REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION BANK OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 5623

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 12 2000

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DECISION

This is a petition for review filed by the petitioner UNION BANK OF THE PHILIPPINES against respondent COMMISSIONER OF INTERNAL REVENUE for the failure of the latter to act on the former's claim for refund in the total amount of P9,574,205.06 allegedly representing petitioner's unutilized creditable withholding taxes for the year 1995.

Petitioner is a domestic corporation, primarily engaged in the general banking business, with principal office at the SSS (Makati) Building, corner Ayala Avenue and Herrera St., Makati City.

On October 15, 1996, petitioner filed its Corporate Annual Income Tax Return (ITR) for the calendar year ending December 31, 1995 (Exh. A) with respondent's authorized agent bank, UNION BANK – Main office Branch, showing among others, a total creditable withholding tax of P9,515,844.00, a net operating loss in the sum of P14,299,825.00, a nil income tax liability, and a refundable amount of P9,515,844.00

which represents the total creditable withholding tax paid by petitioner to respondent, which it sought to be applied as tax credit to the succeeding taxable year of 1996. The said ITR was amended by petitioner on February 25, 1999 to rectify the amount of the refundable unused creditable withholding tax for 1995 from P9,515,844.00 to P9,574,205.26 (Exh. A-5).

However, since petitioner was in a loss position for the succeeding calendar year ending December 31, 1996 (Exh. A-7), the aforestated excess/unutilized creditable withholding tax for 1995 was likewise not utilized for the succeeding taxable year of 1996.

In a letter dated April 7, 1997, which was received by the respondent's Bureau on April 8, 1997, petitioner filed a claim for refund or issuance of a tax credit certificate of the amount of P9,574,205.06, representing its excess/unutilized creditable withholding tax for the calendar year ending December 31, 1995, inasmuch as it had not tax liability for the said year 1995 and succeeding year 1996 against which to credit the said amount (Exh. B).

The aforesaid claim was not acted upon by the respondent, hence, on April 15, 1998, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that it is entitled to the refund of the amount of P9,574,205.06 representing its excess creditable withholding tax for the year 1995. It stressed that the legal basis of the claim is Section 69 (now 76) of the Tax Code, which states, to wit:

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

total net income for the preceding calendar year 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 net income of that year the corporation shall either:

(a) Pay the 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.

It pointed out that the instant claim for refund was well within the two (2) year period prescribed in Sections 204 and 230 (now 229) of the Tax Code, which provides:

Section 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

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(3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction, No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

Section 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 (2) 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 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.

Respondent on the other hand, by way of special and affirmative defenses, alleges that (1) the amount claimed for refund has been applied as credit to the next succeeding year, hence no longer refundable; (2) petitioner is subject to paragraph (a) instead of (b) of Section 69, NIRC; (3) 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; (4) taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; (5) in an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for tax credit/refund; and (6) well-settled is the rule that claims for refund are construed against the claimants since it partakes the nature of exemption from taxation.

The issue that comes to fore for our consideration is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P9,574,205.06 allegedly representing its excess/unutilized creditable withholding tax for the year 1995.

We find nothing ambiguous nor obscure in the language of Section 69 (now 76) of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either

(a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.

Since it appears in the case at bar that petitioner was not able to utilize its 1995 unutilized/excess creditable withholding tax for the said year and to the succeeding year 1996, due to losses incurred in both years, the amount of P9,574,205.06 appears, on its face, to be refundable. Petitioner must however prove its entitlement to the refund by substantial evidence.

It is a settled rule in this jurisdiction that before a claim for refund of excess creditable withholding taxes may be granted, the petitioner taxpayer must show compliance with the following:

> 1) That the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 (now 229) of the Tax Code;
>
> 2) That it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. v. CA, 204 SCRA 957);
>
> 3) That 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 *(ibid.)*.

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within two-years from the date of payment of the tax. Its final income tax return for the calendar year ending December 31, 1995 and its claim for refund was filed with the Bureau of Internal Revenue on April 15, 1996 (Exh. A) and April 8, 1997 (Exh. B), respectively, while its Petition for Review was filed with this court on April 15, 1998. The two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final tax return **(ACCRA Investment Corp. v. Court of Appeals, 204 SCRA 957).**

As regards the second requirement, petitioner presented in evidence its ITR for 1995 (Exhs. A to A-4) to establish and prove that the items of gross income which were subjected to creditable withholding tax were reported as part of petitioner's gross income in 1995. Likewise, it presented as its witness, Mr. Francisco Roque Lumbres, Petitioner's Assistant Vice President for Tax and Insurance Management Division, who testified, during the hearing held on March 4, 1999, that indeed the income upon which the subject creditable withholding taxes were reported as part of petitioner's gross income in 1995, thus:

Q. Mr. Witness, are you familiar with the case?

A. Yes, I am.

Q. What is this case all about?

A. This is a case of Union Bank's claim for refund on its excess tax credits pertaining to taxable (year) 1995.

Q. And to your knowledge, what were the income subjected to creditable withholding tax?

A. These are professional fees, sale of real property and rental of real property. All of these form part of gross income reported in our 1995 income tax return.

Q. Mr. Witness, I would like to show you document marked as Exhibit "A". This document is the 1995 income tax return of Union Bank for taxable year 1995, I would like to direct your attention to Section "A" of this document wherein there is stated gross income, will you please tell this Court what is the amount of gross income of Union Bank for 1995?

A. It is P2,012,083,372.00.

Q. Mr. Witness, what document, if any, would reflect for more details, the schedule of income or breakdown of your gross income?

A. It is the document or the schedule called list of attachment accompanying the income tax return. This schedule was filed together with the 1995 income tax return.

Q. I am showing you a nine-page document entitled list of attachment to annual income tax return of 1995, is that the same document you are referring to?

A. Yes, it is.

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ATTY. CAÑETE

Q. Mr. Witness, I would like to direct your attention to page four of Exhibits "A-1" wherein there is stated schedule of income and there are items of income enumerated hereunder, can you please read to the Court what are the items of income stated therein?

A. These are interest, service charges, fees and commission, foreign exchange, profit and trading gains and miscellaneous.

Q. Mr. Witness, you mentioned earlier that the income subjected to creditable withholding tax were rental of real properties, sale of real property and professional fees and you also mentioned that these three form part of the gross income reported in the 1995 income ax return, can you please tell this Court under what classifications or items do these three fall?

A. These three items fall under service charges, fees and commission and miscellaneous.

Q. What are these services charges, fees and commission?

A. Professional fees which are actually management fees paid to us by our subsidiaries.

Q. And what falls under miscellaneous?

A. These are sale of real property and rental (of) real property.

Q. Mr. Witness, you said that the sale of real property and rental of real property fall under miscellaneous?

A. Right.

Q. Is there a document or what document, if any, which show a more detailed or breakdown of your miscellaneous income to reflect that sale of real property and rental (of) real property do indeed fall under miscellaneous?

A. I have prepared a document which will show a detailed listing of miscellaneous income. In that document, it will show that sale of real property and rental (of) real property fall under miscellaneous income account.

Q. Mr. Witness, I am showing you a one-page document entitled schedule of income for calendar year ended December 31, 1995, is this the same document you are referring to?

A. Yes, that is the same document I am referring to.

(See TSN, March 4, 1999, p. 5-9)

It likewise complied with the third requirement when it presented in evidence the Certificates of Creditable Withholding Tax at Source, Monthly Remittance Return of Income Taxes Withheld, Certificate Authorizing Registration, Certificate of Payment from the BIR, and Capital Gains Tax Return (Exhs. D to T, inclusive).

Respondent, on the other hand, did not present any evidence to dispute or controvert the testimonial and documentary evidence offered by the Petitioner. In fact, respondent waived his right to present evidence and submitted the case for decision. He likewise submitted his case sans his memorandum.

Clearly the evidence presented by petitioner, satisfactorily convinced this Court that it is entitled to the amount claimed for refund, thus, the Court extends the relief sought by the petitioner.

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein petitioner in the amount of P9,574,205.06, representing the latter's excess/unutilized creditable withholding taxes for the year 1995. No costs.

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 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