REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AICHI FORGING COMPANY OF ASIA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. **5609**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 06 1999

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DECISION

This is a judicial claim for refund or tax credit in the amount of ₱892,269.47 allegedly representing overpaid creditable withholding taxes for the calendar year ended December 31, 1995.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with address at Barrio Pulong, Sta Cruz, Santa Rosa, Laguna, Philippines. It is engaged in the business of forging and manufacture of closed impression and die steel.

The facts are simple.

On April 8, 1997, Petitioner filed an amended Corporate Annual Income Tax Return ("ITR" for short) with the Bureau of Internal Revenue ("BIR" for brevity) corresponding to its 1995 ITR which was filed on April

12, 1996 in order to properly reflect the excess creditable tax withheld for such year in the amount of ₱892,269.47 resulting from a net loss of ₱3,720,434.00 (Exhibits "A" and "B"). Said excess tax was not utilized by the Petitioner in its 1996 ITR on account of the fact that it suffered further net loss in the amount of ₱11,653,658.00 (Exhibit N).

On March 11, 1997, Petitioner filed with the BIR a written application for refund of the aforesaid amount of ₱892,269.47 as excess creditable withholding tax for the year 1995, in accordance with Section 204 of the Tax Code, as amended in 1997 (Exhibit "O") wherein it is so stated that no credit or refund of tax or penalty is allowed unless the taxpayer has filed in writing with the Respondent a claim for credit or refund within two (2) years after payment of such tax or penalty.

On April 8, 1998, or nearly the lapse of two years reckoned from April 12, 1996, Petitioner instituted the instant appeal in view allegedly of the inaction of the Respondent on said claim for refund and that, as provided in Section 229 of the Tax Code, as amended, the two-year period within which a judicial claim for refund may be filed from date of payment of the tax was about to expire. Hence, this Petition for Review.

At bar, Petitioner reasserted its stance *a quo*. On the other hand, Respondent surprisingly could only muster general presumptions of law in his special and affirmative defenses, to wit:

> 8. In an action for tax refund/credit, the burden is upon the taxpayer to show and/or prove entitlement thereto and failure to sustain said burden is fatal to said action;
>
> 9. Taxes paid are deemed to have been made in accordance with law and existing BIR regulations;
>
> 10. Petitioner must prove that it has complied with the provisions of Section 230 of the Tax Code, as amended.

Trial proceedings were quite uneventful and involved on the main identification and presentation of evidence. It is only during the submission of the memoranda that Respondent began to seriously attack the merit of Petitioner's propositions.

Respondent argued that Petitioner should prove that the deductions claimed from its gross income are allowable deductions under the Tax Code and pertinent BIR rules and regulations; otherwise, it does not ipso facto warrant a refund.

Respondent further averred that there is no showing that the income from which the taxes were withheld was declared as part of Petitioner's gross income in its ITR; that the statements and certificates of tax withheld presented and offered by the Petitioner as proof of withholding are not conclusive evidence of payment and remittance to the BIR; and that there is no sufficient proof that the tax withheld went into government coffers.

Based on the preceding facts and circumstances, this Court is merely confronted with the factual issue of whether or not Petitioner was able to submit sufficient evidence in support of its claim for refund in the amount of ₱892,269.47.

It must be noted that there is no dispute in so far as the legal aspect of herein claim is concerned. Section 69 of the Tax Code, as amended, clearly provides the foundation for the refund, to wit:

> 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 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 carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the

succeeding taxable year. (italics and emphasis supplied)

Going into the evidentiary requirements of a claim for refund, this Court has repeatedly enunciated in a number of cases[1] that the taxpayer needs only to establish the following facts, namely:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 230 (now Section 229) of the Tax Code, as amended;

2. that the income upon which the taxes were withheld were included in the return of the recipients; and,

3. the fact of withholding is established by a copy of statement (BIR Form No. 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

These requirements were affirmed by the Supreme Court in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.

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[1]. *Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997; AP Industrial Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5360, January 20, 1999, etc.)*

Undeniably, herein claim for refund has been filed within the peremptory two-year period as required under Section 229 of the Tax Code, as amended, the provisions of which state, to wit:

> **Sec. 229. *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 of Internal Revenue, 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 (2) years from 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 refund upon which payment was made, such payment appears clearly to have been erroneously paid.

Records reveal that Petitioner filed its ITR and written claim for refund with the Respondent on April 12, 1996 which when reckoned from the date of institution of the present appeal on April 8, 1998, four days still remain before the period of two-years would lapse.

A painstaking review of the documentary exhibits submitted clearly shows that the income upon which the subject taxes had been withheld were duly reported in Petitioner's 1995 ITRs (Exhibits A and B, inclusive); and that the various 1995 Certificates of Creditable Tax Withheld At Source (BIR Form No. 1743-750) correctly corresponding to the amount of taxes being claimed for refund were likewise duly adduced in evidence (Exhibits C to M), to wit:

WITHHOLDING AGENT/PAYOR	AMOUNT OF TAX WITHHELD	EXHIBIT
Asian Transmission Corp.	P164,338.16	C
Honda Philippines, Inc.	17,413.82	D
Asian Transmission Corp.	210,974.53	E
Asian Transmission Corp.	3,294.74	F
Honda Philippines, Corp.	20,711.68	G
Honda Philippines, Inc.,	10,871.75	H
Asian Transmission Corp.	188,439.87	I
Honda Philippines, Inc.	45,560.59	J
Asian Transmission Corp.	205,304.23	K
Honda Philippines, Inc.	25,163.67	L
Connell Bros. Co.	196.43	M
TOTAL	**P892,269.47**	

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of **₱892,269.47** immediately.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On leave)
RAMON O. DE VEYRA
Associate 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