REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NESTLÉ PHILIPPINES, INC.
(formerly, MAGNOLIA NESTLÉ
CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5350

HON. LIWAYWAY VINZONS-CHATO
COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JAN 20 1998

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DECISION

This case involves a claim for refund of the sum of ₱2,125,900.00, representing overpaid income tax resulting from excess payments of quarterly income tax and creditable withholding tax for calendar year ended December 31, 1993.

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of manufacturing assorted foods and beverages including ice cream and other chilled products with principal office at Km. 46, Bgy. Niyugan, Cabuyao, Laguna.

On January 19, 1996, pursuant to the approval of the Security and Exchange Commission of the Plans of Merger dated December 7, 1995 and January 8, 1996 of Magnolia Nestle Corporation and Nestle Philippines, Inc., with the latter as the continuing and surviving corporation, petitioner Nestle Philippines, Inc. assumes, among

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others, all the assets, liabilities, claims, cases or actions in litigation of Magnolia Nestle Corporation (Exhs. A, A-1, and A-2). One of the claims of Magnolia Nestle Corporation is the present claim for refund of overpaid income tax for the calendar year 1993.

The records show that on April 15, 1994, Magnolia Nestle Corporation filed its 1993 Corporation Annual Income Tax Return reflecting a net loss from operations of ₱24,556,772.00 but with a total amount refundable of ₱2,125,900.00, representing first quarter income tax payment of ₱326,451.00 and creditable taxes withheld on service fees and rentals of ₱1,799,449.00. This overpaid income tax refundable of ₱2,125,900.00 was opted by Magnolia Nestle Corporation "TO BE APPLIED AS TAX CREDIT TO SUCCEEDING TAXABLE YEAR". However, in the year 1994, petitioner still suffered net loss from operations. Thus, the application of its excess income tax payment in the year 1993 to anticipated income tax liability of 1994 became nugatory.

On November 8, 1995, Magnolia Nestle Corporation filed an administrative claim for refund/tax credit of overpaid income taxes for the calendar year ended December 31, 1993 with the Bureau of Internal Revenue.

On April 12, 1996, petitioner Nestle Philippines, Inc. after acquiring personality of pursuing a suit due to the approved plans of merger, filed the instant judicial action pursuant to Section 230 of the Tax Code.

In her Answer, respondent raised the following special and affirmative defenses:

> 7. Petitioner's claim for tax refund is still undergoing administrative routinary investigation/examination by respondent's Bureau;
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> 8. The amount of tax sought by the petitioner to be refunded/credited was collected and paid pursuant to law and BIR implementing rules and regulations, hence, the same is not refundable. Petitioner must prove that the said income tax was actually paid, remitted and received by respondent's Bureau, and that, the income from which the amount of tax was paid, were declared and included in its gross income during the year under review;
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> 9. Petitioner's allegations that it sustained losses during the year under review does not *ipso facto* warrant the refund. Petitioner must prove that the deductions claimed by it from its gross income must be allowable deduction under the Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence;
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> 10. Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s;
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> 11. Claims for tax refund are construed strictly against the claimant as it partakes of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund;

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> 12. Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

In order to support its entitlement to the refund sought, petitioner presented the following evidence which were all admitted by the Court in a Resolution dated February 4, 1997:

1. Certificate of filing of the Articles of Merger, Articles of Merger and the Plan of Merger (Exhs. A, A-1, and A-2);

2. Corporation Quarterly Income Tax Returns for first, second, and third quarters of 1993 (Exhs. B, E, E-1, H, and H-1);

3. The 1993 and 1994 Corporation Annual Income Tax Returns together with the attachments of audited financial statements and certifications of independent CPAs (Exhs. K, K-1, K-2, K-3, K-4, K-5, K-6, K-7, N, N-1, and N-2);

4. Certificates of Creditable Income Tax Withheld at Source (Exhs. C, D, F, G, I, J, L, and M); and

5. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. O, and O-1).

On May 8, 1997, upon oral motion of petitioner, respondent was declared by the Court to have waived her right to present evidence due to the failure of her

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counsel to appear and present evidence for the fourth time.

This case was submitted for decision after both parties presented their respective memoranda.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund/tax credit of the sum of P2,125,900.00, representing alleged overpaid income tax for the calendar year 1993.

Petitioner believes that it is entitled to the claim for refund contending that it met the following three basic requirements laid down by this Court in numerous cases involving claims for refund of excess creditable withholding tax at source:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
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> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
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> 3. The fact of withholding is established by a copy of the 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. The 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**

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> **Internal Revenue, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

On the other hand, respondent remains firm that petitioner is no longer entitled to the claim for refund arguing that a mere allegation of net loss in the corporate annual income tax return does not *ipso facto* merit a tax refund/credit. Respondent further reasoned that there was no evidence showing that loss was indeed incurred.

After weighing the evidence, records, pleadings, and surrounding circumstances of the case, We find in favor of the petitioner.

We can not subscribe to respondent's aforementioned ratiocination. In the case entitled **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993** the said argument was dealt with wherein we ruled:

> Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this case for decision nothing was shown during the hearing that the return was erroneous nor was

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> there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified this Court if there was any. It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of the quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of ₱65,259.00.

It should be pointed out that the 1993 and 1994 annual income tax returns of Magnolia Nestle Corporation were prepared and signed under the penalties of perjury. In fact these income tax returns were examined by independent CPAs as required under Section 232 of the Tax Code wherein the auditors expressed an unqualified opinion on the financial positions of Magnolia Nestle Corporation for the years 1993 and 1994. Further, as testified by petitioner's witness Mr. Enrique Vargas, there was no deficiency tax assessments issued against it nor has the company have any pending tax liability (see TSN, October 8, 1996, pp. 7 and 22).

With respect to petitioner's entitlement to the amount of claim for refund, the Court finds the same to be meritorious. Indeed petitioner was successful in substantiating its overpaid income taxes. First, the claim for refund with the BIR and the judicial action with this Court were filed within the two-year prescriptive period prescribed under Section 230 of the Tax Code. The letter-claim for refund with the BIR was filed on November 8, 1995 (Exhs. O and O-1) while the instant petition for review was filed on April 12, 1996. The two-year period, in the instant case, commences to run on April 15, 1994, the actual date of filing of Magnolia Nestle Corporation's 1993 Corporation Annual Income Tax Return **(Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 83736, January 15, 1992).** Second, as explained by petitioner's witness, Mr. Enrique Vargas, the income upon which the creditable withholding taxes were paid were included in petitioner's gross income (TSN, October 8, 1996, pp. 8 to 20). The income received from Philippine Dairy Products Corporation in the amount of P33,315,386.20 was treated as a reduction of expenses which is tantamount to being recorded as taxable income since the reduction of expenses resulted in the increase of taxable income (Exhs. K and K-6). With regard to the income received

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from Philippine Multiline Sales and Marketing Corporation in the amount of ₱2,673,601.00, the same formed part of the other income under Schedule 5 of the 1993 Annual Income Tax Return (Exhs. K and K-7). And third, the fact of withholding was established when petitioner presented in evidence the certificates of creditable withholding tax at source (BIR Form 1743.1) duly issued by the withholding agents showing the amount of income payments made and the amount of tax withheld therefrom (Exhs. C, D, F, G, I, J, L, and M). Further, petitioner also proved that the first quarter income tax in the amount of ₱326,450.68 was paid to the Bureau of Internal Revenue as reflected in the 1993 annual income tax return of petitioner (Exhs. K and K-3).

Below is the detailed computation of the overpaid income taxes paid by Magnolia Nestle Corporation for the calendar year ended December 31, 1993 which was later on assumed by the petitioner in view of the approved plan of merger:

Withholding Agent	Amount of Income Payment	Amount of Tax Withheld	Exh.
Philippine Dairy Products Corp.	₱ 7,159,661.40	₱ 357,983.07	C
Philippine Multilines Marketing Corp.	834,007.20	41,700.36	D
Philippine Dairy Products Corp.	7,507,043.20	375,352.16	F
Philippine Multilines Marketing Corp.	834,007.20	41,700.36	G
Philippine Dairy Products Corp.	11,751,398.20	587,569.91	I
Philippine Multilines Marketing Corp.	273,316.00	13,665.80	J
Philippine Dairy Products Corp.	6,897,283.40	344,864.17	L

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Philippine Multilines Marketing Corp.	732,271.20	36,613.56	M
Total	P49,257,050.00	P1,799,449.39	
Add first quarter income tax payment		326,451.00	K-3
Total amount refundable		P2,125,900.39	

WHEREFORE, in view of the foregoing, the petition for review is hereby **GRANTED**. Respondent is ORDERED to **REFUND** in favor of petitioner the sum of P2,125,900.00, representing overpaid income tax for the calendar year 1993.

No pronouncement as to cost.

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
Court of Tax Appeals

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