REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus -

C.T.A. CASE NO. 5915

COMMISSIONER OF INTERNAL REVENUE BEETHOVEN L. RUALO,
Respondent.

Promulgated:

APR 10 2001

DECISION

This case involves a claim for refund in the amount of *two million eight hundred fifty six thousand five hundred fifty six & 49/100 pesos* (P2,856,556.49) allegedly representing unapplied creditable income taxes withheld for the fiscal year (FY) ended March 31, 1997.

The facts of the case are as follows:

Petitioner Philippine Airlines, Inc. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at PAL Building II, Legazpi St., Legazpi Village, Makati City, where it may be served with summons.

On July 29, 1997, Petitioner filed with the BIR its annual income tax return for the fiscal year ended March 31, 1997 declaring a net loss of P1,477,213,358.00 and unutilized creditable income taxes withheld of P4,584,022.00 which Petitioner indicated as to be refunded (Exh. A). The latter amount represents the sum of the prior year's (FY 1996) excess credits of P2,012,668.00 and creditable income taxes withheld in FY 1997 of P2,571,354.00.

Since it has already filed a separate claim for refund of the alleged prior year's (FY 1996) excess credits amounting to P2,012,668.00, Petitioner filed on August 13, 1997 an administrative claim for refund only in the amount of P2,571,354.00 corresponding to the reported excess creditable income taxes withheld in FY 1997 (Annex C of the Petition).

Subsequently, on July 23, 1998, Petitioner filed an additional administrative claim for refund amounting to P285,202.49 allegedly representing excess creditable income taxes withheld in FY 1997, which were not included in its FY 1997 ITR and in the earlier claim for refund, filed on August 13, 1997 (Annex D of the Petition; TSN, March 23, 2000, page 6).

Since Respondent did not act upon the aforestated claims for refund in the total amount of P2,856,556.49, Petitioner filed the instant Petition before this Court on July 23, 1999 pursuant to Sections 204(3) [now Section 204(C)] and 230 [now 229] of the Tax Code, which are all hereinbelow quoted, thus :

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** —The Commissioner may –
>
> xxx xxx xxx
>
> "(3) x x x x 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 (2) years after the payment of the tax or penalty: x x x "

> "**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 penalty claimed to have been collected without authority, 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; x x x."
>
> "In any case, no such suit or proceeding shall be filed 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: x x x."

In his Answer filed through registered mail on August 26, 1999, Respondent denied Petitioner's assertions and advanced the following Special and Affirmative Defenses:

> "1.) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Respondent's Bureau;
>
> 2.) Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
>
> 3.) Petitioner must prove the following:
>
> a. That the total amount of P2,856,556.49 allegedly claimed as creditable income tax withheld for the fiscal year ended March 31, 1997 has not been applied against any income tax liability for the succeeding taxable period.
>
> b. That it has incurred tax loss for the aforesaid taxable period.
>
> c. That the alleged income tax payments from which the taxes were withheld were included in its gross income for 1997.
>
> 4.) Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Section 204 in relation to Section 230 (now Section 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 5.) Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)."

Petitioner presented testimonial and documentary evidence to support its claim. Respondent, on the other hand, submitted the case based on the pleadings.

After the parties have submitted their respective memorandum, the case was submitted for decision on December 12, 2000.

The issues submitted by the parties for this Court's resolution are:

1.) Whether or not Petitioner PAL is entitled to the refund of the amount of P2,856,556.49 representing its unapplied creditable income tax withheld for the fiscal year ended March 31, 1997;

2.) Whether or not the aforementioned amount has not been applied against any income tax liability of the Petitioner for the succeeding taxable period;

3.) Whether or not Petitioner has incurred a tax loss for the aforesaid taxable period ended March 31, 1997;

4.) Whether or not the income tax payments from which the taxes were withheld were included in its gross income for 1997; and

5.) Whether or not Petitioner has complied with the provisions under Section 204 in relation to Section 229 of the Tax Code.

(Stipulation of Facts, pages 83-84)

Upon careful examination of the evidence adduced solely by Petitioner, We find the latter to be entitled to a partial refund.

Anent the third issue of whether or not Petitioner has incurred a tax loss for taxable period ended March 31, 1997, We answer in the affirmative. Petitioner's FY 1997 annual income tax return sufficiently proves that it had indeed suffered a net loss in taxable FY 1997. As can be seen in Section A (Resume of Income and Deductions) of the same return (Exh. A), Petitioner's deductions amounting to P32,408,970,438.00 (Exh. A-5) exceeded its gross income of P30,931,757,080.00 (Exh. A-6) resulting in a net loss of P1,477,213,358.00 (Exh. A-4). Inasmuch as the FY 1997 ITR was prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct in the absence of contrary evidence (*Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR SP. No. 33589, October 14, 1994*). Similarly, in the case of *Citibank N. A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997*, the Supreme Court held that:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, <u>detailed proof of the truthfulness of each and every item in the income tax return is not required</u>. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. <u>The grant of a refund is founded on the assumption that the tax return is valid: that is, the facts stated therein are true and correct. In fact even without Petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC</u>." (Underlining supplied)

With reference to the second issue, Petitioner proved that it did not apply or carry-over to the succeeding FY 1998 the claimed FY 1997 excess creditable withholding taxes since there was no amount indicated as "Prior Year's Excess Credits" in its FY 1998 income tax return (Exh. B).

We now proceed to the first issue of whether or not Petitioner is entitled to a refund of P2,856,556.49 representing its unapplied creditable income tax withheld for the fiscal year ended March 31, 1997.

Sections 51(f) [now 58(D)], and 69 [now 76] of the Tax Code provide thus:

"Sec. 51. ***Returns and payment of taxes withheld at source.*** x x x

(f) Income of recipient. – Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 295 (now 204); if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 50."

"**Sec. 69.** ***Final Adjustment Return.*** — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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."

The foregoing provisions clearly allow the refund of the excess amount of income tax withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return of the taxpayer.

As earlier mentioned, Petitioner incurred a net loss in FY 1997, thus, it had no income tax liability against which the claimed creditable taxes withheld in FY 1997 of P2,856,556.49 may be applied or credited. Further, the same were not carried forward as prior year's excess credits to the succeeding FY 1998. Hence, the claimed excess creditable taxes withheld in FY 1997 of P2,856,556.49 appears to be refundable in accordance with the above provisions of law.

However, in order to be entitled to a refund of excess creditable withholding taxes, Petitioner must likewise prove its compliance with the following three requirements as provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence on the matter:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient [*Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

The question of compliance with the first requirement is similar to the fifth issue raised by the parties. The reckoning of the two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*). The claimed excess creditable withholding taxes subject of the instant Petition were for the fiscal year ending March 31, 1997 for which Petitioner filed its annual income tax return on July 29, 1997 (Exh. A-3). Counting from this latter date, Petitioner's two separate administrative claims for refund filed on August 13, 1997 and July 23, 1998 as well as the Petition for Review filed on July 23, 1999 fall within the two-year period prescribed under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code.

In compliance with the second requirement, Petitioner submitted Certificates of Creditable Tax Withheld at Source (Exhs. C-2-1-a to C-2-1-u, inclusive) which were examined by SGV & Co, the auditing firm commissioned by this Court pursuant to CTA Circular 1-95, as amended, to verify Petitioner's claim for refund. In its report (Exh. C, pages 4-6), SGV & Co. certified that out of the claimed excess creditable withholding taxes of P2,856,556.85, only the amount of P1,534,103.96 was properly supported by certificates. However, upon scrutiny of the said documents, this Court found out that the amount of P1,534,103.96 includes creditable value-added taxes withheld amounting to P32,511.08 detailed as follows:

Exh.	Period Covered	Withholding Agent	Income Payment	Creditable VAT Withheld
C-2-1b				
1				
2/25	4/8/96	Bangko Sentral ng Pilipinas	P 267.30	P 14.58
3/25	06/96	Bangko Sentral ng Pilipinas	5,964.60	325.34
4/25	7/1/96	Bangko Sentral ng Pilipinas	249.50	9.08
5/25	11/4/96	Bangko Sentral ng Pilipinas	228.60	12.46
6/25	5/7/96	Bangko Sentral ng Pilipinas	217.47	6.73
7/25	8/14/96	Bangko Sentral ng Pilipinas	6,993.80	381.48
8/25	01-09/96	Bangko Sentral ng Pilipinas	41,575.42	2,267.74
11/25	7/8/96	Bangko Sentral ng Pilipinas	3,000.95	180.05
12/25	8/5/96	Bangko Sentral ng Pilipinas	3,226.25	175.97
14/25	9/96	Bangko Sentral ng Pilipinas	16,935.85	923.77
15/25	8/27/96	Bangko Sentral ng Pilipinas	34,035.35	1,856.47
		Total Amount	P 112,695.09	P 6,153.67
		Less: SGV Disallowances		2,986.23
		Net Amount		P 3,167.44
C-2-1-e				
1				
1/12	7/8/96	Senate of the Philippines	P 268,800.00	P 14,681.82
2/12	6/96	Senate of the Philippines	134,400.00	7,330.91
2/12	4/96	Senate of the Philippines	34,400.00	7,330.91
			P 437,600.00	P 29,343.64
		Grand Total		P 32,511.08

These creditable value-added taxes withheld should be excluded from the amount of P1,534,103.96 since the same are deductible from Petitioner's output VAT liability and not from its income tax liability as provided under Section 110(c) [now Section 114(C)] of the Tax Code, to wit:

> "(C) ***Withholding of Creditable Value-Added Tax.*** – The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of its purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the value-added tax liability of the seller or contractor: x x x x."

Likewise, this Court observed that the creditable income taxes withheld of P532,243.34 indicated in the following certificates include taxes withheld in FY 1996, which are outside of the period covered by the subject claim for refund.

Exh.		Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
C-2-1-b	1/25	Mar '96	Bangko Sentral ng Pilipinas	P 5,241.90	P 285.92
C-2-1-e	4/12	Jan to June '96	Senate of the Philippines	703,063.20	31,957.42
C-2-1-0	2/2	Jan to Dec '96	Abacus Dist. Sys. Phils.	10,000,000.00	500,000.00
			Total:	P 10,708,305.10	P 532,243.34

Hence, the amount of P532,243.34 shall also be disallowed since this Court cannot ascertain from the corresponding certificates the actual amount of creditable taxes withheld related only to FY 1997 covered by the instant Petition.

Therefore, the amount of P1,534,103.96 recommended by SGV & Co. is further reduced by the aforesaid disallowances amounting to P564,754.42 (the sum of P32,511.08 and P532,243.34) resulting to a net amount of P969,349.54 creditable income taxes withheld in FY 1997, which were substantiated by proper certificates.

Concerning the third requirement which is also the fourth issue stipulated by the parties, Petitioner proved that it declared in its FY 1997 income tax return the income corresponding to the substantiated creditable income taxes withheld of P969,349.54. As certified by the commissioned auditing firm, SGV & Co. in its report, the income related to the creditable income taxes withheld of P1,534,103.96 was verified to have been declared by Petitioner in its FY 1997 income tax return (Exh. C, page 4). Consequently, the income corresponding to the creditable income taxes withheld of P969,349.54 which are properly supported by certificates was also declared by Petitioner in its FY 1997 ITR since the latter amount originated from the amount of P1,534,103.96 verified by SGV & Co.

Contrary to the Respondent's allegation, Petitioner proved that it complied with all the requirements for the refund of excess creditable income taxes withheld but in the reduced amount of P969,349.54.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** the amount of **NINE HUNDRED SIXTY NINE THOUSAND THREE HUNDRED FORTY NINE AND 54/100 PESOS (P969,349.54)** in favor of Petitioner representing unapplied creditable income taxes withheld for the fiscal year ended March 31, 1997.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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