REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ERNST & YOUNG GLOBAL CLIENT CONSULTING ASIA PACIFIC, BV,
Petitioner,

- versus -

C.T.A. CASE NO. 6223

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 11 2002

x - x

DECISION

This is a claim for refund or issuance of a tax credit certificate in the amount of P3,434,942.00 allegedly representing petitioner's unutilized excess creditable income tax withheld at source for the fiscal year ended September 30, 1998.

From the pleadings submitted, the facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Netherlands, primarily engaged in co-ordination and provision of management consultancy services to multinational clients, with business address at 6/F Vernida IV Building, Alfaro Street, Salcedo Village, Makati City. It is registered with the Bureau of Internal Revenue with TIN number 050-005-038-904 (par.1, Joint Stipulation of Facts).

On April 25, 2000, petitioner filed with the Bureau of Internal Revenue (BIR) its Amended Corporate Annual Income Tax Return for the fiscal year ended September 30, 1998 (par. 3, Joint Stipulation of Facts) declaring nil income tax liability as it suffered a

136

net loss of P7,834,939.00 and unutilized creditable taxes withheld in the amount of P3,454,942.00 arising from payments for management services made to petitioner (Exhibit A). In the said return, petitioner indicated its intention to refund its unutilized creditable withholding taxes.

On May 2, 2000, petitioner filed with the Revenue District No. 50 of the BIR an application for refund of its unutilized creditable withholding taxes for the fiscal year ended September 30, 1998 in the amount of P3,434,600.17, in accordance with Section 204(c) of the 1997 Tax Code (Annex D, Petition for Review, CTA records, p. 10).

On September 22, 2000, petitioner filed its Annual Income Tax Return for the fiscal year ended September 30, 1999. Again, it declared a net loss amounting to P3,995,255.00 and total tax credits in the amount of P4,270,323.00 consisting of its prior year's excess credit of P3,454,942.00 and creditable tax withheld for the fourth quarter in the amount of P815,381.00.

On January 15, 2001, petitioner was compelled to file this instant petition due to the inaction of the respondent on its claim for refund.

On August 9, 2001, the parties submitted the following issues for this Court's resolution:

1. Whether or not the petitioner has an unutilized creditable withholding tax in the amount of P3,434,942.00 for the fiscal year ended September 30, 1998;

2. Whether or not the income from which the taxes were withheld were included as part of the gross income of the petitioner in the 1998 Income Tax Return; and

3. Whether or not the petitioner's claim for refund of alleged 1998 unutilized creditable withholding tax is substantiated by documentary evidence.

137

In support of its claim, petitioner submitted to this Court the following documents:

1.	Exhibit A	- Amended Annual Income Tax Return of petitioner for the fiscal year ended Sept. 30, 1998
2.	Exhibit B	- Financial Statements of petitioner as of Sept. 30, 1998
3.	Exhibits C to E	- Certificates of Creditable Tax Withheld at Source for the first three (3) quarters of fiscal year 1998
4.	Exhibit F	- Annual Income Tax Return of petitioner for the fiscal year ended Sept. 30, 1999

On the other hand, respondent submitted the case for decision without presenting any evidence (page 91, CTA Records).

The petition is devoid of merit.

In order to be entitled to a refund of unapplied creditable income tax paid, petitioner must prove compliance with the following three (3) basic requirements:

a. That the claim for refund was filed within the two year prescriptive period provided under Section 204(c) in relation to Section 229 of the Tax Code, as amended;

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

c. That the income upon which the taxes were withheld were included in the return of the recipient ([*Revenue Regulations No. 12-94, which amended Revenue Regulations No. 6-85*] ***Citibank, N.A. vs. Court of Appeals*, 280 SCRA 459 and *ACCRA Investments Corporation vs. Court of Appeals*, 204 SCRA 957**).

138

With reference to the first requirement, petitioner alleged that the instant petition for review was filed within the two-year reglementary period, reckoned from April 25 2000, the date of filing of its final adjusted income tax return.

However, after a careful evaluation of the evidence presented, this Court finds that petitioner was not able to establish with sufficient evidence that the claim for refund was timely filed. As borne out by the records, petitioner submitted only its 1998 amended Annual Income Tax Return which was filed on April 25, 2000 but failed to offer as evidence its 1998 original Annual Income Tax Return. It is important to state that the two-year prescriptive period is reckoned from the actual date of filing of the original, not the amended, final adjustment return.

In the case of ***Benguet Management Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 5492, January 27, 1999**, We had the occasion to rule on the same issue, thus:

> "An analysis of the evidence submitted by Petitioner reveals that it failed to show that the claim for refund was timely filed within two years from the date of payment of tax. Petitioner failed to present the original Corporation Annual Income Tax Returns for the calendar years 1994 and 1995 to enable Us to verify if the claim for refund was made within the two-year reglementary period. Both documents are needed for the purpose of determining whether petitioner filed the claim for refund with the respondent and the petition for review with this Court within the two-year prescriptive period, reckoned from the actual date of filing of the original final adjustment returns (***Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, 244 SCRA 446**). The mere allegations by the Counsel of petitioner that the 1994 and 1995 income tax returns were filed in April, 1995 and April, 1996, respectively, and that the claim for refund was filed within the two-year period have to be verified. We could not see the reason why such important documents were not presented by the petitioner during the trial of the case. In the absence of these material documents, the Court is constrained to deny petitioner's prayer. x x x"

139

Significantly, this Court was affirmed by the Court of Appeals in the case entitled ***Benguet Management Corporation vs. Commissioner of Internal Revenue,* CA-GR SP No. 52737, promulgated on October 29, 1999, with Entry of Judgment dated November 27, 1999**, thus:

> "Clearly, the time or date of actual filing by the Petitioner of its 1994 and 1995 Annual Income Tax Returns with the BIR, can well be verified from its duplicate copies since all income tax returns filed with the BIR area all stamped "Received" on the date they are filed which also shows that the date of its actual filing. Thus, there is no gainsaying why the Public Respondent deemed it necessary for the Petitioner to present copies of its original 1994 and 1995 Annual Income Tax Returns for them to verify if, indeed, the claim for refund with the BIR and the "Petition for Review" with them, were made within the two-year reglementary period. We are in full accord with the findings and disquisitions of the Public Respondent xxx"
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> xxx xxx xxx

Petitioner's failure to present its 1998 original final adjusted return is fatal to its claim for refund for we cannot conclude with certainty whether the two-year reglementary period has been complied with. In view of this, this Court no longer finds it necessary to dwell on the issues raised by the parties.

Well settled is the rule that tax refunds are in the nature of tax exemptions, and as such they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption. (***Commissioner of Internal Revenue vs. S.C. Johnson and Son Inc.*, 309 SCRA 87**).

IN VIEW OF THE FOREGOING, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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