REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CCT CONSTRUCTORS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5266

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 23 1999

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DECISION

This is a petition seeking for the refund or issuance of tax credit certificate amounting to Four Million Eight Hundred Twenty Seven Thousand Two Hundred Seventy Nine Pesos (₱4,827,279.00), representing unutilized creditable taxes withheld for the fiscal years ended March 31, 1993 and March 31, 1994.

The factual backdrop of the case are as follows:

Petitioner is a corporation organized and existing under the laws of the Republic of the Philippines and is primarily engaged in construction and engineering. For the fiscal year ended March 31, 1993, Petitioner's Annual Income Tax Return which was filed on July 17, 1993 reflected a gross income of ₱ 188,983.360.00, broken down as follows:

Contract income	₱183,279,038.00
Rental income	5.400,450.00
Miscellaneous income	9,291.00
Others (sales/exchanges of property)	294,581.00
Gross income	₱188,983,360.00

For the said year, however, Petitioner allegedly ended into a net loss position as its expenses amounted to

₱191,247,647.00. Petitioner, therefore, was not able to utilize the creditable taxes withheld from its contract and rental income totalling ₱2,218,270.00.

Pursuant to Section 69 of the Tax Code which provides that "(i)n 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," Petitioner carried over the amount of ₱2,219,270.00 to the succeeding year.

For the fiscal year ended March 31, 1994, Petitioner's Annual Income Tax Return filed on July 15, 1994 showed a gross income of ₱256,486,806.00, detailed as follows:

Contract income	₱248,063,452.00
Rental income	7,171,100.00
MIscellaneous income	1,052,418.00
Others (sales/exchanges of property	199,836.00
	₱256,486,806.00

However, while Petitioner reported a gain for the said year amounting to ₱352,277.00, its income tax payable was only ₱123,297.00 and because of this condition, Petitioner was not able to apply in full its creditable taxes withheld for the year in the amount of

₱2,732,306.00 as well as its creditable taxes withheld which were carried over from the previous fiscal year.

Invoking the provisions of Section 204 (3) of the Tax Code, to wit:

> "SEC. 204. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.*- **The Commissioner may** -
>
> x x x
>
> (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty,"

Petitioner filed a claim for refund with the Bureau of Internal Revenue on June 27, 1995 in the total amount of ₱4,827,279.00, representing the unutilized creditable taxes withheld for the fiscal years ended March 31, 1993 and March 31, 1994, broken down as follows:

Creditable tax withheld for FY 1993	₱2,218,270.00
Add: Creditable tax withheld for FY 1994	2,732,306.00
Total	₱4,950,576.00
Less: Income tax for FY 1994	(123,297.00)
	₱4,827,279.00

Since there was no action on the part of herein Respondent and the two-year prescriptive period was about to expire, the instant petition was filed on July 14, 1995.

Respondent, in his Answer, set up the following Special and Affirmative Defenses:

> "6. Petitioner's claim for tax refund is still undergoing the usual routinary investigation/examination by the respondent's Bureau;
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> 7. The alleged creditable withholding taxes were collected and paid pursuant to law and its pertinent implementing rules and regulations, hence, not refundable. Moreover, petitioner has to prove that the creditable withholding taxes were actually paid, remitted to and received by respondent's Bureau and that, the income from which the alleged creditable taxes were withheld must be declared and included in its gross income during the year under review;
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> 8. Petitioner must likewise prove that the alleged creditable withholding taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding taxable year nor included as creditable taxes declared in the succeeding taxable year/s;
>
> 9. Petitioner's allegation that it sustained losses does not ipso facto warrant the refund. Petitioner must prove that the deductions claim (sic) by it from its gross income are allowable deductions under the Tax Code and its pertinent BIR implementing rules and regulations. The same must be supported by evidence;
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> 10. 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 petitioner to prove the same. Petitioner must prove that it is entitled thereto. Failure of petitioner to prove

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entitlement to the subject claim for refund is fatal to its claim;

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

The sole issue to be resolved is whether or not Petitioner is entitled to the refund sought on the basis of the evidence presented.

Petitioner, to prove its case, submitted the following exhibits:

Exhibit	Description
A	Corporation Annual Income Tax Return of Petitioner for Fiscal Year Ended March 31, 1993
B	Corporation Annual Income Tax Return of Petitioner for Fiscal Year Ended March 31, 1994, including Attachments
C	Administrative claim for refund filed by Petitioner
D to HH	Various certificates of creditable income tax withheld at source

Respondent, on his part, contended that the instant action for refund should be denied due course for failure on the part of the Petitioner to submit the required documents necessary for the settlement of the case. Furthermore, Respondent argued that Petitioner even had an income tax deficiency in the amount of ₱73,960,150.00 for fiscal year 1994. To support his case, Respondent offered the following in evidence:

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Exhs.	Particulars
1	Letter of Authority dated June 30, 1995 (p.80, BIR rec.)
2	Letter dated November 15, 1996 sent to the petitioner (p. 190, BIR rec.)
3	Letter of petitioner dated December 3, 1996 (p. 191, BIR rec.)
4	Memo-report dated December 9, 1996 addressed to the Revenue District Officer, RD No. 47, East Makati (p. 194, BIR rec.) (inadvertently marked as Exh. "5")
5	Memorandum dated June 15, 1990 sent by the Commission on Audit to the Chief, Tax Credit/Refund Division (inadvertently marked as Exh. "6") stating therein the documents which the latter should require taxpayers to submit before claims for tax credit/refund may be granted.
6	Memo-report dated February 7, 1997 relative to the claim for tax credit/refund of alleged excess creditable withholding tax paid for fiscal year ended March 31, 1994 (inadvertently marked as Exh. "7")
10	Letter of the Revenue District Officer, Revenue District No. 47, East Makati addressed to the petitioner informing the latter that respondent's investigating revenue examiner has already submitted his report recommending the denial of the herein claim for tax credit/refund and that petitioner is being invited for a conference to go over the findings of said revenue officer and present objection thereto if necessary.

After a careful scrutiny of the facts and evidence attendant to the case at bar, Petitioner has indeed failed to convince this Court of its entitlement to the refund sought.

It bears emphasis that aside from the two-year prescriptive period required under Sections 204 and 230 of the Tax Code and the presentation of the Certificates of Creditable Income Tax Withheld at Source which Petitioner was able to satisfy, it is likewise required that the income upon which the taxes were withheld at source were included as part of the income declared in the income tax return of the recipient. Petitioner's Income Tax Returns for the fiscal years ended March 31, 1993 and March 31, 1994, reflected a total contract and rental income of ₱443,914,040.00 computed as follows:

Fiscal year ending March 31, 1993

Contract income	₱183,279,038.00	Exh. A (Schedule 2)
Rental income	5,400,450.00	Exh. A (Schedule 4)

Fiscal year ending March 31, 1994

Contract income	₱248,063,452.00	Exh. B (Schedule 2)
Rental income	7,171,100.00	Exh. B (Schedule 4)
Total	₱443,914,040.00	

A detailed computation, however, of the Certificates of Creditable Tax Withheld at Source submitted by Petitioner revealed a total contract and rental income of ₱462,987,654.78 (net of adjustments) or a difference of ₱19,073,614.78, thus:

Exhibit	Withholding Agent	Income	Tax Withheld
D	EDS Mfg. Inc.	₱ 20,320,152.34	₱ 203,201.53
E (6/92)	Kawasaki Heavy Industries, Ltd.	2,780,700.00	27,807.00
F (7/92)	Industries, Ltd.	3,648,068.40	36,480.69
G (10/92)	Industries, Ltd.	4,762,160.00	47,621.60
H (1-12/92)	Matsushita Elec. Phil. Corp.	3,482,298.00	34,822.98
J	Rohm Electronics Phils. Inc.	31,967,472.27	319,674.72
I (4/92-3/93)	Matsushita Communication Industrial Corp. of the Phils.	122,190,317.00	1,221,903.17
K (1993)	Rohm Electronics Phils. Inc.	14,545,454.54	145,454.54
L (1993)	Toyo Construction Co., Ltd.	2,040,450.00	20,404.50
M (1993)	Toyo Construction Co., Ltd.	4,800,000.00	240,000.00
N	Toyo Construction Co., Ltd.	1,860,000.00	85,800.00
O (1993)	Eds Mfg. Inc.	15,108,545.98	151,085.46
P	Eds Mfg. Inc.	392,100.00	3,921.00
Q (Oct. '93)-(Mar. '94)	Eco-Formwork System Phil., Inc.	13,636.36	681.82
R (1/1-12/31/93)	Fels Energy, Inc.	57,930,016.00	579,300.16
S (1/1-3/94)	Fels Energy, Inc.	3,545,454.55	35,454.55
T (1993-2nd Q)	Kawasaki Heavy Industries, Ltd.	7,016,752.92	70,167.55
U (1993-3rd Q)	Kawasaki Heavy Industries, Ltd.	18,552,325.23	185,523.26
V (1993-4th Q)	Kawasaki Heavy Industries, Ltd.	30,908,677.19	309,086.79
W (1994-1st Q)	Kawasaki Heavy Industries, Ltd.	17,278,859.60	172,788.60
X (April '93-March '95)	Matsushita Communication Industrial Corp. of the Phils.	4,096,457.00	40,964.57
Y (April-Sept. '93)	Matsushita Communication Industrial Corp. of the Phils.	27,591,056.00	275,910.56
Z (Oct. '93-Mar. '94)	Matsushita Communication Industrial Corp.		

	of the Phils.	10,978,421.00	109,784.21
AA 1993	Precision Engineered Components Corporation	217,541.82	2,175.42
BB 1993	Rohm Electronics Phils., Inc.	43,687,345.52	439,063.46
CC (Jan.- Mar. 1994)	Rohm Electronics Phils., Inc.	4,183,323.00	41,833.23
DD	Rohm Electronics Phils., Inc.	4,692,000.00	46,920.00
EE 1993	Sagara Metro Plastics Industrial Corp.	5,763,698.00	57,636.98
FF (Jan.- Mar. 1994)	Toyo Construction Co., Ltd.	5,191,100.00	259,555.00
GG (Jan.- Dec. 1993)	Alpha Core, Inc.	2,340,000.00	23,400.00
HH (Jan.- Dec. 1993)	Yakult Phils. Inc.	27,380.00	273.80
Total		471,911,762.78	5,111,046.83

Less: Adjustments

Exh.	D-2	₱ 5,145,454.00	
	J-2	2,394,700.00	
	P-2	334,900.00	
	X-2	224,878.00	
	Z-2	1,159,076.00	9,259,008.00
Balance			₱ 462,652,754.78
Per returns			443,914,040.00
Difference			₱ 18,738,714.78

With this result, we may infer that not all the contract and rental income of Petitioner were reflected in its 1993 and 1994 returns. Consequently, if we are to consider the difference of ₱18,738,714.78, Petitioner might have ended into a relatively higher gain position which could give rise to a tax liability rather than a refund. For Petitioner's failure to declare in its returns all the income payments received as part of its gross income, this claim for refund cannot be given due course.

WHEREFORE, in view of the foregoing, Petitioner's claim for refund or issuance of tax credit certificate is hereby **DENIED**. No pronouncement as to costs.

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 this 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