REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SCIENCE PARK OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5307

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 07 1999

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DECISION

This is a petition for review filed by SCIENCE PARK OF THE PHILIPPINES, INC., against respondent, COMMISSIONER OF INTERNAL REVENUE, for the latter's inaction of petitioner's claim for refund in the amount of ₱814,251.13, representing the petitioner's alleged erroneously paid creditable withholding taxes for the year 1993.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with business address at 15th Floor, Solidbank Building, 777 Paseo de Roxas, Makati City. It is registered with the Board of Investments (BOI) as new developer of Industrial Park with the status of a preferred non-pioneer enterprise pursuant to the provisions of Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. It started its commercial operation on January 17, 1991.

In the year 1993, petitioner's income from sales of realty and rental income were allegedly subjected by its payors to withholding taxes in the total amount of ₱814,251.13, broken down as follows:

Name of Withholding Agents	Amount
Medicard Phil. Inc.	₱ 3,358.00
First Phil. Holdings Corp.	4,312.50
FEBTC	14,395.00
Alpina Realty, Inc.	306,838.12
Crismida Realty, Corp.	294,304.50
Kesco Phil. Exports, Inc.	61,008.75
Phil. Lithotripter, Inc.	123,639.37
Philcom	6,394.89
T O T A L	₱814,251.13

On August 7, 1995, petitioner filed with the respondent a claim for refund of the amount of ₱814,251.13, representing its alleged creditable withholding tax for 1993, on the ground that it has been granted and is entitled to an income tax holiday for a period of four years, commencing January 17, 1991 and culminating on January 17, 1995, pursuant to Article 39(a)(1) of the Omnibus Investments Code of 1987 (E.O. 226), which provides:

> **Art. 39. *Incentives to Registered Enterprises*** - All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:
>
> (a) *Income Tax Holiday* -
>
> (1) For six (6) years from commercial operation for pioneer firms and <u>four (4) years for non-pioneer firms</u>, new registered firms shall be fully exempt from income taxes levied by the National Government. x x x. (Underscoring supplied).

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The aforesaid claim for refund was not acted upon by the respondent, thus in order to toll the running of the two (2) year prescriptive period within which to file a judicial claim for refund, petitioner filed with this Court the instant petition for review on December 27, 1995.

Petitioner presents the proposition as reason of the petition for review that under Article 39 par.(a)(1) of Executive Order No. 226, its status as a preferred non-pioneer enterprise entitles it to an income tax holiday for a period of four (4) years from the start of its commercial operations in January 17, 1991 or from actual start of selling and/or leasing of the properties which ever comes first but in no case earlier than the date of registration of its project. Inasmuch as it only started its commercial operations on January 17, 1991, petitioner argues that income payments made to it for 1993 should not be subject to any creditable withholding tax, as it enjoyed an income tax holiday for that year.

Respondent Commissioner of Internal Revenue demurs and maintains that petitioner is not entitled to the claimed refund on the grounds that (1) it does not allege the date/s when the tax sought to be refunded was/were paid, (2) petitioner failed to present the official receipts of the payment and remittance of said withholding tax, (3) petitioner failed to show that the

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creditable withholding taxes for 1993 were not applied in other taxable years, (4) petitioner failed to comply with the Terms and Conditions required under Certificate of Registration No. 90-131, and (5) claims for refund are in the nature of exemption from taxes, hence must be construed strictly against claimant.

The issue to be resolved by the Court is whether or not petitioner is exempt from income taxes for the year 1993 in accordance with Art. 39(a)(1) of the Omnibus Investments Code of 1987 (E.O. 226) hence, entitling the same to the refund or issuance of a tax credit certificate in the amount of ₱814,251.13.

We rule in the affirmative. This is not the first time that this Court has been confronted with such issue at hand. This Court has resolved the same issue in CTA Case No. 5144, promulgated on October 5, 1998, involving the same parties, which is anchored on similar factual circumstances and on all fours with the case at bar. Hence, we find no cogent reason to depart from the wisdom of our decision in said case, which states, to wit:

> "We find nothing obscure or ambiguous in the language of Art. 39 (a) (1) of Executive Order No. 226, *supra*, 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 all enterprises registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987 (Executive Order No. 226) are exempt from income taxes (including the creditable withholding tax) for

> six (6) years, for those with status of a pioneer enterprise, and four (4) years, for those with status of a non-pioneer enterprise, from the start of commercial operation. The law seems clear and specific. It merely calls for application as thus worded. There is no room for interpretation. Construed plainly, the above quoted provision of law yield no other conclusion but that income of a pioneer and non-pioneer enterprises registered with the BOI are exempt from income taxes under the National Internal Revenue Code (NIRC), during the period of six (6) years from commercial operation for pioneer enterprise and four (4) years from commercial operation for non-pioneer enterprise, as in the case at bar. It is a well-settled rule in this jurisdiction that a statute, free from any constitutional infirmity, must be enforced as written. A taxpayer, falling within the ambit of the aforementioned provision of law, whose income were subjected to creditable withholding tax by its various withholding agents should likewise be entitled to a refund of the same, as the creditable withholding taxes are in the nature of an advance payment by the said taxpayer to its income tax liability at the end of the taxable year."

The legal issue having been settled, what remains to be resolved by the Court involves factual matters and that is, whether or not petitioner has established by evidence its claimed refund.

It has been a settled rule in this jurisdiction that before a claim for tax credit or refund of creditable withholding taxes may be granted the following requisites must be complied with, to wit:

(1) that it filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code;

(2) that it was shown on the return that the income payment received was declared as

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part of the gross income (*Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957*);

(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 (*ibid*).

There is no doubt that the filing of petitioner's claim for refund was within the prescriptive period of two years as mentioned in Section 230 of the Tax Code. Records show (1) that petitioner's corporate annual income tax return for 1993 was filed with respondent on April 15, 1994 (Exh. Q), (2) the administrative claim for refund was filed with respondent's Bureau on August 7, 1995 (Exh. P), and (3) the instant petition for review was filed with this Court on December 27, 1995. Thus, the Court finds that the first requisite abovementioned was complied with by the petitioner. The claim for refund has not yet prescribed.

A minutiose scrutiny of the evidence presented reveals that petitioner also complied with the second and third requisites aforementioned. The income upon which the taxes were withheld were included in the annual income tax return of the petitioner for the calendar year ending December 31, 1993 (Exhs. Q to Q-1), and that the amount of ₱793,944.99 was in fact withheld and remitted to the respondent by its withholding agents, (Exhs. E, F, G, H, I, J, K, L, M, N and O). In other words, out of

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the ₱814,251.13 claimed refund of petitioner, only the amount of ₱793,944.99 was duly supported by evidence (*ibid*). Further, petitioner presented its annual income tax returns for the years 1994 and 1995 (Exhs. R, R-1, S and S-1) to show that the creditable withholding taxes for 1993 were not forwarded to nor utilized in the succeeding taxable years of 1994 and 1995.

Considering that respondent did not submit any documentary evidence to support his case neither did he make any effort to adduce any controverting evidence on the legality of the petitioner's claim for refund, and considering further the uncontroverted evidence of the petitioner, the Court was persuaded to extend the relief sought by the petitioner.

IN THE LIGHT OF ALL THE FOREGOING, petitioner's claim for refund is partially **GRANTED**. Respondent is hereby ordered to refund or issue a tax credit certificate to herein petitioner in the amount of ₱793,944.99, representing the latter's erroneously paid creditable withholding taxes for the year 1993. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

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