REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5242

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUL 13 1998

x - x

D E C I S I O N

This case involves a claim for refund or issuance of tax credit certificate in the amount of ₱1,630,689.00 allegedly representing unutilized excess tax credit or overpaid income tax payments for taxable year ended December 31, 1992.

The antecedent facts of the case are simple.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

For taxable year 1992, petitioner filed on April 15, 1993 its Annual Corporate Income Tax Return (Exh. "A") reflecting a refundable amount of ₱10,824,166.00 computed as follows:

Taxable Income			-
Tax Due			NIL
Less:	Prior Year's Excess Credit	₱9,193,477.00	
	Creditable Tax Withheld	1,630,689.00	₱10,824,166.00
Tax Payable (Refundable)			₱10,824,166.00)

Petitioner indicated in the aforementioned return its intention of applying for refund the overpaid or refundable tax.

For the following taxable year 1993, petitioner's Annual Corporate Income Tax Return (Exh. "O") reflected that petitioner suffered a net loss, thus, it was not able to utilize or apply its 1992 creditable tax withheld in the amount of P1,630, 689.00 against any tax liability as shown below:

Taxable Income			(₱94,472,837.00)
Tax Due			NIL
Less:	Prior Year's Excess Credit	₱1,630,689.00	
	Creditable Tax Withheld	3,369,536.00	₱ 5,000,225.00
Tax Payable (Refundable)			(₱ 5,000,225.00)

Likewise, petitioner indicated in its 1993 income tax return its intention of applying for refund the overpaid or refundable tax.

On March 29, 1995, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of the amount of ₱1,630,689.00 representing unutilized creditable income taxes for 1992. (Exh. "N").

The inaction of the respondent on the aforementioned claim compelled the petitioner to file the instant petition for review on April 12, 1995.

Petitioner formally offered in evidence the following documents which were properly identified by its witness:

1. Petitioner's annual income tax returns for the years 1992, and 1993 (Exhs. "A", and "O").

2. Various Certificates of Creditable Income Tax Withheld at Source for the year 1992 (Exhs. "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M")

3. Letter claim for refund (Exh. "N")

Respondent for her part failed to present any evidence to support her special and affirmative defenses and to submit a memorandum to defend her case.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or issuance of tax credit certificate sought.

We answer in the affirmative.

Section 69 of the National Internal Revenue Code, as amended, provides, 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) <u>Be refunded the excess amount paid</u>, 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." (*Underscoring supplied*)

In the case at bar, petitioner had established through its Annual Corporate Income Tax Returns for 1992 and 1993, that creditable taxes amounting to ₱1,630,689.00 were withheld from its income in 1992, but the same were not utilized or credited in the succeeding taxable year of 1993 due to the net loss incurred by the petitioner on that same year, thus entitling it to the tax refund/credit sought.

To further bolster its claim, petitioner submitted the Certificates of Creditable Income Tax Withheld at Source for the year 1992 issued by various withholding agents in the aggregate amount of P1,630,689.00 computed as follows:

Exhibit	***Withholding Agent/Payor***	***Amount***
"B"	Phelps Dodge Philippines, Inc.	₱1,506,660.18
"C"	Nin Bay Mining Company	55.00
"D"	National Steel Corporation	62,500.00
"E"	San Miguel Corporation	13,374.60
"F"	Seagull Shipmanagement & Transport, Inc.	15,318.80
"G"	Far East Bank & Trust Company	4,682.98
"H"	Far East Bank & Trust Company	4.682.98
"I"	Far East Bank & Trust Company	4.682.98
"J"	Far East Bank & Trust Company	4,682.98
"K"	Far East Bank & Trust Company	4.682.98
"L"	Far East Bank & Trust Company	4.682.98
"M"	Far East Bank & Trust Company	₱ 4.682.98
	Total	**₱1,630,689.44**

In the recent case of ***Far East Bank and Trust Co. vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. 4666, May 7, 1997 (CTA Case No. 4972)***, the Court of Appeals reiterated the requirements before a refund of creditable withholding taxes may be granted under Revenue Regulations 6-85, to wit:

1) That it (petitioner) filed a claim for refund within the two-year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;

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

3) The fact of withholding is established by a copy of 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.

Considering that petitioner satisfactorily complied with all the foregoing requirements for refund of creditable withholding taxes, We find no other recourse but to grant petitioner's claim for refund or tax credit.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or in the alternative issue a Tax Credit Certificate in favor of the petitioner in the amount of ₱1,630,689.00, representing unutilized excess creditable income tax payments for taxable year ended 1992.

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
Court of Tax Appeals