Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5188

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 1996

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DECISION

This case refers to a claim for the refund of P22,406,621.89 representing Petitioner's excess and unutilized creditable expanded withholding tax (EWT) for the year 1992.

Petitioner is a domestic corporation engaged in the mining business which includes the exploration, development and operation of mining products produced by it.

During taxable year 1992, Petitioner sold real properties for a gross selling price of P441,853,900.00 which amount was properly declared in its 1992 income tax return (Exh.A). Said amount was subjected to the 5% creditable withholding by the buyer in the amount of P22,092,695.00 (BIR Form 1743-1, Certificate of Creditable Income Tax Withheld at Source).

On the same taxable year, Petitioner received rental income from leasing of real property in the total amount of P6,278,539 from several lessees which was also declared by Petitioner as part of its gross income in its 1992 ITR (Exh.A-4. Said rental income was subjected to the 5% creditable EWT by the lessees (Exh. C to W inclusive) in the total amount of P313,926.89. The total creditable EWT from the rental and sale of real properties by Petitioner amounted to P22,406,621.89 which remain unclaimed as it suffered a net loss and had no tax liability in 1993 (Exh. CC).

Petitioner then filed a written claim for refund of said amount on May 17, 1994 which unfortunately remain unacted by the Respondent up to this date.

Hence, this appeal.

The sole issue in this case is whether or not Petitioner is entitled to the refund claimed?

We answer in the affirmative.

It was not difficult for Us to grant the above claim as Petitioner has sufficiently proven through documentary and testimonial evidences that it was indeed entitled to the refund claimed pursuant to Section 204(3) of the Tax Code. Petitioner had not been able to claim said creditable taxes withheld either in CY 1992 (when the taxes were withheld) or in CY 1993 (as automatic credit, pursuant to Section 69 of the Tax Code) because it had no tax liabilities on said years. Hence, said withholding taxes represented overpaid or erroneously paid taxes.

Likewise, Petitioner has complied with the following basic requirements for the grant of tax refund of creditable tax withheld in excess of the tax due per tax return:

1. The claim for refund is filed with the Commissioner within the two-year period from the date of the payment of the tax as required by Section 204 of the Tax Code;

2. It must be shown in the return of the recipient that the income received was declared as part of gross income; and

3. The fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount of income paid and the amount of tax withheld therefrom. *(Kao [Philippines], Inc. vs. CIR, CTA Case No. 4899, February 21, 1995).*

In view of all the foregoing coupled with the fact that Respondent was even declared in default for failure to appear and to oppose subject claim for refund, there is no other recourse but to grant Petitioner's claim for refund.

WHEREFORE, in all the foregoing, Respondent is hereby ORDERED TO ISSUE A TAX CREDIT CERTIFICATE in favor of the Petitioner in the amount of P22,406,621.89 representing petitioner's excess and unutilized creditable expanded withholding tax for the year 1992.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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 Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals