REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RELIANCE COMMERCIAL ENTERPRISES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5701

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 2001

x - x

DECISION

This case involves a judicial action for the refund of the amount of P3,906,053.00, representing overpaid income tax arising from quarterly income tax payments and creditable withholding taxes for the fiscal years ended September 30, 1996 and September 30, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is registered with the Bureau of Internal Revenue with Taxpayer's Identification Number 049-000-140-421 and adopts a fiscal year from October 1 to September 30 for purposes of keeping its books of accounts and for filing its annual income tax return.

On January 15, 1997, Petitioner filed its Corporation Annual Income Tax Return for fiscal year ended September 30, 1996, reflecting a taxable income of P76,409.00 but with a refundable income tax payment in the sum of P2,918,062.00 arising from quarterly income tax payments of P1,635,562.00 and creditable taxes withheld of P1,358,909.00, detailed as follows: (Exh. A)

Net income		P 218,311.00
Tax Due		P 76,409.00
Less: Tax Credits/Payments		
a) Prior year's excess credits	P 0.00	
b) Quarterly excess credits	1,635,562.00	
c) Creditable tax withheld	1,358,909.00	2,994,471.00
Amount Refundable		P2,918,062.00

Petitioner indicated in its 1996 income tax return its intention to apply the overpaid income tax payments as tax credit to the succeeding taxable year 1997.

On January 15, 1998, Petitioner filed its Corporation Annual Income Tax Return for fiscal year ended September 30, 1997, reflecting a net loss in the amount of P2,102,200.00 but with refundable amount of P987,991.00 arising from various 1997 creditable withholding taxes at source (Exh. "M"). In the said return, Petitioner did not carry-over the 1996 excess income tax payments of P2,918,062.00 but manifested therein its intention to refund the same and to apply the 1997 creditable withholding taxes of P987,991.00 as tax credit to succeeding taxable year 1998 (Exh. M).

On February 12, 1998, Petitioner filed with Revenue District Office No. 49 a written application for claim for refund of excess creditable withholding tax and corporate income tax payments for fiscal years 1996 and 1997 (Exh. Y) in the sum of P3,906,053.00.

Due to the inaction of Respondent on its claim for refund, Petitioner, on December 29, 1998, filed the instant Petition for Review in order to toll the running of the two-year prescriptive period provided for under Section 230 of the Tax Code, as amended.

Mindful of its administrative claim for refund, Petitioner on February 28, 1999, amended its 1997 Corporation Annual Income Tax Return (Exh. N) sequentially to conform with the administrative application for the claim for refund. The amended 1997 return shows both the excess income tax payments of 1996 and 1997 to be refunded in the total amount of P3,906,053.00.

In his Answer, Respondent advanced the following Special and Affirmative defenses:

> 7. Petitioner has already applied as tax credit to the next succeeding quarter or year the amount claimed for refund, hence, no longer refundable;
>
> 8. The Certificate of Creditable Tax Withheld at Source were all issued in violation of Section 58(B) of the 1997 National Internal Revenue Code, hence, cannot be granted probative value;
>
> 9. Petitioner has not proven by competent evidence, other than the return, that it actually incurred losses in the fiscal year ending September 30, 1997;
>
> 10. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;
>
> 11. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 12. Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation.

To prove its entitlement to the claim for refund, Petitioner presented the following evidence:

1. The Corporation Annual Income Tax Returns for the fiscal years 1996, 1997 (with an amended return) and 1998 with the attached reports of independent certified public accountants (Exhs. A, M, N, and X);

2. Various 1996 and 1997 Certificates of Creditable Taxes Withheld at Source (Exhs. B to L, and O to T);

3. Corporation Quarterly Income Tax Returns for fiscal years 1996, 1997, and 1998 (Exhs. U to W, Z, and AA to EE);

4. Letter-claim for refund (Exh. Y); and

5. Report of the commissioned independent CPA with respect to the accuracy of Petitioner's claim for unutilized creditable withholding taxes and overpaid income taxes (Exh. FF).

In an act which bolstered Petitioner's claim for refund, Respondent presented in evidence the Letter of Authority No. 000015158 issued to Mr. Sirikit Tan, authorizing him to examine the books of accounts and other accounting records of Petitioner for all internal revenue taxes for the year 1996 (Exhs. 1 and 1-a) and Mr. Tan's memorandum report recommending the granting of the 1996 claim for refund in a reduced amount of P2,467,097.19 out of the total 1996 claim of P2,994,471.00 (Exhs. 2, 2-a, 2-b, and 2-c).

This case was submitted for decision sans the memorandum of the Respondent.

The sole issue to be resolved by this Court is whether or not Petitioner is entitled to the refund of the sum of P3,906,053.00, representing overpaid income taxes for fiscal years ended September 30, 1996 and September 30, 1997.

The legal basis of Petitioner in claiming for the refund of overpaid income tax is Section 69 (now Sec. 76) of the Tax Code, as amended, which reads as follows:

> **SEC. 69.** ***Final Adjustment Return.*** – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total

> 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 (Underlining supplied).

Based on the aforequoted proviso, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It is apparent in the taxable years 1996 and 1997 that Petitioner has an accumulated creditable withholding taxes and quarterly income tax payments in the total amount of P3,906,053.00 which were not utilized as tax credit in the years 1997 or 1998 (Exhs. N and X). Hence, it is a proper subject of a claim for refund based on Section 69 of the Tax Code, as amended.

But before the present appeal could prosper, Petitioner should prove its entitlement to the refund by substantial evidence.

Section 230 of the 1996 Tax Code provides:

> **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 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 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following requisites, to wit:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 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. the fact of withholding is established by a copy of a statement (BIR For 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957).**

A perusal of the evidence submitted by the Petitioner reveals that the claim for refund was timely filed within two years from the date of payment of the tax. The administrative claim for refund was filed with the Respondent on February 12, 1998 and the Petition for Review was filed with this Court on December 29, 1998. The two-year prescriptive period commences on January 15, 1996 and January 15, 1997, the dates when Petitioner filed its respective 1996 and 1997 final adjustment returns **(Commissioner of Internal Revenue vs. TMX Sales, Inc. etl al., G.R. No. 837736, January 15, 1992).**

The records of the case clearly show that Petitioner paid the following quarterly income taxes as shown by the machine validations appearing on the respective 1996 Corporation Quarterly Income Tax Returns, to wit:

Period	Exh.	Date	Amount
1st Quarter 1996	Z	02-27-96	P 258,681.00
2nd Quarter 1996	AA	05-28-96	176,417.51
3rd Quarter 1996	BB	08-29-96	1,200,463.06
		Total	P1,635,561.57

With respect to the claim for refund of creditable withholding taxes, the Court finds the findings of the commissioned independent CPA, Mr. Florante A. Aseron, in order. The audit procedures stated in his report are sufficient to come-up with the desired result of ascertaining the propriety of Petitioner's claim for refund of creditable withholding taxes for 1996 and 1997. Therefore, the observations and findings arrived at by Mr. Aseron are hereby adopted as follows:

	Per ITR		Per CCTW		Difference	
Nature	Income	CTW	Income	CTW	Income	CTW
Commission Income-1996	16,921,891.00	909,867.00	16,770,354.00	838,517.70	151,537.00	71,349.30
Commission Income-1997	10,193,024.00	509,651.00	10,183,876.60	509,193.83	9,147.40	457.17
Raw Materials -1996	-	-	1,206,036.00	12,060.36	(1,206,036.00)	(12,060.36)
Rental of Real Property-1996	7,930,458.00	408,191.00	8,163,823.93	408,191.23	233,365.93	(0.23)
Rental of Real Property-1997	9,330,990.00	466,550.00	9,441,716.69	472,085.94	(110,726.69)	(5,535.94)
Interest and others-1996	1,933,506.00	40,851.00	-	-	1,933,506.00	40,851.00
Interest and						

others-1997	1,880,514.00	-	-	-	1,880,514.00	-
Income Payments by Top 5000 Corp. to Local Supplier (the Company) of Goods and Tax Withheld-1996	-	-	15,826.00	158.26	(15,826.00)	(158.26)
Totals	48,190,383.00	2,335,110.00	45,781,633.22	2,240,207.32	2,875,481.64	94,902.68

The discrepancies of income payments reported in the income tax returns as compared with that of the certificates were very well explained in the auditor's report (Exh. FF). Furthermore, as verified by the Court, the creditable withholding taxes for fiscal years 1996 and 1997, reflected in the table, were all supported by certificates of creditable tax withheld at source (Exhs. B to L, and O to T).

In sum, Petitioner is entitled to the reduced amount of P3,799,359.89, computed as follows:

1996

Income Tax Due		P 76,409.00
Less: Tax Credits/Payments		
a. Quarterly income tax payments	P1,635,561.57	
b. Creditable withholding taxes	1,258,927.55	2,894,489.12
Amount Refundable		P2,818,080.12

1997

Income Tax Due	P 0.00
Less Creditable withholding taxes	981,279.77
Amount Refundable	P 981,279.77
Total Amount Refundable	P3,799,359.89

WHEREFORE, in the view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED.*** Respondent is **ORDERED to REFUND** in favor of Petitioner the amount of P3,799,359.89, representing overpaid income taxes for the years 1996 and 1997.

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 this 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