REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5045

COMMISSIONER OF INTERNAL REVENUE.
Respondent.

Promulgated:
APR 12 1996

x - x

DECISION

This petition is a judicial claim for refund of alleged excess withholding tax payments in the amount of P5,902,252.00 for the taxable year 1991.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. It is engaged in the mining business which includes the exploration, development and operation of mining properties for purposes of commercial production and the marketing of marketable mine products it produces. The petitioner alleges that in the course of the business during the year concerned, it received income payments from various sources from which creditable taxes were withheld by different agents in the total amount of P5,902,252.00. It is claimed that these creditable taxes were not utilized for the aforesaid taxable year as petitioner suffered a net loss in the amount of P153,912,610.00 in 1991 thus resulting in an overpaid income tax of P5,902,252.00. Petitioner likewise suffered a net loss in 1992 as shown by its income tax return thus the excess income tax payments of the previous year were not credited to the succeeding taxable year. Correspondingly, petitioner filed a claim for refund of excess income tax payments made in 1991 in a letter, dated November 29, 1993, and received by the respondent on December 2, 1993. Shortly thereafter, that is, on December 10, 1993, a petition for review was filed before this Court. Records show that respondent did not act on the claim for refund.

In her answer to the petition, respondent asserted the following special and affirmative defenses, to wit:

SPECIAL AND AFFIRMATIVE DEFENSES

> 5. Petitioner states no cause of action as the petition has not shown that the tax sought to be refunded was actually withheld and remitted to herein respondent in accordance with the Tax Code.
>
> 6. The claim for refund is still undergoing investigation and respondent has yet to make a decision thereon rendering the appeal to this Honorable Court premature.
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> 7. Claims for refund of taxes are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Customs vs. Phil. Acetylene Co., 39 SCRA 70 (1971); Meralco vs. CIR 67 SCRA 352 (1975).

> 8. In an action for refund of taxes, the burden of proof is upon petitioner to show that the taxes paid were erroneously or illegally collected. Failure to prove the same is fatal to its claim for refund.

As an added defense, the respondent, by way of a formal offer of evidence filed on February 3, 1995, presented a photocopy of a pre-assessment notice, dated November 17, 1994, addressed to petitioner containing the result of the investigation conducted by BIR examiners showing petitioner's tax liabilities for the taxable year 1991 in the amount of P737,598,918.23 to counteract that the claim for refund of petitioner cannot prosper as the petitioner has a pending tax liability consisting of a much larger amount for the taxable year 1991.

The issue for the consideration of this Court is whether or not petitioner is entitled to a tax refund or credit in the amount of P5,902,252.00 representing overpaid creditable income tax for the year 1991.

Petitioner presented as evidence its 1991 annual corporate income tax return filed on April 13, 1992 showing a net loss of P153,912,610.00 (Exhibit "A"). Also reflected in said return is the amount of P5,902,252.00 corresponding to the creditable income tax withheld for that same year. To further prove that it was unable to credit the overpaid amount of the previous year to the next succeeding quarters of the taxable year

1992, petitioner presented its 1992 annual corporate income tax return showing a net loss of P100,865,810.00 (page 7, CTA records). Copies of certificates of creditable income taxes withheld by its various agents in 1991 were also offered in evidence.

One of the objections of respondent to the petitioner's claim for refund is that the petition has not shown that the tax which is the subject of the claim has been actually withheld and remitted to the BIR.

At this point it is best to review the applicable provisions of the law and revenue regulations, plus the evidence presented by the petitioner, to determine whether there has been compliance with the requirements sufficient to warrant the refund of the amount claimed for the taxable year 1991.

Section 69 of the Tax Code authorizes the application of excess income taxes paid for a particular taxable year on the quarterly income tax liabilities for the taxable quarters of the succeeding taxable year, thus:

> SEC. 69. *Final adjustment return.*- Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable 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 :

> 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. (as amended by Presidential Decree No. 1705)

If the succeeding taxable year upon which the excess income taxes of the previous year likewise results in a loss, a claim for refund must be filed within the two year period from payment. As in the instant case, a refund of excess creditable income tax shall be granted, if there is compliance with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85. Compliance with these requirements has been reiterated in a number of cases decided by this Court namely: **Kao Philippines Inc. vs. CIR,** CTA Case No. 4899, February 21, 1995; **BPI Family Savings Bank Inc. vs. CIR,** CTA case no. 4325, March 17, 1994; **Citytrust Finance Corporation formerly Investors** Finance Corp. **vs. CIR,** CTA case no. 4046, February 24, 1993; **Citytrust Finance Corporation vs. CIR,** CTA case no. 4143, November 11, 1991. The Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Court of Tax Appeals and Paseo Realty and Development Corporation,** CA-G.R. SP No. 32927, February

28, 1994, upheld the decision of this court acknowledging compliance with the three basic requirements to warrant the refund of excess creditable income taxes.

These requirements are as follows :

1) That petitioner filed a claim for refund within the two (2) year period as prescribed by Section 292 (now 230) of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) The fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom.

Records show that petitioner filed its annual income tax return for the taxable year 1991 on April 13,1992. Within a two-year period from payment, petitioner filed a claim for refund with the respondent on December 2,1993 and a petition for review was filed with this Court on December 10, 1993 thereby showing sufficient compliance with the aforementioned requirement number one.

As to the second requirement, it has been established that the petitioner declared the income from which the taxes were withheld in its income tax return covering the taxable year 1991 (Exhibit "A", page 53, CTA records). The income from the sale of real property in the amount of P112,000,000.00 from which a 5% income tax of P5,600,000.00 was withheld is also indicated in the aforecited 1991 income tax return of petitioner.

A careful examination of the evidence presented by the petitioner in compliance with the third requirement shows that not all of these documents presented by petitioner warrant the refund of the amount prayed for. The income tax withheld as shown by Exhibits "F" and "F-1" were not included in the final computation as these pertained to withholding tax on compensation which is not classified as a creditable income tax. Likewise, the income tax allegedly withheld by Far East Bank in the amount of P37,949.58 presented as Exhibit "G" is also denied as it is not presented in the prescribed form (BIR Form 1743.1) but is embodied in a mere certification issued by Far East Bank. (see page 62, CTA records)

The main bulk of petitioner's claim for refund corresponds to the income tax withheld in the amount of P5,600,000.00 on its sale of real property in the amount of P112,000,000.00. Such withholding tax of 5% on the sale, exchange or transfer of real property by a corporation is classified as creditable withholding tax by Revenue Regulations No. 1-90 which provides as follows:

Section 1. Section 1 of Revenue Regulations No. 6-85 is hereby amended to read as follows:

> "Section 1. <u>Income payments subject to creditable withholding tax and rates prescribed thereon.</u> - Except as herein otherwise provided, there shall be withheld a creditable income tax at the rates herein specified for each of payee from the following items of income payments to persons residing in the Philippines:
>
> xxx xxx xxx
>
> "(iii) real property, other than capital assets, by an individual, estate, trust, trust fund or pension fund or real property, whether capital or ordinary asset, by a corporation who is not habitually engaged in real estate business -- five percent (5%)."

Petitioner presented a copy of the BIR Payment Order No. C12282756 (Exhibit "K") and Central Bank Confirmation Receipt No. B24106141 (Exhibit "L") to prove that the amount of P5,600,000.00 was withheld and subsequently paid to the BIR in 1991 (see page 300, BIR records) which is sufficient compliance to warrant their appreciation for purposes of including the indicated amount in our final computation.

Another significant objection made by respondent on the claim for refund is the existence of a pre-assessment notice, dated November 17, 1994 (Exhibit "1"), outlining petitioner's tax deficiencies for the taxable year 1991 which is the same year subject of the present claim.

This objection although not expounded by respondent was included in her formal offer of evidence presumably on the proposition that a pending tax liability for a taxable year is a bar to a claim for refund pertaining to that same year.

This Court finds no merit in this theory of respondent, if we can call it that, as we cannot look into the merits of the pre-assessment notice issued to the petitioner unless such notice matures into a final assessment. To do otherwise is tantamount to treading into grounds where this Court has no jurisdiction.

One of the remedies provided by law to taxpayers in cases of assessments issued by the BIR is the remedy of protest provided in Section 229 of the Tax Code. It is only when this protest is denied in whole or in part, that the taxpayer may take his appeal to this Court in accordance with Section 7 (1) of Republic Act 1125, thus:

> **SECTION 7.** ***Jurisdiction*** - The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided.
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the BIR.

Jurisdiction over the subject matter is fundamental for a court to act on a given controversy. It is conferred by law, not by consent of the parties. xxxxx The Tax Court is a Court of special jurisdiction. As such, it can take cognizance only of such matters as are clearly within its jurisdiction (**Commissioner of Internal Revenue vs. Villa**, 22 SCRA 3).

In conclusion, the creditable withholding taxes to be refunded or credited to the petitioner is computed as follows:

Withholding Agent	Amount of Income Payment	Tax Withheld	Exhibit
Far East Bank and Trust Co.	117,692.94	5,884.65	G-1
Far East Bank and Trust Co.	176,419.14	8,820.96	G-2
Far East Bank and Trust Co.	58,966.74	2,948.34	G-3
Far East Bank and Trust Co.	117,692.94	5,884.65	G-4
Far East Bank and Trust Co.	239,346.16	11,967.31	G-5
Far East Bank and Trust Co.	53,606.12	2,680.31	G-6
Far East Bank and Trust Co.	53,606.12	2,680.31	G-7
Far East Bank and Trust Co.	160,818.36	8,040.91	G-8
Metropolitan Bank and Trust Co.	520,168.00	26,008.40	H
Engineering Equipment Inc.	250,000.00	12,500.00	I
Engineering Equipment Inc.	250,000.00	12,500.00	I-1
Engineering Equipment Inc.	250,000.00	12,500.00	I-2
Engineering Equipment Inc.	250,000.00	12,500.00	I-3
Engineering Equipment Inc.	250,000.00	12,500.00	I-4
Engineering Equipment Inc.	250,000.00	12,500.00	I-5
Engineering Equipment Inc.	250,000.00	12,500.00	I-6
Engineering Equipment Inc.	250,000.00	12,500.00	I-7
Engineering Equipment Inc.	250,000.00	12,500.00	I-8
Engineering Equipment Inc.	250,000.00	12,500.00	I-9
Engineering Equipment Inc.	250,000.00	12,500.00	I-10
Engineering Equipment Inc.	250,000.00	12,500.00	I-11
Petrophil Exploration and Development Co.	533,170.00	26,658.48	J
Benguet in behalf of La Golondrina	112,000,000.00	5,600,000.00	K,L
		P5,851,574.32	

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to issue a Tax Credit Certificate in the amount of P5,851,574.32 in favor of the petitioner.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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