REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGREVO PHILIPPINES CORPORATION (formerly HOECHST FAR EAST MARKETING CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5787

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 02 2001

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DECISION

The case at bar seeks the refund/tax credit of the amount of P505,117.00 allegedly representing Petitioner's overpaid income tax/excess creditable withholding tax for the taxable year ending December 31, 1996.

As represented, Petitioner is a corporation duly organized and existing under Philippine laws, and is primarily engaged in the business of dealing, distributing and selling on a wholesale basis of chemicals of every description, with principal office address at 221 Salcedo St., Legaspi Village, City of Makati.

On April 15, 1997, Petitioner filed with Traders Royal Bank – Paseo Branch its Corporate Annual Income Tax Return for the year 1996 (Exhs. A and A-4) showing *inter alia*, a refundable amount of P505,117.00, computed as follows:

Taxable Income		P10,842,603.00
Tax Due		3,794,911.00
Less: Quarterly Income Tax Payments	P3,648,945.00	

Creditable Withholding Tax for 1996	651,083.00	4,300,028.00
Total Refundable Amount		P 505,117.00

The said refundable amount of P505,117.00 was not carried over by Petitioner to succeeding taxable year 1997 because of *nil* tax liability resulting from its operational loss of P31,176,215.00 (Exhs. E and E-4).

On April 8, 1999, Petitioner filed a letter-claim for refund dated April 7, 1999 with the Respondent in the amount of P505,117.00 representing its overpaid quarterly income tax/excess creditable withholding taxes for the taxable year 1996 (Exh. F).

The same was not acted upon by Respondent, hence, in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund, Petitioner filed the instant Petition for Review with this Court on April 14, 1999, in accordance with Sections 58 (D) and 204 (C) of the 1997 Tax Code which provides as follows:

> "**SEC. 58.** *Returns and Payments of Taxes Withheld at Source.* –
>
> x x x x x x x x x
>
> "(D) *Income of Recipient.* – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
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> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.

"**SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

x x x x x x x x x

"(C) 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 (2) years after the payment of the tax or penalty: *Provided, however* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

x x x x x x x x x"

On the other hand, Respondent raised in his answer the following Special and Affirmative Defenses, to wit:

"4. The attachment in the letter-claim for refund constitutes only of Petitioner's ITR for 1996, thus, failing to comply with the requirement in order that a claim be given due course as provided for under Section 10, Revenue Regulations No. 6-85, which states that the fact of withholding is established by a copy of the statement (BIR Form 1743.1);

5. The tax filer of the 1996 ITR, subject matter of this case, is not the Petitioner but Hoeschst Far East Marketing Corporation, hence, the former is not a party-in-interest in the instant case;

6. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; and,

9. Well-settled is the rule that claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation. (*Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968*)."

Paragraph No. 5 above was later contradicted by Respondent when he signed the Joint Stipulation of Facts and Issues, which states that AGREVO PHILIPPINES CORPORATION and HOECHST FAR EAST MARKETING CORPORATION are one and the same entity (p. 44 to 45, docket).

During the hearing of the case, Petitioner offered in evidence among others, its Corporate Annual Income Tax Returns for the years 1996 and 1997 (Exhs. A & E), the various Certificates of Creditable Tax Withheld at Source (BIR Form No. 1743-750) duly issued to Petitioner by its withholding agents (Exhs. B-1 to B-51, C-1 to C-45, and D-1 to D-78, and letter-claim for refund of Petitioner received by the Respondent on April 8, 1999 (Exh. F).

Respondent on his part did not present any testimonial or documentary evidence to dispute the claim for refund of Petitioner and merely submitted this case for decision based solely on the evidence adduced by the Petitioner.

The issue submitted by the parties for the resolution of this Court may be summarized into one that is: WHETHER OR NOT PETITIONER HAS PROVEN THE LEGAL AND FACTUAL COMPONENTS OF ITS CLAIM FOR REFUND FOR THE YEAR 1996.

We rule in the affirmative. Records show that Respondent did not present any countervailing evidence for the claim for refund of Petitioner. Thus, what is left to be done is to see whether Petitioner has complied with the requirements of a refund for overpaid income tax/excess creditable withholding tax.

The legality of the Petitioner's claim for refund is well established under Section 58 (D), *supra* and Section 69 (now Section 76) of the Tax Code, to wit:

> "**SEC. 69**. *Final Adjustment Return*. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net 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.
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> 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."

Inasmuch as Petitioner's Corporate Income Tax Return (ITR) for 1996 (Exh. A) shows that the sum of its quarterly income tax payments and creditable withholding tax for 1996 are more than that of its total tax due, and considering that the said excess payments were not carried over to the succeeding year as it suffered a net loss of P31,176,215.00 for the year 1997 (Exh. E), it is clearly entitled to its claim for refund pursuant to paragraph (b) of Section 69, *supra*.

Thus, what remains is the determination of whether or not Petitioner has satisfied the factual requisites of its claim for refund in the total amount of P505,117.00.

In a litany of cases, such as **Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4134 and 4046, dated November 11, 1991 and**

February 24, 1993, respectively; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997; Oranbo Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5335, July 24, 1998; AP Industrial Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5360, January 20, 1999**, this Court ruled that the requisites required for the grant of refund when the creditable withholding tax is in excess of the amount of tax due comprise of the following, to wit:

1. That the taxpayer filed a claim for refund within the two (2) year period as 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. vs. Court of Appeals, 204 SCRA 957**);

3. The fact of withholding is established by a copy of a statement (BIR Form No. 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

These aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10, 1997, 280 SCRA 459.**

There is no doubt as to the timeliness of the instant petition. The Supreme Court on April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., G.R. No. 85956**, ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of filing of the adjusted final tax return (**ACCRA Investment Corp. vs. Court of Appeals**, *supra*). Records show that Petitioner seasonably filed its administrative claim for refund with the

Respondent's bureau on April 8, 1999 (Exh. F) and its Petition for Review with this Court on April 14, 1999 well within the two-year prescriptive period provided under the Tax Code, reckoned from the date of the filing of its 1996 ITR on April 15, 1997 (Exh. A).

With regard to the second requisite, We find merit in Petitioner's submission that the income subjected to the withholding tax was included in its 1996 gross income. Petitioner, thru its witness Mr. Wilfredo Pascua, fully explained to the Court that the income subjected to the creditable withholding tax was reported as part of Petitioner's 1996 Gross Income, thus:

ATTY. PALER: Mr. Witness, you said also that the Petitioner paid Creditable Withholding Taxes amounting to P651,083.00, was the income which gave rise to this Creditable Withholding Tax reported in the 1996 Annual Income Tax Return?

MR. PASCUA: Yes, the income subjected to withholding taxes were (sic) reported in the Taxable Year 1996 under Section C of the Gross Income. This is included in the P648,702,500.00, Sir.

ATTY. PALER: Your Honors, this amount was reflected in the Section C of Exh. "A" and this portion was sub-marked as Exh. "A-3" for the Petitioner. (see TSN dated January 20, 2000, p..9-10)

This testimony of the Petitioner's witness was not refuted by the Respondent.

As regards the third requisite, Petitioner likewise complied with the same when it submitted in evidence its Certificates of Creditable Tax Withheld at Source duly issued by the income payor (withholding agent) to Petitioner, showing the amount of income paid and the amount of tax withheld therefrom (Exhs. B-1 to B-51, C-1 to C-45, and D-1 to D-78; TSN dated November 18, 1999, p. 15-18).

Moreover, Petitioner presented in evidence its ITR for the succeeding year 1997 (Exh. E) to show that it suffered a net loss in the year 1997 and that the unutilized creditable withholding tax paid for 1996 in the amount of P505,117.00 was not carried over to the year 1997 (Exh. E-4).

Thus, taking into account the above findings and the Respondent's failure to controvert or dispute the documentary and testimonial evidence of Petitioner and considering further the explicit provisions of Section 51 (f) [now 58 (D)] of the Tax Code, which states that any excess of the amount of tax so withheld over the tax due on the taxpayer's return should be refunded, the Court has no other recourse but to grant the tax credit/refund prayed for by Petitioner in the instant Petition for Review.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in favor of herein Petitioner in the amount of P505,117.00 representing the latter's overpaid income tax/excess creditable withholding tax for the year 1996. No costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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