REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANITARY WARES MANUFACTURING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4150

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

8/21/92

D E C I S I O N

This is a claim for refund of petitioner's alleged overpayment of income taxes for the fiscal year 1984 in the sum of P252,875.00.

The undisputed facts show that petitioner is a domestic corporation duly organized under the laws of the Philippines and duly registered with the Board of Investment (BOI) as an Export-Producer engaged in the manufacture of vitreous China bathroom fixtures for domestic use and export to foreign countries.

In 1984 petitioner was granted by BOI the following tax credit certificates in the total amount of P722,502.00, to wit:

TCC NO.	DATE	AMOUNT
0726	June 07, 1984	P215,391.00
0727	June 07, 1984	228,239.00
0759	July 20, 1984	38,328.00
0760	July 20, 1984	35,837.00
0948	Nov. 20, 1984	204,707.00
T o t a l		P722,502.00

For the calendar year 1984, petitioner filed its corporate quarterly income tax returns, and paid the corresponding income tax in the sum of P12,111,071.04, as follows:

Quarter	Amount
First	P 4,269,782.07
Second	4,075,358.94
Third	3,765,930.03
	P12,111,071.04

On April 15, 1985 petitioner filed its final income tax returns declaring a total gross income of P82,492,883.00 for taxable year 1984 (Exh. "K", p. 77, CTA records) including the amount of P2,404,805.00 as income of petitioner from other sources, as follows:

Sale of scrap materials	P	435,058.00
Tax Credit on BOI incentives		722,502.00
Foreign Exchange gain		642,209.00
Others		605,036.00
Total		P2,404,805.00

(Annex "F" Petition for Review, p. 10, CTA records.)

On the same day, petitioner paid the amount of P6,897,111.00 as total tax due as indicated in its income tax return.

On September 29, 1986, respondent Commissioner of Internal Revenue issued BIR Ruling No. 195-86 holding that tax credit duly issued on or after April 28, 1983 to BOI registered firms are not includible in the gross income of the grantee and are therefore not taxable for income tax purposes. Salient portion of said ruling states:

> "In reply, please be informed that pursuant to Article 22 of PD 1789 as amended by Batas Pambansa Blg. 391 (effective April 28, 1983), pertinent portion of which reads:
>
> 'x x x The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government: Provided, That the tax credits issued under this Code shall not form part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided further, That such tax credits shall be valid only for a period of ten (10) years from date of

> issuance. (Emphasis supplied)' the tax credits duly issued on or after April 28, 1983 to BOI-registered firms like Indo Phil Textile Mills, Inc. are not includible in the gross income of the grantee and are therefore not taxable for income tax purposes.
>
> x x x"

Petitioner on account of the above-cited ruling, filed a request for refund or tax credit on April 15, 1987 in the amount of P252,875.00 representing its overpaid corporate income tax for the year 1984, computed as follows:

Gross Income Per Return		P82,492,883
Less: Tax Credits Issued by BOI, erroneously reported as income		722,502
Corrected Gross Income		81,770,381
Less: Deduction per Return		27,513,748
Corrected Taxable Income		P54,256,633
Tax Due Thereon		
P 100,000 x 25%	P 25,000	
54,156,633 x 35%	18,954,822	P18,979,822
Less: Tax Credits Certificate Obtained From BOI Applied Against Income Tax Due as Shown in the Return		215,391
Creditable Income Tax (EWT) on Rental Income		9,124
Amount of Tax That Should Have Been Paid		P18,755,301
Income Tax Paid Per Return		
1st	P4,269,782	
2nd	4,075,359	
3rd	3,765,930	
4th	6,897,111	
T o t a l		19,008,182
Overpaid Income Tax		(P 252,875)

(Annex 1, Petition For Review, p. 15 CTA records.)

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Petitioner without waiting for respondent to act on the claim for refund or tax credit filed the instant petition for review on April 15, 1987 to suspend the running of prescriptive period set forth in Section 230 of the tax code.

The sole issue posed on this appeal is whether or not petitioner is entitled to the refund of the overpaid income tax amounting to P252,875.00 or in the alternative, the issuance of tax credit certificates.

Respondent in his answer raised the following special and affirmative defenses as follows:

1. In an action for refund, the taxpayer must show that the taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;

2. Claims for refund are construed strictly against the claimants since they are in the nature of an exemption from taxation (***Manila Electric Co. v. Com. of Internal Revenue***, G. R. No. L-29987 and L-23847, October 22, 1975, 67 SCRA 351); and,

3. Taxes are presumed to have been paid and collected in accordance with law.

4. Respondent alleged that petitioner can not rely on BIR Ruling No. 198-86 because it does

not apply to petitioner (Answer, par. 3, p. 29, CTA records).

However, respondent failed to substantiate his allegations and submitted the case for decision based on the pleadings and records of the case.

Petitioner, on the other hand, strongly maintained that the overpaid income tax in the total sum of P252,875.00 is refundable in accordance with BIR Ruling No. 195-86 dated September 29, 1986 which holds that tax credit duly issued on or after April 28, 1983 to BOI registered firms are not includible in gross income of the grantee and are therefore not taxable for income tax purposes (Exh. "V", p. 94 CTA records). Petitioner being a BOI registered export producer is entitled to several incentives like tax credit for percentage taxes paid on imported and locally purchased raw materials used in the manufacture of its exported finished products citing the pertinent provision of P.D. No. 1788, as amended as follows:

> "ART. 48 Incentives to Registered Export Producers. - Registered export producers, whether pioneer or non-pioneer, shall be entitled to additional incentives enumerated hereunder:
>
> a. Tax Credit. - Every registered export producer shall enjoy a tax credit equivalent to the sales, compensating and specific taxes and duties on the supplies, raw materials and semi-

> manufactured products used in the manufacture, processing or production of its export products and constituting a substantial portion of the cost of production or forming part of the export products, whether exported directly by the registered export producer or sold to another export producer, which uses such sold products as a direct input in export products manufactured or processed by it and subsequently exported, or to an export trader: Provided, That the tax credit shall accrue to the registered export producer only after the other export producer or export trader has actually or constructively exported said products."

That its annual corporate income tax return for the year 1984 showed an overpayment of P252,875.00 due to the erroneous inclusion of P722,502.00 tax credits in its gross income (Exh. "K-5", p. 78, CTA records). The latter amount was not supposed to be a part of the gross income of petitioner in its 1984 corporate income tax return based on the aforestated BIR Ruling No. 195-86 dated September 29, 1986. To advance his claim, petitioner cited Section 69 of the Tax Code, to wit:

> "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 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."

Likewise the pertinent provision of Revenue Memorandum Circular No. 7-85 dated April 1, 1985 implementing Section 69 of the Tax Code provides:

"In the above provision of the Regulations (Section 7 of the Revenue Regulations No. 10-77), the corporation may request for the refund of the overpaid income tax <u>or</u> claim for automatic tax credit. <u>To insure prompt action on corporate annual income tax return showing refundable amounts arising from overpaid quarterly income taxes</u>, the office has promulgated Revenue Memorandum Order No. 32-76 dated June 11, 1976, containing the procedures in processing said returns. Under these procedures, <u>the returns are merely pre-audited</u> which consist mainly of checking mathematical accuracy of the figures in the return. <u>After which, the refund or tax credit is granted; and, this procedure was adopted to facilitate immediate action on cases like this.</u> xxx" (Underscoring supplied).

We agree with petitioner. It is clear from the foregoing provision of law and Memorandum Circular No. 7-85 that petitioner may be allowed to recover the amount claimed on the basis merely of checking the mathematical accuracy of the figures in the income tax return.

Furthermore, petitioner had reason to rely on the BIR Ruling No. 195-86 herein cited even if such ruling was addressed to another taxpayer because petitioner's case involved substantially if not equally the same facts. We find the BIR Ruling to be sound in its interpretation of law. Said BIR Ruling No. 195-86 answers categorically the issue affecting the party seeking clarification from the provision of P.D. No. 1789 specifically Art. 22, which grants tax credit to export producers who are registered with the Board of Investments. The rationale of the said BIR ruling is to benefit not only the parties involved but addresses itself to all producers who are also registered with the BOI and are themselves grantee of the incentives pursuant to said provision of law. For easy reference, we quote the provision of Section 22 of Presidential Decree No. 1789, Section 22 which gives credence to the claim of petitioner that provides:

> "Art. 22. 'Tax Credit' shall mean any of the credits against taxes and/or duties paid or would have been paid or based on a percentage of net value earned or of net local content of exports extended to a registered enterprise by this Code to evidence which a tax credit

> certificate shall be issued by the Minister of Finance or his representative, except in cases of tax credits on net value earned and net local content which shall be issued by the Chairman of the Board or his representative. The tax credit certificates are transferrable under such conditions as may be determined by the Board after consultation with the Ministry of Finance. However, the tax credit based on net value earned or of net local content can be transferred only to domestic raw materials or component suppliers of the registered enterprise which in turn can transfer such certificates to its suppliers, whether registered enterprises or not. The tax credit certificate shall be used to pay taxes, duties, charges and fees due to the national government: Provided, That the tax credits issued under this Code shall not form part of the gross income of the grantee/transferee for income tax purposes under Section 29 of the National Internal Revenue Code and are therefore not taxable: Provided, further, That such tax credits shall be valid only for a period of ten (10) years from date of issuance." (Underscoring supplied)

We are fully convinced of the position taken by petitioner that it is entitled to a refund and/or tax credit for the overpayment of its corporate income tax since it did not apply to the succeeding taxable year 1985 its overpaid income tax for the taxable year 1984 pursuant to Sec. 69 in relation to Memorandum Circular No. 7-85.

In view of all the foregoing, this court believes that petitioner has substantiated its claim for refund in accordance with the law and rules above cited. Contrary to the allegation of the respondent, this court believes that it is the respondent who failed on his duty to substantiate his allegation that the claim of petitioner is not meritorious. For instead of presenting his own evidence which will tend to disprove the allegations of petitioner, he merely submitted the case based on the pleadings and records of the case. Instead of relying on the strength of his own case, he has been relying on the weaknesses of his opponent's evidences. A policy which respondent has adopted in previous cases but which this court citing jurisprudence has stated as follows "Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations, must be understood to have admitted the truth of all the material and relevant allegations taken together with such of his own as are admitted" - (***Citibank, N.A. vs. The Acting Commissioner of Internal Revenue,*** CTA Case No. 3378, August 30, 1991; ***Bank of America vs. Commissionewr of Internal Revenue,*** CTA Case No. 3642, December 27, 1991; citing Bauermann vs. Casa, 10 Phil 386; Evangelista vs. De La Rosa, et al., 76 Phil 115). Respondent maybe considered as not questioning seriously petitioner's entitlement to its claim for refund. More so when the evidences presented which were not disputed by respondent, sufficiently established petitioner's right to the refund (*Commonwealth Management & Services Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 3232, June 26, 1985; *Sun Life Insurance Office Ltd. vs. The Acting Commissioner of Internal Revenue*, CTA Case No. 3205, June 23, 1989; *Jardine Fleming [Phil.] Inc. vs. Commissioner of Internal Revenue*, CTA Cases Nos. 4041 and 4125, October 31, 1991).

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to issue in favor of petitioner Sanitary Wares Manufacturing Corporation a tax credit certificate in the sum of P252,875.00.

Without pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, August 21 , 1992.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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