REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5493

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: NOV 06 1998

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DECISION

This is a petition for review filed by the petitioner, Benguet Corporation, against respondent Commissioner of Internal Revenue, for the latter's inaction on petitioner's claim for refund in the amount of P857,208.00 representing petitioner's alleged overpaid/unutilized creditable withholding tax for the years 1994 (P607,701.00) and 1995 (P249,507.00).

As represented, petitioner is a domestic corporation, engaged in mining activities including, among others, the exploration, development and operation of mining properties for purposes of commercial production, and the marketing of marketable mine products produced by it. On April 11, 1995, petitioner filed with the Far East Bank and Trust Co. its Corporate Annual Income Tax Return for the calendar year 1994 (Exh. B) declaring a net loss of P42,077,863.00. In the said return, petitioner declared the total amount of P607,701.00 as overpaid income tax for the taxable year

1994 which allegedly represents the creditable expanded withholding taxes (EWT), from the sale of real property and services, rentals and income payments made by a top 5000 corporation, which were withheld and remitted to the BIR by the payors/withholding agents pursuant to Revenue Regulations No. 6-85, as amended.

Likewise, on April 15, 1996, petitioner filed with the Banco de Oro Commercial Bank its Corporate Annual Income Tax Return for the calendar year ending December 31, 1995 (Exh. C), again declaring a net loss of ₱2,509,190.00 and a refundable amount of ₱249,507.00, allegedly representing the EWT withheld and paid for the year 1995.

Since petitioner incurred a net loss position for the years 1994 and 1995, the aforestated creditable withholding taxes were not utilized for the said taxable years neither were they utilized or deducted from petitioner's income tax liability for the succeeding taxable year of 1996 as it allegedly likewise suffered a net loss for said year.

In a letter, dated March 11, 1997, which was received by the respondent's Bureau on April 01, 1997, petitioner filed a claim for refund of the aforesaid amounts totalling ₱857,208.00, inasmuch as it had no tax liability for the years 1994, 1995 and 1996 against which to credit the amounts withheld.

The aforesaid claim was not acted upon by the respondent, hence, on April 11, 1997, petitioner filed with this Court the instant petition for review.

Petitioner posited that it is entitled to the refund of the aforementioned amount as it is clearly provided under Section 51(f) [now Sec. 58(d)] taken in relation to Section 204(3) [now Sec. 204(c)], both of the Tax Code, which states, to wit:

> SEC. 51. ***Returns and payment of taxes withheld at source. - (f) Income of recipient.*** - Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) 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 295 (now 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 50.
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> SEC. 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - x x x (3) Credit or refund taxes erroneously or illegally received, 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 years after the payment of the tax or penalty.

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Petitioner pointed out that the instant claim for refund was well within the two (2) year period prescribed in Section 230 of the Tax Code, which provides:

> SEC. 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 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.
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> 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.

Respondent in her Answer stressed that the petitioner's application for tax refund is still undergoing administrative investigation/examination by the respondent's Revenue District No. 41, Mandaluyong City. Further, respondent raises in the usual token of a defense that (1) taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations, (2) a claim for tax refund partakes of the nature of an exemption from taxation, hence, must be construed against the petitioner, and (3) it is incumbent upon petitioner to show that it has complied with the provisions of Section 204 taken in relation to Sec. 230, both of the Tax Code.

The issue to be resolved by the Court is whether or not petitioner has indeed overpaid its income taxes in the amount of P857,208.00 for the taxable years 1994 and 1995.

We find nothing ambiguous nor obscure in the language of Section 51 (f) of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that any excess of the amount of tax so withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return shall be refunded to the taxpayer. The issue before us is nothing new. The Court has already laid down the requisites needed for a grant of refund of creditable withholding taxes, to wit:

1.) 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. CA, 204 SCRA 957);

2.) 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 of income paid and the amount of tax withheld therefrom (*ibid.*);

3.) that the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code.

91

In establishing its claim for refund, petitioner during trial presented evidence (Exhibits A to S) to substantiate its claim that (1) it filed its Corporate Annual Income Return for 1994 and 1995 on April 11, 1995 and April 15, 1996, respectively. (2) the income upon which the taxes were withheld were included in the returns of the petitioner, and (3) the amount claimed to be refunded were in fact withheld and remitted to the respondent by the withholding agents. Petitioner presented as evidence the photocopies of Certificates of Creditable Tax Withheld at Source (Form No. 1743.750) (Exhibits E, F, G, H, I, K, L, M, N, O, P, Q, R, and S) to show the amount of income tax withheld by various withholding agents during the period covered by the claim for refund. Further, petitioner presented Exhibits B and C, to show that it suffered a net loss position for years 1994 and 1995 and that it filed its claim for refund in the total amount of P857,208.00 with the respondent on April 01, 1997 (Exh. A). Respondent interposes no objection to the admission of the exhibits offered by the petitioner as proof of its claim of excess payments, neither was it heard to complain about the authenticity of the contents of these documents nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proof of excess payments or excess creditable withholding tax despite the fact that it is well within their competence to do so. Respondent is thereby considered to have vouched the veracity of these exhibits.

With regard to the timeliness of the instant petition, We find merit in the petitioner's ratiocination that its claim for refund has not yet prescribed. As resolved by the Supreme Court on April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd. (G.R. No. 85956)**, the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return **(ACCRA Investment vs. Court of Appeals, supra)**. Records show that petitioner filed its Corporate Annual Income Tax Return for the years 1994 and 1995 on April 11, 1995 and April 15, 1996, respectively (Exhs. B and C). The date of the filing of the instant petition which was on April 11, 1997 is clearly within two (2) years from April 11, 1995, the date when petitioner filed its final adjustment return for the year 1994.

Thus, apropos, to the petitioner's claim for refund of the amount of ₱607,701.00 representing its overpaid unutilized creditable withholding tax for the year 1994, the Court finds that petitioner is indeed entitled to the same. However, with regard to petitioner's claim for refund of the amount of ₱249,507.00, representing its excess creditable withholding tax for the year 1995, the Court denies the same on the ground the petitioner has not shown any evidence that will prove that it suffered a loss on the succeeding taxable year of 1996 neither did it adduce any evidence that will show that it did not utilize the same in the succeeding taxable year. Petitioner did not offer its 1996 Annual Corporate Income Tax Return as evidence to substantiate its claim of loss for 1996. In other words, petitioner failed to discharge its duty in not presenting a document which is very indispensable in the instant case. It is not a redundancy to quote once more the decision of this Court in the case of **BPI Data Systems Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993**, thus:

> "After a thorough review of the arguments raised by both parties this Court arrived with the following findings. In the process of going over the records of the case, the Court noted that the 1990 Income Tax Return was not presented in evidence by the petitioner. Had it been presented in evidence, petitioner may have claimed as tax credit the amount sought for. Accordingly, since the 1990 Income Tax Return was not presented, it cannot be ascertained whether the refundable amount of ₱199,255.60 was already credited being part of P877,857.60 applied for as tax credit to the succeeding taxable year 1991. There is no way by which this Court can determine how much it is legally entitled to.
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> Unfortunately, petitioner fall short in its obligation to submit that vital document which would have worked to his advantage. Failure on the part of the petitioner to

> sustain his claim is fatal to its cause following the time tested doctrine that claims for refunds are construed strictly against claimant (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-17509, January 30, 1970, 31 SCRA 95)."

Further, respondent in her memorandum invoked that "the claim for refund must fail on the ground that petitioner was not able to substantiate its alleged 'net loss' for the years 1994 and 1995. The Court finds the same incongruous to the jurisprudence on the matter, that the declarations made by the taxpayer in its tax return are for all intents and purposes presumed to be made in good faith and are true and correct considering that they were made and executed under penalties of perjury **(Paseo Realty and Development Corp. v. Commissioner of Internal Revenue, CTA Case Nos. 4693 and 4439, promulgated on July 29, 1993 and July 5, 1993, respectively and Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, July 31, 1992).**

The Supreme Court ruled in the case of **Citibank, N.A. vs. Court of Appeals, G.R. No. 107434, October 10, 1997,** that the alleged irregularities in the declared operation losses is a matter which must be proven by competent evidence, thus:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That

function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts, stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, on any date which may be relevant or material in accordance with Section 16 of the present NIRC.

IN THE LIGHT OF ALL THE FOREGOING, the petition is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** in favor of herein petitioner the amount of P607,701.00, representing the latter's overpaid/unutilized creditable withholding tax for the year 1994 but denies the 1995 claim in the amount of P249,507.00 for failure to substantiate.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

96

CERTIFICATION

I hereby certify that this 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

97