REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PEPSI COLA PRODUCT PHILIPPINES INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 5497**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 21 2000

x - x

DECISION

This case involves a claim for refund/tax credit in the amount of P30,901,698.00 allegedly representing excess creditable withholding taxes for the calendar year ended December 31, 1995.

Petitioner is a domestic corporation primarily engaged in the manufacture and distribution of softdrink products.

On April 12, 1995, Petitioner filed with the Bureau of Internal Revenue its Annual Corporate Income Tax Return for the calendar year ended December 31, 1994 (Exh. A) declaring a taxable income of P3,275,732.00 and an income tax due in the amount of P1,146,506.00. Said return showed total tax credits in the amount of P43,098,988.00 comprising of creditable taxes withheld in the sum of P42,522,888.00 derived from the sale of real properties and quarterly tax payment of P576,100.00. Thus, it appears that there was an excess or unutilized creditable withholding taxes in the amount of P41,952,482.00.

For the period ended December 31, 1995, Petitioner filed its Annual Corporate Income Tax Return on April 15, 1996 (Exh. D) and an amended return on April 10, 1997

(Exh. E) reporting an income tax due of P43,326,979.00. The total creditable taxes withheld for the period was P32,276,195.00 which were mainly taxes withheld from the income payments arising from the sale of real properties. With the excess tax credits in the previous year of P41,952,482.00, petitioner's total tax credits amounted to 74,228,677.00. After deducting its tax due for the period, there remained total excess tax credits of P30,901,698.00.

Consequently, an administrative claim for refund was filed by the Petitioner on April 10, 1997 (Exhibit "K"). Petitioner alleged inaction on the part of the respondent forcing it to come to Us for judicial remedy. But truth to tell, said claim with the BIR was filed just the day before the instant petition was filed by the Petitioner on April 11, 1997.

Petitioner anchored its claim from Section 69 of the Tax Code, as amended, in relation to Section 204(3) of the 1995 Tax Code, quoted hereunder:

> **SEC. 69.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be.
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> 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.

> **SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** The Commissioner may-
>
> xxx xxx xxx
>
> (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use or refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

To bolster its case, Petitioner presented both testimonial and documentary evidence.

Respondent, by way of Special and Affirmative Defenses, states, among other things, that:

1) The petition states no cause of action;

2) It is axiomatic that taxes are presumed to have been collected in accordance with law; and

3) Refund of taxes is in the nature of an exemption from tax and must be strictly construed against the claimant.

Respondent also asserts that by virtue of the tax deficiency assessments issued against herein petitioner, its claim for refund must be denied, if not, reduced.

The issues posed for Our consideration are:

(a) Whether or not the claim for refund may be resolved without proper determination of the assessments issued against petitioner; and

(b) Whether or not petitioner is entitled to the claim sought for.

Respondent contends that to avoid multiplicity of suits, it is necessary and proper that the issue of deficiency tax assessments against petitioner be resolved jointly with its claim for tax refund.

We do not agree. The deficiency tax assessments, which resulted from a regular investigation by the BIR on all internal revenue taxes of the petitioner for 1994, were duly protested and are still pending administrative action. Section 229 of the Tax Code, as amended, provides that if the protest is denied in whole or in part, the taxpayer affected may appeal to Us within thirty days from receipt of the said decision. Corollarily, Section 7 of Republic Act No. 1125 provides that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. Considering therefore that no decision has yet been rendered by the Commissioner relative to the protest filed by the petitioner and no appeal filed before Us, We acquire no jurisdiction over the same. In **Citytrust Banking Corporation versus The Honorable Commissioner of Internal Revenue**, CTA Case No. 4099, October 16, 1997, We held that "With due respect to the Supreme Court's decision, it is the Court's firm stand in hearing a refund case, the CTA cannot hear in the same case an assessment dispute even if the parties involved are the same parties." In other words, the claim for refund can proceed independently of the assessment case.

As regards the second issue, We found that Petitioner is not entitled to the claim for refund/tax credit of alleged excess creditable taxes withheld.

The requirements of a claim for refund of creditable withholding taxes have been clearly laid down in numerous cases, to wit:

(1) that petitioner filed a claim for refund within the two-year period as prescribed under Section 230 of the Tax Code, as amended;

(2) that the income upon which the taxes were withheld were included in the return of the recipient; and

(3) the fact of withholding is established by a copy of statement (BIR From 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

These requirements were already affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

In relation to the first requirement, Section 230 mandates:

> **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 penalty claimed to have been collected without authority, 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 years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x

Petitioner complied with the first requisite. The income tax return for 1994 was filed on April 12, 1995 while the 1995 income tax return was filed on April 15, 1996. The amended return of 1995 was simultaneously filed with the administrative claim on April 10, 1997. The Petition for Review was filed on April 11, 1997.

However, there exists some inconsistencies regarding compliance with the second and third requirements which then cast doubts upon Our minds as to the veracity of petitioner's claim.

In the said 1994 return, petitioner declared as part of its gross income the amount of P400,638,878.00 from which income the creditable taxes were withheld. To establish the fact of withholding, petitioner submitted the following certificates of income taxes withheld at source:

INCOME WITHHOLDING AGENT	PAYMENT	TAXES WITHHELD	EXHIBIT
Phil. Realty & Holding Corporation	P350,000,000.00	P26,250,000.00	F-1
Sanders Ville Realty & Dev't. Corp.	94,406,000.00	7,080,450.00	P-1
Sanders Ville Realty & Dev't. Corp.	216,814,000.00	16,261,050.00	Q-1
TOTAL	P661,220,000.00	P49,591,500.00	

Based on the above documents, there is a clear discrepancy between the income declared in petitioner's 1994 tax return and the income per the certificates in the amount of P260,581,122.00. It indubitably follows that the total withholding taxes reported in the return was lesser than what had been actually withheld by the agents. Petitioner did not offer any explanation for the discrepancy. Either there was an underdeclaration of petitioner's income in 1994 or the certificates submitted do not really correspond to the transactions from which the income subject of withholding taxes in 1994 was derived. Whatever is the truth behind petitioner's evidence, one thing is certain, petitioner failed to comply with the above-mentioned requirements.

It must be stressed that the grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. (**Citibank, N.A. vs. Court of Appeals**, 280 SCRA 459). In other words, petitioner's 1994 income tax return is deemed verified true and correct under penalties of perjury. Notably, Section 7 of Revenue Regulations No. 6-85, as amended by Revenue Regulations No. 12-94, likewise requires that the certificates "be verified by a written declaration that it is made under the penalties of perjury". Therefore, it is also presumed that the certificates submitted by the Petitioner as part of its evidence are true and correct. If indeed these documents contained true and correct declarations, how come there was a discrepancy?

Petitioner should not have the false notion that mere presentation of certificates of income taxes withheld at source is sufficient compliance with the requirements. In fact, the inconsistency brought about by Petitioner's documents led Us to disbelieve the authenticity of petitioner's evidence. Inasmuch as We disregard petitioner's alleged creditable taxes withheld in 1994, its income tax liability of P1,146,506.00 is partly left unpaid save for the quarterly payment made in the amount of P575,573.61.

For the year 1995, petitioner declared as part of its gross income the amount of P420,727,689.00 from which income taxes were withheld in the amount of P32,276,195.00. But an examination of the documents submitted by the petitioner would show that only the sum of P370,499,461.00 corresponding to income payments was substantiated, detailed as follows:

WITHHOLDING AGENT	INCOME PAYMENT	TAXES WITHHELD	EXHIBIT
Phil. Long Distance Telephone Co.	P125,000,525.00	P 6,250,026.25	G-1
Photokina Marketing Corp.	105,984,936.00	5,299,247.00	H-1
Josefina O. Chua	10,000,000.00	1,500,000.00	I-1
Jesus Cano Chua	116,238,000.00	10,897,312.50	N-1
Jesus Cano Chua	13,276,000.00	663,800.00	O-1
TOTAL	P370,499,461.00	P24,610,385.75	

Exhibit J was not given any credence as evidence because no original was submitted for comparison therewith.

Accordingly, only the amount of P24,610,385.75 can be considered as the creditable taxes withheld for the period. The tax due being P43,326,979.00, then there still exists a balance of the tax due for 1995 in the amount of P18,716,593.25.

WHEREFORE, in the light of all the foregoing, petitioner's claim for refund/tax credit is hereby DENIED.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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