REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILTREAD TIRE & RUBBER CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5598

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 18 2000

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DECISION

The present appeal involves this Court's ruling on whether or not petitioner is entitled to the claim for refund or issuance of a tax credit certificate in the amount of P34,668,890.00, representing overpaid income tax for the year 1995, despite respondent's denial due to an existing assessment for deficiency income, VAT and documentary stamp taxes issued against it.

The facts of the case are simple.

Petitioner, Philtread Tire & Rubber Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at 3rd Flr., Alegria Building, 2229 Pasong Tamo Street, Makati City.

On November 29, 1996, petitioner filed its 1995 final Corporation Annual Income Tax Return[1] reflecting a net loss in the amount of P171,306,980.00 but with a refundable income tax payment in the sum of P36,140,330.00, representing prior year's excess credit of P1,471,440.00 and the 1995 creditable tax withheld of P34,668,890.00. This alleged overpaid income tax for the year 1995 was opted by petitioner to be refunded (Exh. A).

On February 23, 1998, petitioner filed a letter-claim for refund of overpaid income tax in the amount of P34,668,890, representing the 1995 unapplied creditable withholding tax with the respondent (Exhs. J, J-1 to J-5).

On April 1, 1998, petitioner, without waiting for an action from the respondent, decided to file an appeal with this Court in order to recover the alleged overpaid income tax pursuant to the provisions of Section 230 of the Tax Code, as amended.

In his Answer, respondent raises the following Special and Affirmative defenses:

> 5) The petition states no cause of action as it does not alleged (sic) the dates when the taxes sought to be refunded were actually paid (Manufacturer's Bank and Trust Co., etc. vs. Commissioner of Internal Revenue, CTA Case No. 1659, November 29, 1965).
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> 6) Petitioner's claim for refund is under the process of verification/investigation by the respondent considering that the same was filed only on February 23, 1998;
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> 7) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 8) It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended;
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> 9) In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund.

In support of its claim, petitioner presented the following evidences:

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[1] A tentative income tax return for the year 1995 was filed by petitioner on April 25, 1996 (BIR records, pp. 13 to 17).

1. The final corporation annual income tax returns for the years 1995 and 1996 (Exhs. A, A-1 to A-20, K, K-1 to K-15);
2. Various certificates of creditable withholding tax at source (Exhs. B to I); and
3. The letter-claim for refund with the respondent (Exhs. J, and J-1 to J-3).

Respondent, on the other hand, presented as evidence, among others, Assessment Notice Nos. 000059-95-98-452, 02-219-95B-98-B2-452 and 02-219-95B-98-B-2-452, all dated November 13, 1998, finding petitioner liable for deficiency income, VAT, and documentary stamp taxes, respectively (Exhs. 4, 5 and 6), for the calendar year 1995. Respondent rests his case on the belief that petitioner is not entitled to the claim for refund because of the aforementioned assessed deficiency taxes.

After taking into consideration all the circumstances encompassing the present appeal and the existing jurisprudence applicable, this Court finds that the issue of whether or not petitioner is liable to pay the assessments for deficiency income, VAT and documentary stamp taxes should be tackled in a separate case. The subject brought to Us for resolution in the petition for review only involves the refund of overpaid income tax for the year 1995. Moreover, the Court has no jurisdiction over the assessments issued against petitioner because the said assessments have neither been disputed nor do we have any information whether or not these have become due and demandable.

Section 229 of the Tax Code, as amended, provides that if the protest is denied in whole or in part, the taxpayer affected may appeal to the Court within thirty days from receipt of the said decision. Furthermore, Section 7 of Republic Act 1125 provides that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. In the case of **Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, dated December 9, 1997**, the Court ruled that:

> "The argument advanced by the respondent cannot serve as an obstacle to grant the instant claim for refund because petitioner's alleged tax deficiencies for the taxable year 1992 is not the issue presented before us in this petition for review. By bringing up the issue of petitioner's alleged tax deficiencies, respondent seeks to block the grant of the refund by presenting the argument that no refund of taxes is possible because after all the petitioner has an outstanding debt due the government, suggesting the possibility of legal compensation or set-off of taxes.
>
> It is already well-settled that internal revenue taxes cannot be the subject of set-off or compensation (**Republic vs. Mambulao Lumber Company, 4 SCRA 622**). The reason is that the government and taxpayer are not mutually 'creditors and debtors of each other' under Article 1278 of the Civil Code as a 'claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off' (**Cordero vs. Gonda, 18 SCRA 331**). In the instances where the Supreme Court allowed legal compensation or set-off of taxes, such taxes were already **due and demandable**, thus compensation under Article 1279 of the Civil Code, took place by operation of law." (Underscoring supplied).

In the case at bar, the records bear no traces of whether or not the assessments issued against petitioner have become disputed or final. The only manifestation evident in the BIR records is that petitioner will file a protest after it has received the formal demand letter of the assessments from the respondent (Exh. 3, BIR records, pp. 250 to 253). Since the BIR failed to prove that the assessments for income, VAT and documentary stamp taxes have become final and executory, the respondent cannot prohibit the Court in rendering a decision over the claim for refund of petitioner due to the mere existence of assessment notices. The reason that can negate petitioner's entitlement to the claim for refund or issuance of a tax credit certificate of overpaid income tax is petitioner's non-compliance with the following requisites:

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 299 (now 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

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. (**Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Coporation 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 Coporation (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 Investors Finance Coporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994**).

These aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

A scrutiny of the evidence on record reveals that petitioner has satisfactorily met all of the above requirements. The claim for refund with the respondent and the petition for review with this Court were timely filed within the two-year period. The reckoning date of the two-yéar prescriptive period being April 25, 1996, the date when the 1995 tentative annual income tax return was filed (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, dated January 15, 1992**). Petitioner also established the fact that the income upon which the creditable withholding taxes were paid were included in its 1995 final adjustment return as shown in Exh. A-20. However, petitioner is only entitled to the refund of overpaid income tax in the amount of P34,549,668.52 which is the sum duly supported by certificates of withholding tax at source, computed as follows:

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Withheld
Colombo Merchant Phils., Inc.	B	P 67,500.00	P 3,375.00
Italcar Pilipinas Inc.	C	252,618.00	2,526.18
Commercial Motors Corp.	D	19,509.09	195.10
Universal Motors Corporation	E	1,232,000.00	12,320.00
Sime Darby Pilipinas, Inc.	F	2,547,100.55	25,471.01
Man Automotive Concessionaires	H	578,123.28	5,781.23
Sucat Land Corporation	I	460,000,000.00	34,500,000.00
Total		P464,696,850.92	P34,549,668.52[2]

WHEREFORE, in view of the foregoing, the petition for review is partially granted. Respondent is hereby **ORDERED** to **REFUND** or in the alternative to issue a tax credit certificate in favor of petitioner the sum of P34,549,668.52, representing overpaid income tax for the year 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

[2] Exh. G (For the quarter ended March, 1995) was not considered in the computation for being a part of Exh. F (For the year ended December 1995).

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