REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN AUTO CAR CORPORATION,
Petitioner,

- versus -

CTA CASE NO. 5329

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 02 1998

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DECISION

This case involves claim for refund of overpaid income tax amounting to ₱2,082,187.99 arising 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 Philippines and is engaged in the assembly and manufacture of automobile, 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 fiscal year ended October 31, 1993 (Exhibit A). Thereafter, on July 6, 1994, petitioner filed an Amended Income Tax Return declaring a net loss in the amount of ₱50,001,029.00. The Amended Corporate Annual Income Tax Return of the petitioner

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for fiscal year 1993 likewise reported a creditable withholding tax in the amount of P2,082,187.99 (Exhibit B). This amount represents creditable tax withheld on income from lease of real property for the same fiscal year 1993 which was not allegedly utilized because petitioner incurred a net operating loss in the same fiscal year.

The amount of P2,082,187.99, 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	P32,185,906.60	P1,609,295.33
Columbian Motors Corp.	1,729,085.20	86,454.26
Columbian Motors Corp.	3,980,772.00	199,038.60
Columbian Motors South Super, Inc.	373,359.00	18,667.95
Solid Corporation	3,202,636.87	168,731.85
	P41,471,759.67	P2,082,187.99

(Exhibits C to G, inclusive)

On February 15, 1995 and July 28, 1995, petitioner filed its Tentative and Amended Corporate Annual Income Tax Returns for fiscal year 1993-1994, respectively, declaring a net operating loss in the amount of P103,279,316.00 (Exhibits H and I). In view of this net operating loss, the creditable withholding tax in the amount of P2,082,187.99 remained unutilized.

On February 13, 1996, petitioner filed with the BIR an application for refund of the said amount. The letter claim for refund mentioned that the creditable withholding tax payments made in fiscal year 1992-1993 were not utilized to pay its tax liabilities for the succeeding year due to its loss position in 1994, thus, petitioner saw a sufficient legal basis to ask for refund of the amount of ₱2,080,187.99. Respondent failed to act upon the administrative claim for refund. Petitioner then resorted to seek redress from this Court by filing a petition for review on February 14, 1996. This petition merely echoed the allegations contained in the aforecited letter-claim for refund, reiterating herein that petitioner's creditable withholding tax payments in the amount of ₱2,082,187.99 were not utilized.

The reason for respondent's inaction on the administrative claim for refund was brought to light when she expressed her opposition to the petition by setting forth the following Special and Affirmative Defenses, thus:

> 1) The law is clear and categorical that the final adjustment return, as in the case of the petitioner which opted for a fiscal year accounting period, shall be filed on or before the 15th day of the 4th month following the close of the fiscal year, hence, respondent considers petitioner's "tentative" return as its final adjustment return;
>
> 2) Petitioner's alleged "final" return filed very late on July 6, 1994 has no bearing insofar as the respondent is concerned;
>
> 3) Moreover, petitioner has not shown proof or cogent reasons why the gross income declared in its "tentative" return in the amount of ₱170,650,979.00 was abruptly decreased to ₱162,265,194.00 while, on the other hand, the deductions of ₱213,690,043.00 was decreased to only ₱212,266,223.00 or barely ₱1,423,820.00 in the "final" return.

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4) Petitioner, likewise, has not shown proof of the loss incurred in the fiscal year 1993 (P43,039,064.00, "tentative" return and P50,001,029.00 "final" return);

5) The alleged tax withheld must be shown to have been paid and remitted to respondent's bureau where the best evidence are the official receipts;

6) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

7) In an action for tax refund/credit the burden of proof 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.

The foregoing defenses proposed by the respondent directs the attention of this Court on the issue of whether or not petitioner is entitled to the refund of alleged overpaid income tax amounting to P2,087,187.99 representing unutilized creditable income tax withheld at source for fiscal year 1992-1993 ended October 31, 1993.

Petitioner strongly 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

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equal to the total tax due on the entire taxable 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 quarter of the succeeding taxable year.

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 written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid.

A meticulous scrutiny of all the records of this case convinced this Court to hold in favor of petitioner.

Petitioner filed a claim for refund with the BIR and with this Court within the two year prescriptive period prescribed by Section 230 of the Tax Code. The Supreme Court in the case of **Commissioner of Internal Revenue vs.**

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Asia Australia Express, Ltd., GR No. L-85956, April 10, 1989, held that "the two year prescriptive period within which to claim a refund commences to run at earliest on the date of filing of the adjustment final tax return" (see also **ACCRA Investments Corporation vs. CIR, GR No. 96322, dated December 20, 1991, 204 SCRA 957).**

In the instant case, the prescriptive period for filing a claim for refund shall commence to run on the date petitioner filed its final income tax return for the taxable year involved. Under Section 70(b) of the National Internal Revenue, Code, the final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal or calendar year, as the case may be. As in this case, the taxable year involved is fiscal year ended October, 1993. Therefore, the prescriptive period shall begin to run at earliest from the time petitioner filed its final tax return, that is, on February 15, 1994. Hence, petitioner had until February 16, 1996 within which to file its claim for refund. Thus, when petitioner filed with the Bureau of Internal Revenue (BIR) the said claim on February 13, 1996 (Exhibit J) and with this Court on February 14, 1996, the two-year prescriptive period has not yet lapsed.

As regards the contention of the respondent that petitioner has not shown proof of the loss incurred, We find this to be without merit. Suffice it to state, that in the case of **Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991,** this particular issue has already been settled, to wit:

> "Respondent's contention that a mere allegation of loss does not *ipso facto* merit a refund is unmeritorious. As stated, respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence the income tax return should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by petitioner in the year (see also **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993).**

This Court also finds the allegation of respondent that the alleged tax withheld must be shown to have been paid and remitted to respondent's bureau where the best evidence are the official receipts, to be untenable. We believe that it is no longer necessary for the petitioner to do so. In fact, this Court has already laid down the three basic requirements pursuant to respondent's own Revenue Regulation 6-85, in claiming for the refund of excess or unutilized creditable withholding tax at source and these are:

> 1. that it filed a claim for refund within the two year period as prescribed under Section 230 of the National Internal Revenue Code;

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2. that the income upon which the taxes were withheld were included in the 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, as amended by Rev. Reg. 12-94; see **Citytrust Finance Corp. vs. CIR, CTA Case No. 4134, November 11, 1991; Oranbo Realty Corp. vs. CIR, CTA Case No. 5082, January 16, 1997; Ayala vs. CIR, CTA Case No. 5081, March 31, 1997; PDCP vs. CIR, CTA Case No. 5237, March 23, 1997).**

Compliance by the petitioner with the above requirements is paramount to a grant of the claim.

Based on the records of this case, petitioner met all the three conditions. It filed its claim for refund within two years from the date of payment of the tax. The income upon which the creditable withholding tax at source was deducted has been included in the return (Exhibit B). The proof of withholding is well established by the presentation of Certificates of Creditable Income Tax Withheld at Source (Form 1743.1) showing 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). The fact also remains that petitioner suffered losses for both fiscal years 1993 and 1994 (Exhibits H and I) and the excess creditable withholding tax was proven to be unutilized in both years. Hence, there is nothing left for this Court to do but to grant the claim for refund.

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It must also be emphasized that during the hearing, respondent's witness Rogelio Poblete, BIR examiner, even testified that in his report of investigation (Exhibit 3), he recommended the grant of tax credit to petitioner (TSN, July 2, 1997). Respondent, therefore may be considered to have conceded her case and realized that indeed petitioner is entitled to its claim. However, it should be noted that in the Certificate given by the withholding agent Columbian Motors South Super, Inc. (Exhibit C), an alteration has been made corresponding to the taxable year when the final tax was withheld. It gives rise to doubt and open to question on whether the same is actually for the year 1993 or 1994. Since claims for refund partakes of the nature of exemption and construed in *strictissimi juris* against the taxpayer, We resolve this doubt against the petitioner. Thus, We have excluded the amount of ₱1,609,295.33 leaving only the sum of ₱473,000.00 to be given to petitioner.

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a TAX CREDIT CERTIFICATE in favor of petitioner in the amount of ₱473,000.00 representing unutilized creditable withholding tax at source for fiscal year 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