REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN CARMAKERS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5330

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
MAY 13 1998

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DECISION

This case involves a claim for refund of alleged overpaid income tax amounting to ₱1,663,580.52 from unutilized creditable income tax withheld at source for fiscal year ended October 31, 1993.

The antecedent facts of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines and is engaged in the assembly and manufacture of automobiles, including the sale and distribution of automotive spare parts.

It appears from the records that on February 15, 1994, petitioner filed with the Bureau of Internal Revenue its Tentative Corporate Annual Income Tax Return for the fiscal year ended October 31, 1993 (Exhibit "A",

p. 39, CTA records). Thereafter, on July 6, 1994, petitioner filed an Amended Income Tax Return declaring a net loss in the amount of ₱16,873,634.00. The amended return of the petitioner for fiscal year 1992-1993 reported a creditable withholding tax in the amount of ₱1,663,581.00 (Exhibit "B", p. 48, CTA records). This amount represents creditable tax withheld on income from lease of real property for the same fiscal year 1992-1993 which was not utilized as petitioner incurred a net operating loss in the same year.

The claim for refund in the amount of ₱1,663,580.52, which is the subject of this petition for review is broken down as follows:

Withholding Agent	Amount of Income	Withholding Tax at 5%
Columbian Motors South Super, Inc.	₱23,004,185.00	₱1,150,209.25
Columbian Motors Corp.	1,622,607.00	81,130.36
Columbian Motors Corp.	6,991,702.00	349,585.13
Columbian Motors South Super, Inc.	815,302.60	40,765.13
Solid Corporation	837,813.13	41,890.65
	₱33,271,610.33	₱1,663,580.52

On February 15, 1995 and July 28, 1995, petitioner filed its Tentative and Final Corporate Annual Income Tax Returns for fiscal year 1993-1994, respectively, declaring a net operating loss in the amount of ₱26,334,549.00 (Exhibits "H" and "I", pp. 104 and 116,

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CTA records). In view of this net operating loss, the creditable withholding tax remain unutilized.

As the law limits the automatic carry over and application of the excess tax credit of a prior year to only one (1) taxable year, petitioner was left without choice but to file a claim for refund of its unutilized income tax payments for the fiscal year 1992-1993 in the amount of ₱1,663,580.52. Thus, on February 13, 1996, petitioner filed with the Bureau of Internal Revenue (BIR) an application for refund of the said amount. Subsequently, on February 14, 1996 petitioner instituted the instant petition for review.

Respondent avers in her Answer that petitioner's claim for refund is pending administrative investigation and verification by the BIR. The BIR records reveal that the subject claim for refund was referred to Revenue Officer Hipolito Ison on February 20, 1996 (Exhibit "1). Thereafter, a Letter of Authority No. 120809 was issued by Revenue District Officer Antonio F. Montemayor authorizing Mr. Hipolito Ison to examine the books of accounts and other accounting records of the petitioner in connection with the latter's claim for refund (Exhibit "3"). This explains why respondent, in her Answer, avers that the present claim for refund is still pending administrative investigation because at the time the

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claim for refund was referred to Mr. Hipolito Ison for investigation, the petitioner had already filed a petition for review in this Court.

The issue to be resolved in this case is whether or not petitioner is entitled to its claim for alleged overpaid income tax amounting to ₱1,663,580.52 arising from unutilized creditable income tax withheld at source for fiscal year 1992-1993 ended October 31, 1993.

Petitioner believes that it is entitled to the refund sought anchoring its stand on Section 69 of the National Internal Revenue Code, in relation to Section 230 of the same Code. For easy reference, Sections 69 and 230 are hereby quoted as follows:

> **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:
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> (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.

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> SEC. 230. ***Recovery of tax erroneously of 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 excessive 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, 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 therefor, 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.

After a thorough study of the records and evidence of the case, this Court finds the petition for review meritorious. Petitioner complied with the requirements this Court has laid down in numerous cases involving claims for refund of excess creditable withholding tax at source, and these are the following:

> 1) That it filed a claim for refund within two (2) year period from date of payment of the tax as prescribed under Section 230 of the NIRC, as amended;
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> 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;

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> 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 paid and the amount of tax withheld therefrom;

A perusal of the evidence presented by the petitioner revealed that it has satisfactorily proven its claim for refund. Petitioner filed a claim for refund with the BIR and with this Court within the two-year prescriptive period prescribed by Section 230. The Supreme Court in the case of **Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Appeals, G.R. No. 83736, dated January 15, 1992,** said that the most reasonable and logical application of the law would be to compute the two-year prescriptive period from the filing of the final adjustment return or the annual income tax return. The two-year period, in the instant case, commenced to run on February 15, 1994, the actual date of filing of petitioner's tentative Corporate Annual Income Tax Return. Petitioner filed its claim for refund with the BIR on February 13, 1996 and the subsequent judicial claim with this Court on February 14, 1996, well-within the two-year prescriptive period provided by law.

To further support its claim, petitioner also presented its corporate annual income tax returns showing that the income upon which the taxes were withheld at

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source were included as part of the income declared in said income tax returns. Based on the evidence presented, petitioner had a net operating loss of ₱16,873,634.00 and an unutilized creditable withholding tax of ₱1,663,580.52. The matter about the unutilized creditable withholding tax was fully substantiated. It was testified to by petitioner's witness Mrs. Editha de la Cruz. During the trial, the said witness stated that the amount representing creditable withholding tax for fiscal year ended October 1993 was not utilized as the company was still in the net loss position (TSN, Hearing of July 9, 1996, pp. 13-14). Petitioner having incurred a net operating loss in fiscal year ended October 1993, carried over to the succeeding taxable quarter the said amount of ₱1,663,580.52. However, the same was not utilized as proved by its 1994 and 1995 Final Adjustment Return which also resulted in a net operating loss in the amount of ₱26,334,549.00. Petitioner also was able to submit the Certificates of Creditable Income Tax Withheld at Source (Form 1743-1), and they show that the amount, subject of the claim, was in fact withheld by the withholding agents and remitted to the BIR (Exhibits "C" to "G", inclusive).

In conclusion, petitioner has adequately proven its case before this Court. On the other hand, respondent

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presented the Memorandum of Asst. Revenue Officer Edna Francisco-Cuartero of Revenue District Office No. 52 addressed to Revenue Officer Hipolito Ison of the same office referring petitioner's claim for refund for immediate investigation (Exhibit "1") and a Letter of Authority authorizing Mr. Ison to conduct an examination of petitioner's Books of Accounts (Exhibit "2"). Both these documents do not have the effect of controverting the evidence presented by the petitioner for they merely prove, if at all, that the claim for refund is still undergoing investigation at the administrative level and has not been terminated despite the fact that petitioner filed its claim for refund with the BIR since February 13, 1996.

WHEREFORE, premises considered, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED** and respondent is hereby **ORDERED** to **REFUND** in favor of petitioner Asian Carmakers Corporation the amount of ₱1,663,580.52 representing unutilized creditable income tax withheld at source for the fiscal year 1992-1993 ended October 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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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
Court of Tax Appeals

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