REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HUSKY (PHILIPPINES) OIL, INC.,
(PHILIPPINE BRANCH),
Petitioner,

- versus - C.T.A. CASE NO. 3757

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

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

5/8/92

D E C I S I O N

This is a suit filed on April 4, 1984 by petitioner for recovery of income taxes alleged to have been erroneously paid to respondent.

Initially, the claim for refund filed against respondent purported to cover petitioner's tax payments for the taxable years 1979, 1980 and 1981. The facts show that after filing its income tax return for 1979 on April 15, 1980 it became necessary for petitioner to amend this income tax return on August 3, 1981 with the advent of Presidential Decree No. 1682 as implemented by Revenue Regulations No. 1-81. Still another amendment of the said income tax return was made by petitioner on August 1, 1983 to reflect a more accurate report of its 1979 income tax liability. The 1980 income tax return filed on April

15, 1981 was also amended on September 14, 1983 to reflect the corrected computation of depletion and intangible exploration and drilling expenses, and to include dry hole costs not included in the original tax return. These notwithstanding, petitioner chose not to pursue its case for recovery of income taxes paid for the taxable years 1979 and 1980 on the understanding that the action had prescribed under Section 292 of National Internal Revenue Code of 1977 as more than two years had elapsed since the date of payment of the tax for the filing of a petition for review with the Court of Tax Appeals.

The recovery of income tax paid for the taxable year 1981 remained as the object of this suit of petitioner. The 1981 original income tax return of petitioner where it paid P1,293,795.00 in income tax also reflected the following:

Revenue		P24,119,342
Deductions:		
Dry Hole Expenses	P 652,509	
Intangible Drilling and Exploration Expenses	-	
Allocable Home Office Expenses	1,036,418	
Depletion	18,173,304	
Administrative, Overhead and Miscellaneous Expenses	531,981	20,394,212
Net Income		P 3,725,130
Tax Due and Paid		P 1,293,795

Petitioner alleges that this 1981 tax return also had to be amended in order to include the deduction of dry hole costs and intangible drilling and exploration expenses in accordance with Section 6(g), (h) and (j) of Revenue Regulations No. 1-81, and to restate the corrected depletion deduction and the deductible ratable share in home office expenses. The amended 1981 tax return was filed on September 12, 1983 showing a net loss as follows:

Revenue		P24,119,159
Deductions:		
Dry Hole Expenses (increased from P652,509 to)	P16,202,954	
Intangible Drilling Exploration Expenses	15,761,021	
Allocable Home Office Expenses (increased from P1,036,418 to)	1,783,999	
Depletion (reduced from P18,173,304 to)	11,000,467	
Administrative, Overhead and Miscellaneous Expenses	531,980	45,280,421
Net Loss		(P21,161,262)

Thus, it is the amount of P 1,293,795.00 it had paid when it first filed its Income Tax Return for 1981 that is sought to be recovered by petitioner.

As it is the rule that the taxpayer must prove that he is entitled to the deductions claimed, petitioner went on to present evidence supporting its claim. Complimentarily, the Memorandum of Revenue

Examiner Ramon Tadeo Cangco for the Commissioner of Internal Revenue appears to reinforce the contention of petitioner as the recommendation includes the opinion that petitioner is entitled to the refund of P1,293.795.00 only that "Husky have (sic) a proposed assessment for the years 1979, 1980 and 1981 in the amount of P13,432,800.58" (Exhibits "1" and "1-a").

Respondent, in turn, argues that reliance on the foregoing recommendation is misplaced considering that the same is subject to the approval of the Commissioner of Internal Revenue, and the Commissioner has precisely rejected the recommendation by the issuance of the assessments against petitioner. Respondent cites the report of Examiner Cangco which states, in part:

x x x

1981

> "Subject taxpayer thru its counsel SGV in its letter dated October 25, 1983 stated that Husky filed its 1981 income tax return on April 15, 1992 paying income tax of P1,293.795.00. On September 12, 1985 it filed an amended return for the taxable year 1981 incurring a net loss of P21,161,262.00. The net loss incurred by Husky was however negated by the following disallowances:

a. Depreciation	P 13,119.64
b. Depletion	24,289,440.99
c. Expenses charged to operation where the company is not a revenue participant	23,975,899.23
T o t a l	P48,278,450.88

> The above disallowances resulted in a deficiency income tax including interest in the amount of P13,099,588.40.
>
> The recommended assessments are as follows:
>
> | | |
> |---|---|
> | 1979 | P 329,390.18 |
> | 1980 | 3,822.00 |
> | 1981 | 13,099,588.40 |
> | Total | P13,432,800.58 |
>
> x x x
>
> RECOMMENDATION:
>
> In view of the foregoing, HUSKY (PHILS.) OIL, INC. is entitled to be refunded in the amount of P1,293.795.00 which is the amount claimed for refund, for calendar/taxable year 1981. However, Husky have a proposed assessment for the years 1979, 1980 and 1981 in the amount of P13,432,800.58 which if charged against the claim for refund of P1,293,795.00 for calendar 1981, applying the principle of "equitable recoupment" would leave a balance of deficiency assessment in the amount of P12,139,005.58."

We note that respondent cannot seem to reconcile the implications of the memorandum of Examiner Cangco with his case. While he argues that the Commissioner has through the issuance of the assessments denied the claim for refund of petitioner, he would, however, infer that "the recommendation by Revenue Examiner Ramon Tadeo M. Cangco relative to his finding that the net loss allegedly incurred by petitioner were offset or negated by disallowed deductions <u>was</u> <u>approved</u> by the respondent Commissioner of Internal Revenue" (p. 289, CTA

Records, Memorandum of Respondent, Emphasis supplied). To the implication of the report of Examiner Cangco is that he agrees to the refund of the amount being claimed except that it is negated by taxes he found to be due from petitioner and this he proposed to be the subject of an assessment. The manner by which Examiner Cangco arrived at his proposed assessments, however, is not adequately supported by evidence.

The case for respondent relies only on the evidence of the assessments dated February 15, 1988 issued against petitioner (Exhibits "2" and "2-A") without adequate proof on how these assessments were derived. Needless to say, it is basic that assessments must be based on facts.

In the face of the mainly uncontradicted evidence on the side of petitioner, therefore, petitioner's claim should be favored.

WHEREFORE, the claim for refund of petitioner is GRANTED. The Commissioner of Internal Revenue is hereby ordered to refund or credit to petitioner the amount of P1,293,795.00 representing erroneously paid income tax for the taxable year 1981.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 8, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

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