REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JS STEEL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5799

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 18 2001

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DECISION

This is a judicial claim for refund of the amount of P3,457,723.00 representing alleged excess unutilized creditable withholding tax filed by the Petitioner on April 15, 1999.

The facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the manufacture of steel blanks for use by various manufacturers of automotive, electrical, electronics, industrial and household appliances.

Petitioner alleges that it sold its products in the year 1996 to various industrial users belonging to the top 5,000 corporations. Pursuant to the Bureau of Internal Revenue's requirement on withholding taxes, the buyers allegedly withheld the required 1% tax on its purchases amounting to P3,457,723.00 which was subsequently remitted to the government. This amount is now the subject of Petitioner's claim for refund.

On April 15, 1997, Petitioner filed its annual income tax return for the year 1996 reflecting therein a gross income of P45,379,577.00 and business related deductions amounting to P46,558,954.00, thus resulting in a net loss of P1,179,377.00. Having a tax credit of P3,457,723.00, Petitioner, in its return, registered its intention to carry-over the aforesaid amount to the immediately preceding taxable year (Exhibit "A").

Availing of the provisions of Section 69 of the National Internal Revenue Code, Petitioner applied its tax credits to its estimated quarterly income tax liabilities in the year 1997 but since it suffered again a net loss of P68,380,390.00, its creditable withholding tax for taxable year 1996 remained unutilized.

On May 21, 1998, Petitioner filed with the Bureau of Internal Revenue a claim for refund of its unutilized creditable withholding tax for the year 1996 (Exhibit "I").

Fearing that its claim for refund might prescribe, Petitioner elevated its claim to this Court on April 15, 1999 via Petition for Review.

In his Answer filed on May 21, 1999, Respondent denied Petitioner's allegations in its Petition for Review and by way of Special and Affirmative Defenses, interposed the following:

> 10. That Petitioner has not substantiated much less proved the alleged losses it allegedly incurred for the year 1996;
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> 11. That to be entitled to refund or tax credit, petitioner, has to prove by clear and convincing evidence that he is entitled to refund or tax credit he claims (sic);

12. That Petitioner is not entitled to the refund or tax credit of the amount claimed.

On January 26, 2001, this case was considered submitted for decision sans the memorandum of the Respondent.

The vortex of the controversy now lies on whether or not Petitioner was able to substantiate by clear and convincing evidence its claim for refund.

As We have laid down in a number of cases, the grant of a taxpayer's claim for refund of overpaid creditable withholding tax is dependent upon its compliance with the following requisites, to wit:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a 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.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**].

These aforementioned requisites were specifically mentioned and affirmed in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

There is no dispute that Petitioner has complied with the two-year prescriptive period provided under Section 204 of the National Internal Revenue Code, the administrative claim for refund having been filed with the Respondent on May 21, 1998, and its Petition for Review filed with this Court on April 15, 1999. Both periods are well-within two years reckoned from April 15, 1997, the date Petitioner filed its 1996 Final Adjustment Return.

As disclosed by Petitioner's Statements of Income and Retained Earnings (Exh. B-3) attached to its 1996 annual income tax return, Petitioner declared as part of its gross income the amount of P541,594,668.00, the income from which the taxes were withheld in compliance with the second requirement.

Likewise, to further bolster its stance, Petitioner presented during the trial various Certificates of Income Tax Withheld at Source for calendar year 1996, thus, proving its receipt of income payment and the corresponding taxes that were withheld therefrom.

With all the evidence on record veering towards the existence of Petitioner's excess creditable withholding tax which remains unutilized as of this date, this Court finds it ineluctable to grant the claim for refund but only in the amount of P3,119,295.16 which Petitioner was able to fully substantiate by documentary evidence, computed as follows:

WITHHOLDING AGENT	EXHIBIT	PERIOD COVERED		INCOME PAYMENT		TAX WITHHELD
3-D Industries, Inc.	M	Jan-Mar 1996	P	220,466.35	P	2,204.67

3-D Industries, Inc.	N	Jul-Sep 1996	444,245.45	4,442.45
Concepcion Industries, Inc.	O	Jan-Mar 1996	22,071,378.81	220,713.77
Concepcion Industries, Inc.	P	Apr-Jun 1996	29,014,163.03	290,141.58
Concepcion Industries, Inc.	Q	Jul-Sep 1996	22,413,606.43	224,136.05
Concepcion Industries, Inc.	R	Oct-Dec 1996	12,961,940.64	129,619.38
Cutler-Hammer Asia Corp.	S	Jan-Dec 1996	201,449.00	2,014.49
Dai-ichi Denshi Industries	T	Jan-Mar 1996	315,033.75	3,150.34
Dai-ichi Denshi Industries	U	Apr-Jun 1996	577,997.85	5,779.99
Dai-ichi Denshi Industries	V	Jul-Sep 1996	1,468,494.46	14,684.94
Dai-ichi Denshi Industries	W	Oct-Dec 1996	303,383.21	3,033.83
Dai-ichi Electronics Mfg.	X	Apr-Jun 1996	1,392,336.65	13,923.36
Dai-ichi Electronics Mfg.	Y	Jul-Sep. 1996	786,984.59	7,869.86
Dai-ichi Electronics Mfg.	Z	Oct-Dec 1996	1,239,941.18	12,399.42
Honda Philippines, Inc.	AA	Jan-Mar 1996	21,818.18	218.18
Honda Philippines, Inc.	BB	Jul-Sep 1996	8,245.45	82.45
K. Nakajo Kozai, Inc	CC	Sep-Dec 1996	2,558,713.59	23,474.41
Mercury Tinsmith Corp.	DD	Jan-Mar 1996	312,060.46	2,836.91
Mercury Tinsmith Corp.	EE	Apr-Jun 1996	122,488.38	1,113.53
Mercury Tinsmith Corp.	FF	Jul-Sep 1996	388,980.20	3,536.18
Mercury Tinsmith Corp.	GG	Oct-Dec 1996	356,300.00	3,239.09
Mitsuboshi Cutlery Co.	HH	Jan-Mar 1996	183,856.00	1,838.59
Mitsuboshi Cutlery Co.	II	Apr-Jun 1996	104,873.00	1,048.73
Mitsuboshi Cutlery Co.	JJ	Jul-Sep 1996	87,218.00	872.18
Mitsuboshi Cutlery Co.	KK	Jan-Dec 1996	375,950.00	3,759.50
Mitsui Industria Corp.	LL	Jan-Mar 1996	401,204.00	4,012.04
Mitsui Industria Corp.	MM	Apr-Jun 1996	271,858.00	2,718.58
Mitsui Industria Corp.	NN	Jul-Sep 1996	159,005.00	1,590.05
Mitsui Industria Corp.	OO	No pd covered	1,769,203.00	17,692.03
Nissan Motors Philippines	PP	Jan-Mar 1996	799,669.66	7,996.70
Nissan Motors Philippines	QQ	Apr-Jun 1996	1,508,467.68	15,084.67
Nissan Motors Philippines	RR	Jul-Sep 1996	3,486,421.07	34,864.22
Norkis Trading	SS	Jan-Mar 1996	1,996,907.00	19,969.07
Norkis Trading	TT	Apr-Jun 1996	727,881.00	7,278.81
Norkis Trading	UU	Jul-Sep 1996	3,163,448.00	31,634.48
P.I. Manufacturing	VV	Jan-Mar 1996	46,023.73	460.24
Philippine Appliance Corp.	WW	Jan-Mar 1996	19,714,381.00	197,143.81
Philippine Appliance Corp.	XX	Apr-Jun 1996	14,189,589.00	141,895.89
Philippine Appliance Corp.	YY	Jul-Sep 1996	15,055,643.00	150,556.43
Saisho Onkyo	ZZ	Jan-Mar 1996	363,970.00	3,639.70
Saisho Onkyo	AAA	Jul-Sep 1996	603,212.15	6,032.12
Saisho Onkyo	BBB	Oct-Dec 1996	709,232.38	7,092.32
Saisho Onkyo	CCC	Jan-Mar 1996	2,638,659.00	26,386.59
Sanyo Philippines	DDD	Apr-Jun 1996	4,979,407.00	49,794.07
Sanyo Philippines	EEE	Jul-Sep 1996	1,159,665.00	11,596.65
Sanyo Philippines	FFF	Oct-Dec 1996	4,134,178.00	41,341.78
Saisho Denshi, Inc.	GGG	Jan-Mar 1996	23,262.41	232.62
Saisho Denshi, Inc.	HHH	Apr-Jun 1996	2,838.45	28.38
Saisho Denshi, Inc.	III	Jul-Sep 1996	45,235.46	452.36
Saisho Denshi, Inc.	JJJ	Oct-Dec 1996	3,022.73	30.23

Sharp (Phils) Corp.	KKK	Jan-Mar 1996	1,425,720.00	14,257.20
Sharp (Phils) Corp.	LLL	Apr-Jun 1996	1,551,796.57	15,517.96
Sharp (Phils) Corp.	MMM	Jul-Sep 1996	663,996.86	6,639.96
Standard Electric Mfg. Corp.	NNN	Jan 1-31, 1996	1,042,360.16	10,423.60
Standard Electric Mfg. Corp.	OOO	Mar 1-31, 1996	1,141,755.00	11,417.55
Standard Electric Mfg. Corp.	PPP	Apr 1-30, 1996	1,045,902.17	10,459.02
Standard Electric Mfg. Corp.	QQQ	May 1-31, 1996	1,008,629.47	10,086.30
Standard Electric Mfg. Corp.	RRR	Jun 1-30, 1996	718,100.04	7,181.00
Standard Electric Mfg. Corp.	SSS	Jul-Sep 1996	3,858,726.00	38,587.26
Standard Electric Mfg. Corp.	TTT	Oct-Dec 1996	2,430,085.00	24,300.85
Tisdall Industrial Corp.	UUU	Jan-Mar 1996	370,775.20	3,707.76
Tisdall Industrial Corp.	VVV	Apr-Jun 1996	1,715,190.63	17,151.93
Tisdall Industrial Corp.	WWW	Jul-Sep 1996	1,348,458.65	13,484.62
Tisdall Industrial Corp.	XXX	Oct-Dec 1996	1,114,256.63	11,142.59
Transunion Corp.	YYY	Jan-Mar 1996	75,422.05	754.22
Transunion Corp.	ZZZ	Oct-Dec 1996	26,439.44	264.39
Universal Stainlessware Mfg.	AAAA	Jan-Mar 1996	28,823.00	288.23
Universal Stainlessware Mfg.	BBBB	Jul-Sep 1996	40,074.00	400.74
Universal Stainlessware Mfg.	CCCC	Jan-Dec 1996	82,621.00	826.21
Matsushita Electric Phils.	DDDD	Jan-Mar 1996	24,961,310.00	249,613.10
Matsushita Electric Phils.	EEEE	Apr-Jun 1996	30,678,323.00	306,783.23
Matsushita Electric Phils.	FFFF	Jul-Sep 1996	37,268,912.00	372,689.12
Matsushita Electric Phils.	GGGG	Oct-Dec 1996	23,766,054.00	237,660.54
		TOTAL	**312,248,039.25**	**3,119,295.10**

WHEREFORE, in view of all the foregoing, the Respondent is hereby **ORDERED** to **REFUND** or in the alternative, to **ISSUE** a Tax Credit Certificate in the amount of P3,119,295.10, in favor of the Petitioner representing overpaid creditable withholding tax for taxable year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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