REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SGS PHILIPPINES, INC. (formerly PHILIPPINE TESTING AND CONTROL SERVICES, INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 5500

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 14 1999

x - x

DECISION

This case involves a judicial action for the refund of the sum of ₱507,460.00 representing alleged overpaid creditable withholding tax for calendar years ended December 31, 1994 and 1995.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the business of rendering services of pre-inspection of import and export shipments in the Philippines.

On June 14, 1996, Petitioner amended its Articles of Incorporation changing its corporate name to SGS Philippines, Inc., from Philippine Testing and Control Services, Inc. This is evidenced by the certificate issued by the Securities and Exchange Commission (Exh. D), dated December 20, 1996 (Exh. D-3), with SEC Registration No. 174377 (Exh. D-1), authorizing the amendment of the Articles of Incorporation of Philippine Testing and Control Services, Inc., to effect the change of name of Petitioner to SGS Philippines, Inc., among others.

For the calendar year ended December 31, 1994, Petitioner filed its Corporate Annual Income Tax Return on April 17, 1995 (Exh. A-4) reflecting an overpaid or refundable income tax in the amount of ₱144,812.00, the details of which are as follows:

Gross Income	₱40,210,644.00
Less: Deductions	43,515,278.00
Net Loss	(3,304,634.00)
Tax Rate	35%
Income Tax Due	NIL
Less: Tax Credits/Payments	
Creditable Tax Withheld	144,812.00
Amount Refundable	₱ 144,812.00

However, for the said calendar year Petitioner declared a net operating loss in the amount of ₱3,304,634.00 as reflected in its 1994 Corporate Annual Income Tax Return (Exh. A-3). Thus, Petitioner carried over to the succeeding calendar year of 1995 the amount of ₱144,812.00 as tax credit.

Likewise, for the calendar year ended December 31, 1995, Petitioner filed its Corporate Annual Income Tax Return on April 13, 1996 declaring a net operating loss of ₱1,207,847.00 (Exh. B-3) with creditable taxes withheld at source for that year in the total amount of ₱362,648.00 (Exh. B-10). As a result thereof, the carry-over of the excess creditable withholding taxes which Petitioner generated in 1994 cannot be applied because of the operating loss it sustained in 1995. Thus, the amount of P144,812.00 representing unutilized creditable withholding taxes for the calendar year 1994 and the amount of P362,648.00 representing unutilized creditable taxes for the calendar year 1995 represent the alleged total overpaid income tax of Petitioner computed as follows:

Gross Income		P42,648,755.00
Less: Deductions		43,856,242.00
Net Loss		(1,207,487.00)
Tax Rate		35%
Income Tax Due		NIL
Less: Tax Credits/Payments		
Prior Year's Excess Credit	P144,812.00	
Creditable Tax Withholding	362,648.00	507,460.00
Total Amount Refundable		P 507,460.00

Although the refundable amount of P507,460.00 was opted by Petitioner "to be applied as tax credit to next year", the same did not materialize because Petitioner did not carry it over in 1996 as shown by the 1996 income tax return (Exhs. C, C-1 to C-9).

On April 11, 1997, Petitioner filed a letter-claim for refund (Exh. E) with the Bureau of Internal Revenue seeking for the refund of the amount of P507,460.00 as unutilized creditable withholding tax paid for the taxable years 1994 and 1995.

Since Respondent has neither acted much less grant the claim for refund, Petitioner had no other recourse except to file the instant Petition for Review on April 14, 1997 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Respondent, for his part, averred the following Special and Affirmative defenses in his Answer:

> "5. The administrative claim for refund was filed only on April 11, 1997 whereas, the instant petition was filed on April 14, 1997, not giving Respondent enough chance to act on it;
>
> 6. Petitioner has not shown proof that it has incurred losses in the years 1994 and 1995, mere declaration in the returns without being supported by records of pertinent papers proving that the claimed deductions were really paid or incurred during the years in question is insufficient;
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> 7. The expenses claimed by the Petitioner in its 1994 and 1995 tax returns are not totally allowable, thus even if granting, for the sake of argument, that the withholding tax payments for both years are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes;
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> 8. The petition states no cause of action as it does not alleged the dates when the taxes sought to be refunded were actually paid;
>
> 9. The best evidence of payment and remittance of taxes withheld are the official receipts;
>
> 10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemptions from taxes (CIR vs. Ledesma, 31 SCRA 95).

11. It is incumbent upon Petitioner to show compliance with the provisions of Section 230 of the Tax Code;

12. Consequently, Petitioner is not legally entitled to the claim herein sought to be refunded."

It is likewise the contention of Respondent that Petitioner not only failed to establish by clear and convincing evidence its entitlement to the refund sought but was also remiss in disputing the findings of the Respondent's revenue examiner (Respondent's Memorandum, p. 194, CTA records), and on the basis of the investigation conducted, it was found that the taxpayer failed to substantiate with the corresponding certificate of withholding tax the amount of P115,902.65 allegedly representing tax credit; that the sum of P68,430.00 as tax credit is erroneous for there are certain gross income reported but in fact not subject to withholding tax; that the amount withheld allegedly by Toledo Manufacturing Co. and Cebu Mitsume, Inc. is of doubtful nature and that no proof has been shown that the withholding taxes were actually remitted to the BIR by the company's alleged withholding agent (Exh. 3, Memorandum Report, November 25, 1997, p. 255, BIR records).

In order to support its entitlement to refund, Petitioner on its part submitted the following documents which were all admitted in a Resolution, dated February 27, 1998, to wit:

		Exh.
1.	The administrative claim for refund filed with the BIR	E
2.	Petitioner's Corporate Annual Income Tax Return (ITR) for the years 1994, 1995 and 1996 and the amended ITR for 1994	A, B, BB, C
3.	The SEC Certificate of Registration	D
4.	The various certificates of creditable income tax withheld at source for 1994	F-1 to F-79
5.	The various certificates of creditable income tax withheld at source for 1995	G-1 to G-101

The only issue to be resolved by this Court is whether or not Petitioner is entitled to the refund of the sum of ₱507,460.00 representing alleged overpaid creditable withholding tax for calendar years 1994 and 1995.

Petitioner anchored its claim for refund of the aforementioned excess creditable withholding tax on the following provisions of the Tax Code:

> "**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."

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

x x x

(3) Credit or refund taxes erroneously or illegally received, 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 claim for credit or refund within two years after the payment of the tax or penalty."

We find nothing ambiguous nor obscure in the language of Section 69 of the Tax Code, insofar as the same is brought to bear upon the circumstances of the Petitioner in the case at bar. True enough, the excess payment made by the Petitioner could either (a) be refunded to the corporation or (b) be credited to the succeeding taxable year. However, Petitioner sustained a net operating loss for taxable years 1994 and 1995 rendering it impossible to apply the excess creditable withholding taxes it incurred. Since Petitioner did not utilize the 1994 overpaid income tax in the succeeding year 1995, as well as its 1995 overpaid income tax, due to the losses it incurred in the years 1995 and 1996, it appears therefore that the amount claimed for refund is in order.

However, before a refund or credit of the tax withheld can be given due course, it is imperative for the claimant-Petitioner to show first compliance with the following requisites:

> 1) That the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 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 (Section 10, Revenue Regulations No. 6-85; ACCRA Investments Corp. vs. Court of Appeals, 204 SCRA 957);
>
> 3) The fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (*ibid.*)

A perusal of the evidence submitted by the Petitioner reveals that it has satisfactorily proven its claim for refund/tax credit. Petitioner filed its 1994 Corporate Annual Income Tax Return (Exh. A) on April 17, 1995 (Exh. A-6). The 1995 Corporate Annual Income Tax

Return (Exh. B) was filed on April 13, 1996 (Exh. B-7). The written claim for refund (Exh. E) was filed with the Respondent's office on April 11, 1997 (Exh. E-1) and the Petition for Review with this Court on April 14, 1997.

From all the foregoing, it can be gleaned that from the dates of filing of the corporate annual income tax returns for the fiscal years involved, the two year prescriptive period under Section 230 of the Tax Code has been observed by Petitioner in the filing of its administrative and judicial claims.

Contrary to the Respondent's contention, the Petitioner is not required to show the date of payment of the tax withheld at source. The rule is, a corporate taxpayer pays on a quarterly basis or on the 15th day of the 4th month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in their operations **(AdMu vs. CIR, CTA Case No. 3976, October 18, 1989).**

In addition, the 1994 and 1995 creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax At Source (BIR Form 1743.1) in accordance with the requirements of Revenue Regulations No. 6-85 (Exhs. F-1 to F-79 and G-1 to G-101).

It was further established that the income upon which these creditable withholding taxes were paid were included in the Petitioner's return (Schedule 2, Exhs. A and B).

The results of the investigation conducted by Respondent's revenue officers that Petitioner's claim is of doubtful nature cannot be given weight by this Court, absent any proof supporting such fact. Without presenting the necessary and relevant evidence, the findings of the Respondent's officers are nothing but mere conjectures and premature conclusions only drawing its strength from the presumption that they are regularly performing their functions. The Respondent cannot likewise question the veracity of the Income Tax Returns and the certificates of creditable tax withheld since Respondent did not present any evidence pointing out the error and irregularity in the preparation of these documents **(BPI as Liquidator vs. CIR, CTA Case No. 4257, December 20, 1993)**. Thus, the findings of the Respondent cannot defeat the otherwise valid claim of Petitioner, especially if the Petitioner's evidence is complete and uncontroverted.

Respondent's defense which is anchored as usual on the principle that claims for refund are strictly construed cannot be given credence in the light of the Petitioner's evidence to prove its claim **(Shangri-la Plaza Corp. vs. CIR, CTA Case No. 5346, January 9, 1998)**.

In conclusion, We find that Petitioner has adequately proven its case before this Court. However, from the evidence submitted, the total amount to be refunded is only ₱419,562.90 instead of the original ₱507,460.00 as claimed in the petition. For the taxable year 1994, Petitioner presented certificates of tax withheld in the total amount of ₱223,374.41, however in the corporate annual income tax return for the same year, only the amount of ₱144,812.00 was declared as creditable tax withheld, thus, only the amount of ₱144,812.00 should be refunded to Petitioner for calendar year 1994. For the taxable year 1995, the amount of ₱362,648.00 (Exh. B-10) has been declared by Petitioner in its annual income tax return, however only the amount of ₱274,750.90 has been properly substantiated by certificates of tax withheld (Exhs. G-1 to G-101). Thus, only the amount of ₱274,750.90 should be refunded to Petitioner for the calendar year 1995. The details of the total refundable amount of ₱419,562.90 is shown hereunder:

Year	Per Petitioner's Claims with BIR/CTA	Per Petitioner's Supporting Documents	Exhs.	Amount Refundable
1994	₱144,812.00	₱223,374.41	F-1 to F-79	₱144,812.00
1995	362,648.00	274,750.90	G-1 to G-101	274,750.90
TOTALS	₱507,460.00	₱498,125.31		₱419,562.90

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is **GRANTED** and Respondent is hereby

ORDERED to **ISSUE** a TAX CREDIT CERTIFICATE in the amount of P419,562.90, representing overpaid income taxes for the taxable years 1994 and 1995.

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