REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SGS FAR EAST LIMITED - PHILIPPINE BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 5499

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 1999

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DECISION

This case involves a claim for refund in the amount of ₱525,328.00 allegedly representing overpaid or excess income tax payments for calendar years 1994 and 1995.

The antecedent facts of the case are as follows:

Petitioner is a duly registered branch of SGS Far East Limited - a corporation organized and existing under and by virtue of the laws of Switzerland, and is authorized to engage in the pre-inspection of export and import shipments by the Securities and Exchange Commission (Exh. "G").

For calendar year 1994, petitioner filed its Corporation Annual Income Tax return on April 17, 1995, reflecting a "NIL" income tax due and tax refundable in the amount of ₱679,039.00 (Exh. "A"). The amount allegedly refers to petitioner's prior year's credit in the amount of ₱314,246.00 and alleged creditable tax withheld from its service income for the period ended December 30, 1994 in the amount of ₱364,793.00.

Petitioner opted to carry-over this alleged overpayment as tax credit to succeeding year 1995 pursuant to Section 69 of the Tax Code, as amended. However, petitioner claims that although this alleged excess credit was applied against its income tax due for the year 1995, its annual income tax return for that year which was filed on April 13, 1996 (Exh. B) still shows a net refundable tax in the amount of ₱525,328.00, computed as follows:

Gross Income		₱55,841,936.00
Less: Deductions		55,259,932.00
Net Income		₱ 582,008.00
Net Rate		35%
Income Tax Due		₱ 203,701.00
Less:		
a. Prior Year's Excess Credit	₱364,793.00	
b. Creditable Tax Withheld	364,236.00	729,029.00
Total Refundable Tax		₱ 525,328.00

Subsequently, on April 11, 1997, petitioner, through its tax adviser, Sycip Gorres Velayo & Co. filed with the respondent Bureau of Internal Revenue a claim for refund or issuance of tax credit certificate in the amount of ₱525,328.00 representing its alleged overpaid income tax for calendar years 1994 and 1995 (Exh. "D").

Since no action was taken by the respondent and the two (2) year period was about to expire, petitioner filed a petition for review with this Court on April 14, 1997.

Upon these facts, respondent advances the following special and affirmative defenses, thus:

> 1. The petitioner has no cause of action;
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> 2. The petitioner's claim has already prescribed;
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> 3. The petitioner has not proven its allegations of net loss operation for the year 1994 and 1995 by competent evidence;
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> 4. The amount of ₱525,328.00 claimed by petitioner has already been utilized as tax payment for the succeeding years;
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> 5. The petitioner only appears to be entitled to the claim for refund because of inordinate, unreasonable, disallowable and unsupported claim of expenses or deductions which should have instead subjected the petitioner to Section 69(a), NIRC, as amended;
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> 6. A refund partakes of the nature of an exemption, hence, it cannot be allowed unless granted in the most explicit and categorical language;
>
> 7. All doubts must be resolved in favor of the taxing authority and that tax exemptions (or tax refunds for that matter) must be strictly construed and can only be given force when the grant is clear and categorical.

The only issue to be resolved in this case is whether or not petitioner has satisfactorily proven its claim for refund or tax credit in the amount of

₱525,328.00 allegedly representing overpaid or excess income tax for calendar years 1994 and 1995.

In support of its case, petitioner presented in evidence various documents which, among others, consist of the following:

a. Annual Income Tax Returns for the years 1994, 1995 and 1996 (Exhs. "A", "B" and "C");

b. Administrative claim for refund duly filed with the Bureau of Internal Revenue (Exh. "D");

c. Certificates of Creditable Withholding Tax at Source (Exhs. "E-1" to "E-84", "F-1" to "F-85").

On the other hand, respondent failed to submit any controverting evidence. Petitioner submitted its memorandum while respondent did not.

After a careful scrutiny of all the evidence presented before Us, We rule in favor of the petitioner.

Section 69 of the Tax Code provides as follows:

> **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 quarter of the succeeding taxable year.

The excess income tax payments for the years 1994 and 1995 consist of creditable taxes withheld by various withholding agents, thus, it was also essential to determine whether or not petitioner complied with the requirements provided under Section 10 of Revenue Regulations No. 6-85, to wit:

> 1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 230 of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
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> 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 **(Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and The Commissioner of Internal Revenue, CA - G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] and the Court of Tax**

Appeals, CA - G.R. SP No. 31104, April 18, 1994).

This Court finds that petitioner has substantially complied with the aforementioned requirements.

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within the two-year prescriptive period provided by Section 230 of the Tax Code. Its claim for refund with the Bureau of Internal Revenue (BIR) was filed on April 11, 1997 (Exh. "D") and its Petition for Review with this Court was filed on April 14, 1997. For the calendar year 1994, the two-year prescriptive period commenced on April 17, 1995, the date when petitioner filed its corporate income tax return. For the calendar year 1995, the prescriptive period likewise commenced on the date of filing of the annual income tax return on April 13, 1996. The Supreme Court has already declared that the "rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim from the time it filed its final adjustment return is the fact that it is only then that the taxpayer could ascertain whether it made profits or incurred losses in its business operations" **(ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957).** From these aforementioned dates, we can conclude that the claim for refund covering the taxable years 1994 and 1995 fall within the two-year prescriptive period provided by law.

As to the second requirement, it has been established that petitioner declared the income from which the taxes were withheld in its income tax returns covering the taxable years 1994 and 1995. The income from the inspection services forms part of the gross income of the petitioner as shown in its corporate income tax returns (Schedule 2, Exhs. "A" and "B") wherein the taxes were withheld.

With regard to the third requirement, the fact of withholding is established by a copy of the Statements duly issued by the withholding agents to the petitioner as payee showing the amount paid and the amount of tax withheld therefrom. The proof of withholding is established by the presentation of various Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743-1750) and they show that the amount subject of the claim was in fact withheld by the withholding agents and remitted to the BIR (Exhs. "E-1" to "E-84" and "F-1" to "F-85"). Thus, petitioner has satisfactorily proven its claim for refund/tax credit.

As regards the contention of the respondent that petitioner has not shown proof of the loss incurred, suffice it to state that this Court has already settled that in the absence of contrary evidence, the income tax return should be given credence and thus coupled by the fact that petitioner was able to present documents to substantiate its income tax return provide sufficient proof of a loss sustained by petitioner in the year **(Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993 citing Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991).** The matter about the unutilized creditable withholding tax was likewise substantiated by petitioner's presentation of its 1995 and 1996 Final Adjustment Return which also resulted in a net operating loss.

Clearly, from the evidence presented, petitioner has proven its claim for refund/tax credit. Thus, this Court has nothing left to do but to grant petitioner's claim. However, in computing the total amount of creditable income tax withheld at source for the years 1994 and 1995, We have excluded Exhs. "E-2", "E-3", "E-4", "E-36" to "E-51", "F-47" and "F-79" since these certificates do not have the signatures of the withholding agents. In summary, the total amount refundable is only P231,173.99 contrary to the amount claimed by petitioner in the sum of P525,328.00. The details of the computation are stated hereunder, thus:

Income	P55,841,936.00
Less: Deductions	55,259,932.00
Taxable Income	P 582,004.00
Tax Due (582,004.00 x 35%)	P 203,701.00

Less: Tax Payments

1) Prior year's excess credit (1994)

Withholding Agent	Amount of Income	Tax Withheld	Exh.
Ambassador Knitting Corporation	₱ 3,850.00	₱ 385.00	E-1
Best Industrial Steel Mfg. Corp.	27,178.26	271.78	E-5
BHP Philippines Trading Corp.	71,233.44	712.34	E-6
Builders Steel Corp.	48,248.98	482.49	E-7
Caltex (Phils.) Inc.	60,000.00	3,000.00	E-8
Caltex (Phils.) Inc.	147,047.28	7,352.38	E-9
Caltex (Phils.) Inc.	157,507.40	7,875.38	E-10
Chemoil Asia Inc.	48,780.00	487.80	E-11
Exxon Chemicals Phils., Inc.	117,767.00	1,177.67	E-12
Alcorn (Productions) Phils., Inc.	61,828.25	4,946.26	E-13
Filson Shipping Company, Inc.	3,095,956.00	30,959.56	E-14
Galaxie Steel Corp.	65,458.75	654.55	E-15
Hi-las Marketing Corp.	3,300.00	33.00	E-16
International Chem. Ind. Inc.	176,549.96	1,765.50	E-17
Jebsens Maritime Inc.	5,000.00	50.00	E-18
LMG Chemicals Corp.	161,000.00	8,050.00	E-19
LMG Chemicals Corp.	13,943.40	697.17	E-20
Mabuhay Vinyl Corp.	61,626.45	616.27	E-21
Mabuhay Vinyl Corp.	55,271.00	552.71	E-22
Mabuhay Vinyl Corp.	66,855.59	668.55	E-23
Mabuhay Vinyl Corp.	72,459.26	724.60	E-24
Mactan Shangri-la Hotel & Resort, Inc.	13,585.00	135.85	E-25
Marketing Proponents Inc.	33,168.66	331.73	E-26
Metro Industries, Inc.	89,787.70	8,978.77	E-27
Mindanao Energy Systems, Inc.	3,000.00	30.00	E-28
Mitsui & Co. Ltd. Manila Branch	15,000.00	750.00	E-29
Mobil Philippines, Inc.	382,302.24	3,824.41	E-30
National Power Company	2,464,898.91	22,453.63	E-31
Mondial Orient Ltd.	1,953.50	19.53	E-32
Pag-asa Steel Works, Inc.	26,627.60	266.28	E-33
Pag-asa Steel Works, Inc.	23,876.55	238.77	E-34
Pag-asa Steel Works, Inc.	5,101.20	51.01	E-35
Philex Mining Corp.	21,422.00	214.22	E-52
Philex Mining Corp.	22,334.00	223.34	E-53
Philex Mining Corp.	22,061.00	220.61	E-54
Philex Mining Corp.	21,869.00	218.69	E-55
Phil. Petroleum Corp.	334,824.39	16,741.36	E-56
Planters Products, Inc.	176,000.00	8,800.00	E-57
RCS Shipping Agencies Inc.	8,000.00	350.00	E-58
Regan Industrial Sakes Inc.	113,685.41	1,136.86	E-59
Reliance Tong Fang Granies Inc.	7,370.00	73.70	E-60
Republic Cement Corp.	51,500.00	515.00	E-61
San Carlos Milling Co., Inc.	7,000.00	70.00	E-62

San Miguel Corp.	12,309.00	615.45	E-63
Shell Chemical Co. Phils., Inc.	478,845.06	4,788.47	E-64
Shell Gas Eastern Inc,	151,377.82	7,568.90	E-65
Solid Corporation	25,600.00	256.00	E-66
Supreme Steel Pipe Corp.	83,087.88	830.88	E-67
Unilever Phils. (PRC), Inc.	1,287,930.00	12,879.30	E-68
Union Carbide Phils., Inc.	57,000.00	2,850.00	E-69
United Coconut Chemicals, Inc.	65,841.60	3,292.08	E-70
Vegoil Philippines, Inc.	15,750.00	787.50	E-71
Vitarich Corporation	9,505.07	93.05	E-72
Vitarich Corporation	42,982.50	390.75	E-73
Vitarich Corporation	53,794.84	537.95	E-74
Vitarich Corporation	8,747.01	79.51	E-75
Vitarich Corporation	36,326.23	363.26	E-76
Vitarich Corporation	7,128.00	71.28	E-77
Vitarich Corporation	4,250.00	42.50	E-78
Vitarich Corporation	4,250.00	42.50	E-79
Vitarich Corporation	41,242.27	374.92	E-80
Vegoil Philippines, Inc.	13,600.00	680.00	E-81
Wrigley Philippines, Inc.	3,000.00	30.00	E-82
Wrigley Philippines, Inc.	8,000.00	80.00	E-83
Wrigley Philippines, Inc.	7,000.00	70.00	E-84
Sub-total		₱173,831.07	

2) Tax Credit (1995)

Withholding Agent	Amount of Income	Tax Withheld	Exh.
Alcorn Philippines, Inc.	33,496.25	₱ 2,679.70	F-1
All Asian Counter Trade, Inc.	337,000.57	3,063.64	F-2
Best Industrial Steel Mfg. Corp.	52,585.50	525.85	F-3
Builders Steel Corp.	71,961.45	719.62	F-4
Caltex (Philippines), Inc.	65,722.40	3,286.12	F-5
Ciba Geigy (Phils.)	2,500.00	25.00	F-6
Capital Steel Corporation	70,437.00	704.37	F-7
Chemphil Albright & Wilson Surfactants	13,500.00	675.00	F-8
Colgate Palmolive Phils., Inc.	5,000.00	50.00	F-9
Colgate Palmolive Phils., Inc.	5,000.00	50.00	F-10
Colgate Palmolive Phils., Inc.	40,000.00	400.00	F-11
Dallas Steel Corporation	26,604.38	266.04	F-12
Del Monte Fresh Produce (Phils.) Inc.	20,829.00	208.29	F-13
DMC Const. Equipment Res. Inc.	275,627.85	2,756.27	F-14
Dumaguete Mills Inc.	37,900.03	1,895.00	F-15
Exxon Chemical Philippines	142,444.00	1,424.44	F-16
Exxon Chemical Philippines	24,532.00	245.32	F-17
Exxon Chemical Philippines	57,704.00	577.04	F-18
Ferrochrome Philippines, Inc.	31,500.00	1,575.00	F-19
Ferrochrome Philippines, Inc.	51,290.00	2,564.50	F-20
Filsov Shipping Companu Inc.	179,301.00	1,793.01	F-21

Galaxie Steel Corporation	27,300.73	273.00	F-22
Galaxie Steel Corporation	24,342.79	243.43	F-23
Galaxie Steel Corporation	117,019.12	1,170.09	F-24
Italit Const. & Dev't. Corp.	15,764.56	1,433.14	F-25
Int'l. Chemical Industries Inc.	264,906.04	2,649.07	F-26
Jimenez Oil Mills Inc.	22,112.60	1,105.63	F-27
Jimenez Oil Mills Inc.	18,549.40	927.47	F-28
LMG Chemicals Corp.	15,000.00	750.00	F-29
Marketing Proponents Inc.	15,901.77	159.01	F-30
Mordial Orient Ltd.	7,241.00	72.41	F-31
Mabuhay Vinyl Corp.	97,835.26	978.36	F-32
Mabuhay Vinyl Corp.	43,273.14	432.72	F-33
Mabuhay Vinyl Corp.	44,885.07	448.85	F-34
Mabuhay Vinyl Corp.	17,734.32	177.34	F-35
Pag-asa Steel Works Inc.	24,963.00	249.63	F-36
Pag-asa Steel Works Inc.	60,192.75	601.93	F-37
Pag-asa Steel Works Inc.	50,579.75	505.80	F-38
Pag-asa Steel Works Inc.	23,261.95	232.62	F-39
Pag-asa Steel Works Inc.	49,605.15	496.05	F-40
Pag-asa Steel Works Inc.	47,400.90	474.01	F-41
Pag-asa Steel Works Inc.	23,761.00	237.61	F-42
Pag-asa Steel Works Inc.	25,389.30	253.89	F-43
Pag-asa Steel Works Inc.	18,990.83	189.91	F-44
Pag-asa Steel Works Inc.	8,070.16	80.70	F-45
Petron Corporation	11,983.20	599.16	F-46
Petron Corporation	11,491.40	574.57	F-48
Petron Corporation	129,735.20	6,486.76	F-49
Petron Corporation	247,901.40	12,395.07	F-50
Planters Products Inc.	60,000.00	3,000.00	F-51
Planters Products Inc.	40,000.00	2,000.00	F-52
Planters Products Inc.	44,000.00	2,200.00	F-53
Planters Products Inc.	4,000.00	200.00	F-54
Planters Products Inc.	72,000.00	3,600.00	F-55
Planters Products Inc.	52,000.00	2,600.00	F-56
Philippine Petroleum Corp.	534,402.14	26,720.11	F-57
Philex Mining Corp.	21,877.00	218.77	F-58
Pioneer Insurance & Surety Corp.	26,600.00	1,330.00	F-59
Rohm and Haas Philippines Inc.	123,427.00	1,234.27	F-60
Reliance Tong Fag Ceramics Corp.	10,800.00	108.00	F-61
Regan Industrial Sales Inc.	151,309.50	1,513.10	F-62
Rohm and Haas Philippines Inc.	115,097.00	1,150.97	F-63
Samar Mining & Dev't. Corp.	41,776.41	2,088.82	F-64
Stolt Nielsen Inc.	4,000.00	40.00	F-65
Shell Phil. Petroleum Corp.	423,227.99	21,161.42	F-66
Shell Phil. Petroleum Corp.	199,381.50	9,969.08	F-67
Shell Phil. Petroleum Corp.	95,413.50	4,770.68	F-68
Shell Gas Eastern Inc.	1,240.76	62.10	F-69
The Shell Chemical Co. (Phils.) Inc.	415,089.54	20,754.48	F-70
Unidex Garments Inc.	12,731.20	116.80	F-71
Union Carbide Phils. (Far East) Inc.	16,556.23	827.81	F-72
Union Carbide Phils. (Far East) Inc.	20,000.00	1,000.00	F-73
Union Carbide Phils. (Far East) Inc.	28,473.63	1,423.68	F-74
Union Carbide Phils. (Far East) Inc.	22,119.63	1,105.98	F-75

Warren Manufacturing Corp.	17,523.00	175.23	F-76	
Unilever Phils. (PRC) Inc.	208,500.00	2,085.00	F-77	
Unilever Phils. (PRC) Inc.	63,500.00	635.00	F-78	
Wrigley Phils. Inc.	8,000.00	80.00	F-80	
Wrigley Phils. Inc.	4,000.00	40.00	F-81	
Vitarich Corporation	46,258.53	462.58	F-82	
Glencore Far East	51,500.00	2,575.00	F-83	
Metro Industries Inc.	63,815.90	6,381.59	F-84	
Pilipinas Shell Petroleum Corp.	1,594,607.09	79,731.01	F-85	
Sub-total		₱261,043.92		434,874.99
TOTAL REFUNDABLE TAX				₱ 231,173.99

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a TAX CREDIT CERTIFICATE in favor of SGS Far East Limited - Philippine Branch the total amount of ₱231,173.99 representing overpaid or excess income tax for the years 1994 and 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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