REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGP INDUSTRIAL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5360

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
JAN 20 1999

x - x

DECISION

This case involves a claim for refund of alleged excess or unutilized creditable income tax withheld at source for the year ended December 31, 1993 in the amount of ₱822,929.42.

The facts are simple.

Petitioner is a domestic corporation engaged in business as a holding company and provide management services for its affiliates.

On October 4, 1994, Petitioner filed with the Bureau of Internal Revenue its Amended Corporate Annual Income Tax Return (Exhs. A-A2, pp. 50-52, CTA rec.) for the calendar year ended December 31, 1993 declaring a net loss of ₱12,387,461.00 (Exh. A-16, p. 50, CTA rec.).

On the said annual income tax return, Petitioner reported a creditable withholding tax in the amount of ₱822,929.42 (Exh. A-1, p. 51, CTA rec.) which represents the withholding and remittance to the Bureau by Royal

Undergarments Corporation of the Philippines, Inc., of said amount from the payment of management fees to Petitioner in the amount of ₱16,458,588.40 (Exh. B, p. 70, CTA rec.).

Subsequently, on April 17, 1995, Petitioner filed with the Bureau of Internal Revenue its Annual Corporate Income Tax Return for the calendar year ended December 31, 1994 declaring a net loss in the amount of ₱32,721,568.00 (Exhs. C-C-2, pp. 71-73, CTA rec.).

On April 10, 1996, Petitioner then filed with the Bureau of Internal Revenue, Revenue Region No. 8, Revenue District Office No. 47, an application for the refund of ₱822,929.42 representing the excess or unutilized creditable withholding tax for the taxable year 1993.

In support of its case, Petitioner presented documentary evidence consisting of:

1. Amended Annual Corporate Income Tax Return for the calendar year 1993;

2. Tentative Annual Corporate Income Tax Return for the calendar year 1993;

3. Certificate of Creditable Income Tax Withheld at Source for the period January to December 1993 issued by Royal Undergarments Corporation;

4. Tentative Annual Corporate Income Tax Return for the calendar year 1994;

5. Letter-claim for refund filed with the Bureau of Internal Revenue;

6. Amended Tentative Annual Corporate Income Tax Return for the calendar year 1994; and

7. Amended Final Corporate Income Tax Return for the calendar year 1994.

Moreover, Petitioner presented a witness in the person of Mrs. Luvinia Maglaya who identified the above documents (see TSN, dated August 21, 1996 and February 19, 1997).

Respondent averred, by way of Special and Affirmative Defenses, that:

> 6. Petitioner has not shown proof that it has incurred losses in the years 1993 and 1994, mere declaration of deductions in the return without being supported by records of pertinent papers/documents proving that the claimed deductions were really paid and incurred during the year in question is insufficient. Petitioner must prove its own affirmative allegations. (Sec. 1, Rule 131, Rules of Court);
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> 7. The expenses/deductions claimed by petitioner in its 1993 return are not totally allowable, thus, even if granting, for the sake of argument, that the withholding tax payment for that year is correct and accurate, the same is insufficient to cover the payment of its deficiency taxes;
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> 8. The petitioner states no cause of action as it does not allege the date when the tax sought to be refunded was actually paid. (Manufacturer's Bank & Trust Co. as Trustee for General Trust Plan vs. CIR, CTA Case No. 1659, Nov. 29, 1965);

> 9. The best evidence of payment and remittance of taxes withheld are the official receipts;
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> 10. In claiming refunds, it is incumbent upon petitioner to prove that it is entitled thereto. It must be able to point positively a provision of the law granting such right, otherwise, it would be fatal to the claim for refund. Taxes are presumed to have been collected in accordance with laws and regulations;
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> 11. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95, [1970]; Manila Electric Co. vs. CIR, 67 SCRA 35 [1975]);
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> 12. Consequently, all told, petitioner is not entitled to the claim herein sought to be refunded.

The sole issue to be resolved by this Court is whether or not Petitioner is entitled to the refund sought.

Under Section 69 of the National Internal Revenue Code, as amended, it is provided that:

> **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 income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be;
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> 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.

Based on the above provision, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Since Petitioner incurred a loss in the succeeding year of 1994, the amount of ₱822,929.42 appears to be refundable.

However, it is mandated that Petitioner first comply with certain requirements in claiming for the refund of excess creditable withholding tax. Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, declares that:

> **Section 10.** ***Claim for Tax Credit or Refund.*** -
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Thus, compliance with the following requisites must be shown, namely:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the NIRC, as amended;

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

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 (see **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**).

Section 230 of the Tax Code, as amended, provides:

> SEC. 230. ***Recovery of tax erroneously of 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 written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid.

In relation thereto, Section 70(b) is quoted hereunder:

> **SEC. 70.** (a) x x x
>
> (b) *Time of filing the income tax return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.

As can be gleaned from the records, Petitioner filed its claim for refund with the Bureau of Internal Revenue on April 10, 1996 and its Petition for Review with this Court on April 12, 1996. The two-year period commenced to run on April 15, 1994, the date when Petitioner filed its tentative final income tax return for the calendar year ended December 31, 1993 (see **ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. TMX Sales, Inc. G.R. No. 837736, January 15, 1992; Commissioner of Internal**

Revenue vs. Philippine American Life Insurance Co., G.R. No. 105208, May 29, 1995).

In addition, Petitioner reported as part of its gross income for taxable year ended December 31, 1993, the management fees paid by Royal Undergarments Corporation in the amount of ₱16,458,588.40 from which the amount of ₱822,929.42 was withheld (Exh. A-16). The fact of withholding of the amount of ₱822,929.42 is duly supported by a certificate of creditable income tax withheld at source issued by Royal Undergarments Corporation to Petitioner (Exh. B).

Respondent, on the other hand, failed to present any controverting evidence. The arguments she raised are nothing new and have been repeatedly raised in similar cases (see **Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991; Bank of Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993; Robinsons' Incorporated vs. The Commissioner of Internal Revenue, CTA Case No. 4700, April 30, 1996; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997**).

Respondent alleged that mere declaration of deductions in the return without being supported by records of pertinent papers/documents proving that the claimed deductions were really paid and incurred is insufficient. Yet, the Respondent did not present any evidence showing disallowance of the claimed deductions or that they were highly irregular. Pursuant to Sections 45 and 266 of the Tax Code, as amended, declarations made by the Petitioner in its income tax return were made under oath. Hence, the same are presumed to be correct and accurate in the absence of contrary evidence (**Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993**).

Respondent also alleged that Petitioner states no cause of action as it did not allege the date when the tax sought to be refunded was actually paid. It is to be noted that the tax sought to be refunded is the tax withheld by Royal Undergarments Corporation which served as the withholding agent of the Respondent. Therefore, it is under the control of the latter.

Consequently, neither the law nor the rules and regulations require that official receipts of payments be presented before any claim for refund can be made. Hence, Respondent's allegation pertaining thereto is groundless.

Records will further show that Petitioner's claim for refund was only referred for investigation to Frances Espiritu Leonida on September 22, 1997. However, no Letter of Authority has been issued to her or to any revenue officer for that matter (see TSN dated September

29, 1997). Neither was there any report of investigation submitted. During the hearing of this case, Respondent's counsel failed to appear thrice to present his case, so much so, he was considered to have waived his right to present further evidence. Respondent's counsel even failed to file his memorandum.

Therefore, in the light of all the foregoing, this Court is convinced that Petitioner was able to prove its entitlement to the refund.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** and/or **CREDIT** in favor of the petitioner the amount of ₱822,929.42 representing excess or unutilized creditable income tax withheld at source for the year ended December 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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