Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

F. JACINTO GROUP, INC.
Petitioner,

- versus - C.T.A. CASE NO. 4971

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
APR 05 1995

x - x

D E C I S I O N

This is a claim for refund in the amount of ₱1,096,272.00 representing excess income tax for the year ending December 31, 1990.

Petitioner is a duly organized and existing corporation under Philippine laws engaged in furnishing management services. It alleged that during the year 1990, the various companies it serviced have withheld and remitted to the respondent several amounts representing 5% withholding tax on their payments to petitioner of management service fees that on April 13, 1992 it filed its final adjustment return for tax year 1991 and those pertaining to the utilization of the carried-over tax from 1990 which showed the following details:

Service fees	₱	30,124,370.00
Less: Deductions		28,823,057.00
Net income		1,301,313.00
Add: Misc. income		431,182.00
Taxable income		1,732,495.00
Tax due	₱	606,373.00
Tax credits		(1,702,645.00)
Refundable amount	**₱**	**1,096,272.00)**

On July 10, 1992, petitioner filed its formal claim for refund with the respondent. No allegation is made as to the action taken thereon by the respondent except that "the period to claim refund is set to expire within two years from the filing of the final adjustment return on April 12, 1991 for taxable year 1990, or up to April 11, 1993 and that "the delay of the Commissioner of Internal Revenue in rendering his decision does not extend the period fixed by statute (*Gibbs vs. Collector; L-13453, February 29, 1960*).

Hence, this petition.

The sole issue to be resolved in this case is whether or not petitioner is entitled to a refund of ₱1,096,272.00 representing excess income tax for the year ending December 31, 1990.

Petitioner anchors his argument on Section 69 of the Tax Code, which provides for the refund of erroneously collected tax.

Insofar as pertinent Section 69 of the National Internal Revenue Code is herein quoted for reference:

> **Sec. 69.** ***Final Adjustment Return*** - "Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 total tax due on the entire taxable net 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 quarters of the succeeding taxable year.

Moreso, petitioner averred that the two year period is to be reckoned from the date of filing of the final adjustment return.

For reference is Sec. 230 of the Tax Code.

> **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, 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 a written claim therefore, 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 on the other hand interposed the following special and affirmative defenses, to wit:

> "1. Petitioner's claim for tax credit is pending administrative investigation;
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> 2. The total amount of ₱1,096,272.00 claimed by the petitioner as alleged overpaid income taxes for the year 1990 was not properly documented;
>
> 3. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 4. In action for tax refund/credit the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax credit;

5. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code as amended;

6. Well-settled is the rule that claims for refund are construed strictly against claimants, since it partakes of the nature of an exemption from taxation (*Resins, Inc. vs. Auditor General, 25 SCRA [1968]*)."

Petitioner adduced and offered in evidence Exhibits A to DD-1 with submarkings, which were all admitted together with the testimonies of its witnesses. The Court set several dates for the reception of respondent's evidence which were all deferred upon motion of respondent's counsel on the ground that he was not ready until finally; when respondent's counsel failed to appear. The Court granted petitioner's motion "that respondent's presentation of evidence be deemed waived."

The Court notes the zealous concern of respondent Commissioner of Internal Revenue in tax collection but deplores at the same time the apparent indifference bordering on neglect to support her well in tax cases on the part of her counsel, particularly in this case. The parties were given fifteen (15) days to submit simultaneous memorandum but only petitioner complied while respondent did not. The Court is, therefore, constrained to resolve this case on the basis of the evidence submitted by the petitioner.

In claims for refund, there are three basic requirements that has to be met before a claim can be granted.

First, that the claim for refund was filed within two-years as prescribed under Sec. 230 of the National Internal Revenue Code.

Second, that the income upon which the taxes were withheld were included in the return of the recipient.

Third, 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; see Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, Nov. 11, 1991; and Citytrust Finance Corporation [Formerly Investors Finance Corporation/FNCB Finance] v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.)

It is an elementary rule in taxation that an automatic carry-over of an excess income tax payment should only be made for the succeeding year. (*Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993*)

Petitioner religiously complied with the three basic requirements set by the law and was able to prove to the satisfaction of the Court its entitlement to the relief sought for.

In claims for refund, all that is required is the presentation of Statement of Tax Withheld at Source (BIR Form 1743.1) showing the income received and the amount of tax withheld therefrom and that the income was included to form part of petitioner's gross income as stated in its income tax return. The rationale for this is that the withholding agents are not within the control of the payee taxpayer but are the tax agents of the Commissioner of Internal Revenue. The withholding agents merely hold the amount in trust for the government. (*Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA-G.R. SP No. 26839, supra; Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993*)

After a circumspect study of the case, petitioner is indeed entitled to the refund. The computations are as follows:

1990 Income tax liability (Exh. B-2)		₱ 247,234.00
Less: 1990 quarterly income tax payment		
Qtr. CBCR No. Date		
1st 20095569 05-30-90(Exh. C-2)		42,379.00
Balance of 1990 income tax liability		₱ 204,855.00
Less: 1990 creditable withholding tax		

Withholding Agent	Exh.	Amount	
Mindanao Steel Corporation	G	850,000.00	
Beatriz Marketing & Trading Corp.	H	180,000.00	
Jacinto Iron & Steel Sheet Corp.	I	697,500.00	
Camara Steel Industries, Inc.	J	180,000.00	
T O T A L			1,907,500.00

Amount refundable (to be applied as tax credit in 1991)	₱ 1,702,645.00
Less: portion applied in 1991 as tax credit (Exh. K-1)	606,373.00
Unapplied - to be refunded	₱ 1,096,272.00

The Court finds petitioner's claim for refund meritorious and well supported by evidence.

WHEREFORE in view of the foregoing circumstances respondent, is hereby ordered to refund in favor of petitioner the amount of ₱1,096,272.00 representing excess income tax for the year ending December 31, 1990.

No pronouncement as to cost.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax of Appeals in accordance with Section 13 Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals