REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERCK, SHARP & DOHME, PHILIPPINES,
Petitioner,

- versus - **C.T.A. CASE NO. 5615**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 2000

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DECISION

This case involves a claim for refund and/or tax credit in the amount of P4,601,148.32 representing unutilized creditable taxes withheld for the years ended December 31, 1995 and 1996.

The facts are simple.

Petitioner is a domestic corporation engaged in the wholesale trading of pharmaceutical products.

On April 15, 1996, Petitioner filed with the Bureau of Internal Revenue (BIR) its annual corporate income tax return for the year ended December 31, 1995 (Exh. B) declaring a net loss of P85,719,733.00 and creditable taxes withheld of P1,254,838.23. Consequently, Petitioner carried over to the succeeding taxable year the unutilized creditable taxes withheld.

In the succeeding taxable year of 1996, Petitioner was likewise in a net loss position in the sum of P118,050,093.00 as evidenced by its annual corporate income tax return filed on April 10, 1997 (Exh. H). It also reported creditable taxes withheld for the period in the amount of P3,346,310.00.

In view of its successive net loss position for the years 1995 and 1996, Petitioner allegedly had no tax liabilities. Hence, the creditable taxes withheld for both years, that is, in 1995 and 1996, in the total sum of P4,601,148.32 were not utilized.

Petitioner then filed a written claim for refund with the BIR in the amount of P4,601,148.32 on April 7, 1998 (Exh. O) representing the total unutilized tax credits withheld for said years. Considering that the two-year prescriptive period was about to lapse, Petitioner filed the instant petition on April 14, 1998.

By way of Special and Affirmative Defenses, Respondent averred that:

x x x x x x x x x

> 4. The alleged claim for refund or request for issuance of a tax credit in the amount of P4,601,148.32 reportedly representing its total unutilized withholding tax credits at the end of taxable year 1996 is yet undergoing administrative investigation;
>
> 5. The aforesaid amount sought to be refunded was not properly documented;
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> 6. Taxes paid are presumed collected in accordance with law and regulations, hence, not refundable;
>
> 7. In an action for tax refund, the burden of proof is upon the taxpayer to establish its right thereto as well as to show compliance to the requirement under the provisions in Section 229 of the Tax Code, as amended;
>
> 8. Well-settled is the rule that claims for refund are construed strictly against the taxpayers/claimants since the same partake the nature of exemption.

The sole issue submitted to Us for determination is whether or not Petitioner is legally and factually entitled to the claim for refund and/or tax credit sought for.

We rule in favor of the Petitioner.

Petitioner finds legal support in Section 69 of the Tax Code, as amended, 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 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.

Thus, it is clearly provided that excess creditable withheld taxes may be credited against quarterly tax liabilities for the succeeding taxable quarters. Inasmuch as herein Petitioner was in a net loss position in 1995 and 1996, it incurred no tax liability for said years. Accordingly, the taxes withheld for both periods remained unutilized. The annual corporate income tax return for 1997 filed on April 5, 1998 (Exh. N) showed that Petitioner did not carry over the unused tax credits withheld, subject of this case.

Seemingly, therefore, Petitioner is entitled to the claim sought. The Supreme Court held in the case of **Citibank, N. A. versus Court of Appeals and Commissioner of Internal Revenue**, 280 SCRA 459, that creditable taxes withheld are mere partial payments of probable taxes subject to adjustment at the end of the year. They are provisional in nature. Hence, if the taxpayer incurred losses, the creditable taxes withheld are refundable. But as enunciated in various cases and affirmed by the Supreme Court and stated in the aforesaid case of Citibank, Petitioner must first comply with the basic requirements before a claim for refund and/or tax credits of creditable taxes withheld may be granted, to wit:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the NIRC, 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 Form 1743.1) duly issued by payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

As borne by the records in this case, Petitioner filed its 1995 income tax return on April 15, 1996 and its 1996 income tax return on April 10, 1997. The administrative claim was filed on April 7, 1998 while the judicial claim was filed on April 14, 1998. Thus, the first requirement has been complied with.

For the year 1995, Petitioner declared gross sales in the amount of P185,299,157.00 from which the income payments of P125,483,823.00 formed a part thereof (Exh. B-4, TSN Aug. 5, 1998, p. 25). And for the year 1996, Petitioner reported gross sales of P339,032,134.00 from which the income payments of P334,631,009.00 were culled (Exh. H-4, TSN, Aug. 5, 1998, p. 42). As testified to by Petitioner's lone witness, the reason for the discrepancy between the declared income and income per the certificates of creditable taxes withheld was due to the fact that Petitioner was using the accrual method of accounting, whereas its customers (withholding agents) withheld on the basis of their actual income payments or cash basis (TSN, Aug. 5, 1998, pp. 27 & 43).

Lastly, the fact of withholding was substantiated by the submission of the required certificates of income tax withheld at source (BIR Form 1743.1), detailed as follows:

1995

Withholding Agents	Income	Tax Withheld	Exh.
Zuellig Pharma Corp.			
2nd Quarter	P 43,667,994.00	P 436,679.94	D
3rd Quarter	45,071,191.00	450,711.91	E
4th Quarter	9,304,520.00	93,045.20	F
RCBC	27,440,118.00	274,401.18	G
T o t a l	P125,483,823.00	P1,254,838.23	

1996

Withholding Agents	Income	Tax Withheld	Exh.
Zuellig Pharma Corp.			
1st Quarter	P 34,352,303.00	P 343,523.03	I
2nd Quarter	53,581,860.00	535,818.60	J
3rd Quarter	61,919,952.00	619,199.52	L
4th Quarter	69,857,204.00	698,572.04	K
RCBC			
Jan. to Aug.	86,420,064.00	864,200.64	M-1
Sept. to Dec.	28,499,626.00	284,996.26	M-2
T o t a l	P334,631,009.00	P3,346,310.09	
Grand Total	**P460,114,832.00**	**P4,601,148.32**	

Respondent, on the other hand, presented the revenue officer who conducted the examination on Petitioner's claim and recommended for the denial of the claim for refund solely on the ground that no monthly withholding tax returns and alphabetical listings of withholding tax payments by its withholding agents were submitted by the Petitioner (Exh. 6/TSN, March 24, 1999, p. 14).

Petitioner vehemently opposed the position taken by the Respondent by contending that the law and regulations do not oblige the Petitioner to prove the fact of actual payment and remittance of the withheld taxes by the agents. Further, the above-mentioned documents are documents which the withholding agents are responsible for.

We agree.

The Petitioner should not be prejudiced by the absence of monthly remittance returns and alpha list of tax payments of the withholding agents. The withholding agents are not within the control of the Petitioner. They are the tax agents of the Respondent. To require Petitioner to prove the actual payment and remittance of taxes withheld would place it at the mercy of the withholding agents over which it has no control. Moreover, the law and regulations only require that the claim be filed within the two-year reglementary period; the income from which the taxes were withheld be declared as part of the gross income of the recipient; and the fact of withholding be proved by the certificates of income taxes withheld at source. These requirements as earlier discussed were fully complied by herein Petitioner.

WHEREFORE, in view of all the foregoing, the claim for refund and/or tax credit is hereby **GRANTED**. Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or in the alternative **ISSUE** a tax credit certificate in the amount of P4,601,148.32 in favor of the Petitioner representing unutilized creditable taxes withheld for the years ended December 31, 1995 and 1996.

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