REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN MOTORS SOUTH SUPER, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5779

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 04 2000

x - x

DECISION

This case involves a claim for refund/tax credit in the amount of P6,092,693.00 allegedly representing unutilized or unapplied creditable withholding taxes for the calendar year ended December 31, 1996.

The facts as stipulated by the parties.

1. Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines and is primarily engaged in the assembly and manufacture of automobiles, including the sale and distribution of automotive spare parts, with business address at Km 16 West Service Road, South Superhighway, Paranaque City.

2. Respondent is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to decide, approve and grant tax credit and/or refund of overpaid or erroneously paid internal revenue taxes, and holds office at the 4th Floor, BIR National Office Building, Diliman, Quezon City.

3. On April 15, 1997, Petitioner filed its Tentative Corporate Annual Income Tax Return for the calendar year ended December 31, 1996, which reflected a total

refundable or overpaid income tax in the total amount of P26,206,530.00.

4. On September 16, 1998, Petitioner filed its Amended Corporate Annual Income Tax Return for the calendar year ended December 31, 1996, reflecting a total refundable or overpaid income tax in the total amount of P6,092,693.00.

5. On April 8, 1999, Petitioner filed with the Office of the Commissioner of Internal Revenue its application for refund for calendar year 1996 in the amount of P6,092,693.00.

6. The administrative claim for refund as well as the judicial claim for refund were filed within the two-year prescriptive period prescribed under Section 229 of the Tax Code, as amended.

7. That to date, the Respondent has not approved the administrative claim for refund.

The parties likewise stipulated that the issues to be resolved in this case are as follows:

1. Whether or not Petitioner has excess or unutilized creditable withholding tax as of December 31, 1996 which is a proper object of a claim for refund pursuant to Section 69 (now 79) of the National Internal Revenue Code, as amended.

2. Whether or not the said creditable withholding taxes of Petitioner for the year ended December 31, 1996 are substantiated by documentary evidence.

3. Whether or not said excess/unutilized creditable withholding taxes as of December 31, 1996 were applied as tax credit against Petitioner's tax liability for the succeeding taxable year/s.

4. Whether or not said excess creditable withholding tax being claimed by Petitioner represents tax on income which was reported in the Corporate Annual Income Tax Return of Petitioner for calendar year ended December 31, 1996.

Petitioner raised as legal basis for its claim for refund Section 69 of the Tax Code, as amended, *viz*:

> 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 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.

Corollary thereto, We quote hereunder Section 230 of the same 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 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 therefor, 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.

To prove substantiation of its claim, Petitioner presented several documents and a witness to identify the same. Respondent, for his part, raises the following Special and Affirmative Defenses:

> a) In an action for tax refund, petitioner must show that taxes were paid erroneously or illegally collected. Failure to sustain this burden is fatal to the action for refund;
>
> b) Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation; and
>
> c) Taxes are presumed to have been paid and collected in accordance with law.

Respondent, however, manifested that there was no investigation conducted by the Bureau of Internal Revenue. He proceeded to submit the case based on the pleadings sans memorandum.

With the facts and issues determined as well as the apropos laws and jurisprudence, We resolve against the Petitioner.

There is no quarrel as regards Petitioner's legal right to a claim for refund of excess creditable withholding taxes. Section 69 of the then Tax Code is quite definite. But whether or not Petitioner has excess creditable withholding taxes for the period ended December 31, 1996 is one of the issues that We have to tackle.

Petitioner submitted an amended corporate annual income tax return for the year 1996 (Exh. C) showing a total creditable withholding taxes of P9,991,952.00. The tax due for the period was only P3,899,259.00, thus, leaving an excess creditable withholding taxes in the sum of P6,092,693.00. As to the issue of whether or not Petitioner applied said excess creditable withholding taxes to the succeeding year 1997, the answer is negative based on its 1997 corporate annual income tax return (Exh. J). It can be gleaned from the 1997 return that Petitioner did not carry over its excess or unutilized creditable withholding taxes of the prior year.

Finally, We delve on the issue of whether or not Petitioner's excess creditable withholding taxes for 1996 are substantiated by documentary evidence.

In cases for refund of excess or unutilized creditable withholding taxes, the taxpayer must first comply with three basic requirements (**Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue**, 280 SCRA 459), to wit:

> 1) that it filed a claim for refund within the 2 year period as prescribed under Sec. 230 of the NIRC;
>
> 2) that the income upon which the taxes were withheld was included in the return of the recipient (Revenue Regulation 6-85); and
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> 3) 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 (Sec. 10, Rev. Re. 6-85. as amended by Rev. Reg. 12-94).

With respect to the first requirement, it was already stipulated and for which We hold to be true, that both the administrative and judicial claims were filed within the period prescribed by law. Hence, a discussion of the same will be unnecessary.

The question of compliance with the second requirement is relatively similar to the fourth issue raised by the parties, *i.e.*, whether or not the subject excess creditable withholding taxes represents tax on income which was reported by the Petitioner in its 1996 corporate annual income tax return.

An examination of the evidence will reveal that Petitioner claimed as creditable tax for 1996 the amount of P258,166.57 withheld from the payment of rental of equipment. But nowhere in Petitioner's 1996 income tax return nor in its audited financial statements was the income from rental of equipment declared. In fact, it was clearly stated in the notes to Petitioner's financial statements, that it is not the lessor of machinery and equipment but the lessee thereof.

Furthermore, Petitioner did not declare all the income corresponding to the creditable taxes withheld of P9,991,952.00 in its annual income tax return for the calendar year 1996. Petitioner disclosed in its account information form, the amount of P9,282,445.00 as the creditable taxes withheld corresponding to the declared gross income. Based on the testimony of Petitioner's witness (see TSN, January 13, 2000, pp. 8-10), the discrepancy was due to timing difference, meaning, some of the income had been declared in 1995 but the certificates were issued only in 1996. In other words, not all of the income from which the subject taxes were withheld was declared by the Petitioner in 1996.

The third requirement provides for proof of withholding by virtue of the certificates of income taxes withheld at source wherein the amount of income payments and taxes withheld are shown.

Petitioner, to prove the fact of withholding, submitted several certificates (Exhs. D, E, F, G, H and I). Yet, no amount of income payments can be found from said certificates contrary to Revenue Regulations No. 6-85, as amended. How did Petitioner come up with the particular withheld taxes for such specific period when there were no income payments to base their withholding from?

Revenue Regulations No. 6-85, as amended, required that both the amounts paid and the taxes withheld therefrom must be shown on the certificates. Such requirement was formulated not merely for convenience. In declaring both the amount of income payments as well as taxes withheld therefrom, the taxpayer and the government are informed if the correct amount of taxes are being withheld by the agent. Also, by reflecting the amount of income paid to the payor (taxpayer), this Court can verify the total amount of income payments made from which the taxes withheld formed a part of. Hence, with the non-disclosure thereof in the case at bar, it cannot be determined with certainty the actual amount of total income from which the taxes were withheld and allegedly forming part of the gross income of herein Petitioner.

IN THE LIGHT OF ALL THE FOREGOING, for failure on the part of the Petitioner to fully comply with the requirements for the refund of excess creditable withholding taxes, the same is hereby **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

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