credit Certificate in the amount of P9,482,023.17 representing unutilized and Excess creditable income tax withheld at source for the calendar year ended December 31, 1995.

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