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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MC GEORGE FOOD INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A Case No. 6084

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 03 2001

x - - -

P4,736,188.00 as excess and/or unutilized creditable income tax (Exhibit H-1), computed as follows:

Gross Income	P 1,709,619,235.00
Less: Deductions	1,694,207,841.00
Taxable Income	15,411,394.00
Tax Due	5,393,988.00
Less: Tax Credits/Payments	10,130,176.00
Alleged Refundable amount	P 4,736,188.00

The aggregate tax credits/payments of P10,130,176.00 as above shown consists of the quarterly income tax payments made by Petitioner for the first and second quarters of the year amounting to P2,636,824.24 (Exhibit A-3) and P 7,261,588.75 (Exhibit E-2), respectively; and the balance represents creditable income taxes withheld during taxable year 1997 amounting to P231,763.00, as reflected in Section E of the 1997 Income Tax Return (Exhibit H) of the Petitioner. The authenticity and due execution of these quarterly and Annual Returns of the Petitioner were duly admitted by the Respondent in the Joint Stipulation of Facts.[2]

It was likewise indicated in the said 1997 Annual Income Tax Return, the intention of Petitioner to carry over and apply the unutilized creditable income tax of P4,736,188.00 as tax credit for the succeeding calendar year 1998 (Exhibit H-2).

Meanwhile, on April 15,1999, Petitioner filed its Annual Income Tax Return for calendar year 1998 which showed among others, a minimum corporate income tax (MCIT) due of P5,799,056.00 and a total tax credit payment of P 4,953,367.00, the breakdown of which are as follows:

[2] See Joint Stipulation of Facts and Issues, par. 3 and 4, CTA docket p. 55

Prior Year's Excess Credits	P 4,736,188.00
Tax Credits/Payments for the 1st 3 Quarters	67,274.00
Tax Withheld per BIR Form No.2307 for the First three Quarters	149,905.00
Total Tax Credit Payment	P 4,953,367.00

In its Petition for Review submitted to this Court, Petitioner explained that with the figures above stated, only the amounts of P67,274.00 and P149,905.00, were actually credited against the P5,799,056.00 Minimum Corporate Income Tax liability for the year 1998. Needless to say, the amount of P4,736,188.00 representing the excess tax credits carried over from the previous year (1997) was not taken into account in computing the income tax payable for the year 1998. Neither was this amount carried over or credited against the income tax liability for the year 1999, hence it still remained unutilized.

On April 14, 2000, Petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of P4,736,188.00 representing overpaid income taxes for the calendar year 1997.[3] On that same date, Petitioner filed a Petition for Review with this Court.

Respondent, in his Answer filed on May 8, 2000, raised the following Special and Affirmative Defenses, thus:

> "4. Petitioner's alleged claim for tax refund/ tax credit is subject to administrative routinary investigation/ examination by Respondent's Bureau;
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> 5. The tax sought to be refunded was collected and paid pursuant to law and pertinent BIR implementing rules and regulations; hence, not refundable;
>
> 6. Petitioner's allegation that it has an unutilized creditable withholding tax credits for the year 1997 in the amount of P4,736,188.00 does not *ipso facto*

[3] *ibid.*, par. 5, CTA docket p.55

warrant the credit. Petitioner has the burden of proving that it is indeed entitled to the credit sought as it is a well-settled rule that claims for tax refunds/ tax credit are construed in *strictissimi juris* against the taxpayer *(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31 SCRA 95).* This is due to the fact that claims for refund/ credit partake the nature of an exemption from tax. Thus, it is incumbent upon the Petitioner to prove that it is indeed entitled to the refund/ credit sought. Failure on the part of the Petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption from the common burden cannot be permitted to exist upon vague implications *(Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466).*

7. Petitioner must show compliance with the provisions of Section 204(c) and 229 of the Tax Code."

In order to substantiate its claim for refund/ or tax credit, Petitioner formally offered as evidence, the following documents:

Exhibit	Description
A, E, G	Corporate Quarterly Income Tax Returns for the 1st, 2nd and 3rd quarters of 1997
H, J, L	Annual Corporate Income Tax Return for the calendar years 1997, 1998 and 1999
B, F	Debit Ticket Advise from Citibank showing remittance of tax payments to the BIR
I	Summary of Certificates of Creditable Taxes Withheld at Source from January to December 1997
C, D, I-1 to I-16, M to VV	Various Certificates of Creditable Tax withheld at source

Herein parties, in order to simplify the case, agreed on the issues to be resolved, thus:

1. Whether or not Petitioner is entitled to a refund and/or issuance of a tax credit certificate in the amount of P4,736,188.00 representing overpaid

quarterly income tax and unutilized creditable tax withheld for calendar year 1997;

2. Whether or not Petitioner has shown compliance with the provisions of Section 204(c) and 229 of the Tax Code;

3. Whether or not Petitioner complied with the requirements necessary for the refund of income taxes of P4,736,188.00, representing overpaid quarterly income and unutilized creditable withholding taxes for the year 1997;

4. Whether or not Petitioner's claim for refund of unutilized creditable withholding taxes for the 1997 taxable year is substantiated by documentary evidence.

However, since the enumerated issues are all interrelated, we deem it best to streamline them into one main issue of WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF P4,736,188.00 REPRESENTING THE OVERPAID QUARTERLY INCOME TAX AND UNUTILIZED CREDITABLE WITHHOLDING TAX AT SOURCE FOR THE CALENDAR YEAR 1997.

In asserting its right to the refund of the amount of excess and unutilized creditable withholding income tax, Petitioner cites as its legal bases Section 69 (Now Section 76) in relation to Section 30 (now Section 229) of the Tax Code, hereunder quoted as follows:

> ***"Section 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 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.

> 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."
>
> ***"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 or 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 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 a written claim therefore, 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."

Corollary to the aforesaid provisions, this Court, in previously decided cases, laid down the three basic requisites for the grant of the refund of overpaid quarterly income payments and unutilized creditable tax at source, thus:

1. That the claim for refund was filed within two (2) years as prescribed under Section 230 (Now Section 229) of the Tax Code;
2. That the income upon which the taxes were withheld were included in the return of the recipients;
3. That the fact of withholding is established by a copy of a 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. *(Section 10, Revenue Regulation 6-85; City Trust Finance Corporation vs The Honorable Commissioner of Internal Revenue, CTA Case no. 4134, November 11, 1991; Affirmed by the Court of Appeals in City Trust Finance Corporation vs. Commissioner of Internal Revenue, CA GR SP No. 28239, March 14,1994; and City Trust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24,1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs City Trust Finance Corporation, CA G. R. SP 31104, April 18,1994)*

The above-quoted requirements were affirmed by the Supreme Court in the case of **Citibank, N. A. vs. Court of Tax Appeals and Commissioner of Internal Revenue, G.R. 107434, October 10,1997.**

A thorough analysis of the records of this case as well as the applicable jurisprudence leads this Court to conclude that a refund or tax credit is in order. Petitioner in its 1997 annual income tax return (Exh. H) declared a taxable income of P15,411,394.00 and a corresponding income tax liability of P5,393,988.00. The same return shows quarterly income tax payments of P9,898,413.00 and creditable taxes withheld of P231,763.00 or a total tax credit of P10,130,176.00. Applying the tax credits to the income tax liability, Petitioner will have an excess tax credit of P4,736,188.00 which was opted to be applied as credit to the succeeding taxable year.

While it is true that Petitioner initially intended to carry over the 1997 excess/unutilized tax credits to the succeeding year, it is also significant to note that Petitioner was not able to utilize the same, as reflected in its 1998 Corporate Annual Income Tax Return. For taxable year 1998, Petitioner declared in its annual income tax return a minimum corporate income tax (MCIT) liability of P5,799,056.00, the prior year's excess credit of P4,736,188.00 and the 1998

creditable taxes withheld of P217,179.00 or a total tax credit of P4,953,367.00. After applying the total tax credit of P4,953,367.00 against the MCIT, Petitioner still had an income tax liability in the amount of P845,689.00. In its memorandum submitted to this Court, Petitioner explained that the income tax payable for the year 1998 should have been P845,689.00. However, instead of paying the said amount, Petitioner still paid the amount of P5,581,877.00 (Exhibit J-2, Exhibit J-3) as reflected in the bank validation of Petitioner's Income Tax Return for that year. The difference between the amount paid (P5,581,877.00) and the MCIT due of P5,799,056.00 is P217,179.00 which is the sum of the withholding tax credits for the year 1998. It is significant to note that the amount of P4,736,188.00 representing excess tax credits carried over from the previous year (1997) was not taken into account in computing the income tax payable for the year 1998. Hence, the amount of excess/ unutilized creditable taxes as of the end of taxable year 1997 was not utilized against the income tax payable of Petitioner for the taxable year 1998 (Exhibit J), neither was the amount carried over to the subsequent taxable year 1999 (Exhibit L). But before a claim for refund of unutilized withholding tax can be granted as stated earlier, it is important that Petitioner must first comply with the three basic requirements, thus:

(1) That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

Records show that Petitioner filed a claim for refund with the BIR on April 14, 2000 and with this Court also on the same date. While it is remarkable at the outset that the dates of filing of both the administrative and judicial claim for refund is one and the same, it is

important that both dates should be within the two-year prescriptive period mandated by Section 230 of the Tax Code. This two-year prescriptive period commences to run at the earliest on the date of filing of the adjusted final tax return ***(Commissioner of Internal Revenue vs. Asia Australia Ltd., G.R. No. L-85956, April 10,1989).*** In the instant case, Petitioner filed its Corporate Annual Income Tax Return on April 15,1998. Clearly, this falls well within the two-year period provided by law.

(2) That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient;

As to whether or not Petitioner included the income from which the taxes were withheld in its reported gross income, We are convinced that Petitioner partially complied with this requirement. The Certificates of Creditable Tax Withheld at Source reflected income arising from sale of goods, advertising, and payment to contractors. However, only the income from sale of goods were reflected in the annual income tax return of Petitioner, thus it follows that only the creditable taxes withheld from the sale of goods are considered for refund.

(3) *That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.*

Petitioner's submission of the various certificates of Creditable Income Tax Withheld at Source indicates compliance with this requirement. Petitioner offered as evidence the following Certificates of Creditable Tax Withheld at Source in support of its claim for refund:

WITHHOLDING AGENT	EXHIBIT	PERIOD	SOURCE OF INCOME		TAX WITHHELD
EDSA FOOD INDUSTRIES	C	1/1/97-3/31/97	Sale of goods	P	2,707.04
			Payment to Contractor		5,775.50
MCCOLBY'S INC.	D	1/1/97-3/31/97	Advertising		7,554.36
MCMIGHTY	I-1	1/1/97-12/31/97	Advertising		9,670.46
EDSA FOOD INDUSTRIES	I-2	7/1/97-9/31/97	Sale of goods		3,732.47
EDSA FOOD INDUSTRIES	I-3	4/1/97-6/30/97	Sale of goods		2,638.70
NEEMEE FOOD CORP.	I-4	10/1/97-12/31/97	Advertising		4,598.04
NEEMEE FOOD CORP.	I-5	7/1/97-9/30/97	Advertising		5,005.71
GIANT ARCHES	I-6	10/1/97-12/31/97	Advertising		36,786.38
CEBU GOLDEN INDUSTRIES	I-7	4/10/97-6/10/97	Advertising		2,668.53
CEBU GOLDEN VENTURES	I-8	4/10/97-6/10/97	Advertising		2,746.06
MCBROS	I-9	1/1/97-12/31/97	Payment to Contractor		5,829.12
MCCOLBY'S INC.	I-10	12/1/97-12/31/97	Advertising		29.08
MCCOLBY'S INC.	I-11	10/1/97-12/31/97	Advertising		9,028.04
MCCOLBY'S INC.	I-12	4/1/97-6/30/97	Advertising		8,251.75
MCCOLBY'S INC.	I-13	7/1/97-9/30/97	Advertising		8,349.21
MCCOLBY'S INC.	I-14	8/01/97-9/30/97	Sale of goods		3,318.10
GMC	I-15	1/1/97-12/31/97	Services		31,178.31
MCJOLA	I-16	1/1/97-12/31/97	Sale of goods		81,895.68
		Total		**P**	**231,762.54**

After an examination of the above documents, the certificates from Cebu Golden Food Industries and Cebu Golden Food Ventures failed to bear the withholding agents' signatures, hence we excluded the taxes withheld as reflected therein, in the final computation.

Thus, only the following creditable taxes withheld where the corresponding income were included as part of the gross income declared in the ITR were considered in the final computation, to wit:

WITHHOLDING AGENT	EXHIBIT	PERIOD		TAX WITHHELD
EDSA FOOD INDUSTRIES	C	1/1/97-3/31/97	P	2,707.04
EDSA FOOD INDUSTRIES	I-2	7/1/97-9/31/97		3,732.47
EDSA FOOD INDUSTRIES	I-3	4/1/97-6/30/97		2,638.70
MCCOLBY'S INC.	I-14	8/01/97-9/30/97		3,318.10
MCJOLA	I-16	1/1/97-12/31/97		81,895.68
		Total	**P**	**94,291.99**

Based on the foregoing, it is only proper that a refund be granted to Petitioner but in a reduced amount of P4,598,716.98 computed as follows:

TAXABLE YEAR 1997

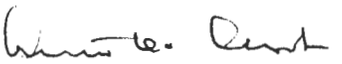
Taxable Income		P15,411,394.00
Tax Due		P 5,393,988.00
Less: Tax Payments/Credit		
(a) Quarterly payments (Exhs. A-3 & E-2)	P9,898,412.99	
(b) Creditable tax withheld	94,291.99	9,992,704.98
Amount Refundable		**P 4,598,716.98**

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** in favor of the Petitioner, the reduced amount of **FOUR MILLION FIVE HUNDRED NINETY EIGHT THOUSAND SEVEN HUNDRED SIXTEEN & 98/100 PESOS (P4,598,716.98)** representing the excess and unutilized creditable withholding tax for the calendar year ended December 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

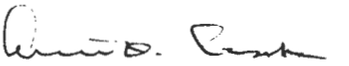
I CONCUR:



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