REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CABLE AND WIRELESS PLC-
PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5397

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
SEP 21 1998

x - x

DECISION

This case involves a claim for refund/tax credit in the total amount of One Million Seventy-Six Thousand Eight Hundred Twenty (₱1,076,820.00) Pesos representing alleged overpaid income tax for fiscal years ended March 31, 1994 and March 31, 1995.

Petitioner is a corporation organized under the laws of England. It is licensed to engage in business in the Philippines through a branch office.

On July 15, 1994, petitioner filed its (tentative) annual income tax return for fiscal year ended March 31, 1994 reporting a net loss in the sum of ₱1,612,512.00 (Exhs. A-12, A-2, A-3) and a net refundable income tax of P558,939.00 (Exhs. A-4, A-8). On said return, petitioner manifested its intention to apply the refundable amount as tax credit to the succeeding year (Exh. A-5).

For fiscal year ended March 31, 1995, petitioner filed its annual income tax return on July 4, 1995 (Exh. I), declaring a net loss of P87,574.00 (Exh. 1-2) and a net refundable tax of P1,076,820.00 (Exhs. 1-3, 1-8).

There was, however, no indication of its intention regarding the said refundable amount.

Predictably, herein petitioner filed a claim for refund with the Bureau of Internal Revenue on July 28, 1995 (Exh. O).

The claim having been unacted upon and the two-year prescriptive period was about to expire, the petitioner instituted this judicial claim for refund on July 5, 1996.

In support of its claim, petitioner submitted the following documentary evidences, to wit:

1) Annual Income Tax Return for fiscal year ending March 31, 1994;

2) Quarterly Income Tax Return for fiscal year ending March 31, 1994;

3) Certificates of Creditable Income Tax Withheld at Source for the fiscal year ending March 31, 1994;

4) Annual Income Tax Return for fiscal year ending March 31, 1995;

5) Certificates of Creditable Income Tax Withheld at Source for fiscal year ending March 31, 1995;

6) Annual Income Tax Return for 1996

7) Annual Income Tax Return for 1993

8) Administrative claim for refund.

Petitioner also presented Mrs. Wilma Pascua to testify and identify some of its documents.

Respondent for her part, presented the person of Mrs. Manolita Dimacali, the revenue officer who was authorized to investigate petitioner's claim. After due examination of petitioner's books of accounts and other accounting records, said revenue officer found petitioner to be liable for deficiency income tax in the total amount of ₱18,349,527.81. Resultantly, she recommended for a denial of petitioner's claim (Exh. 2).

The sole issue to be resolved in this case is whether or not the petitioner is entitled to the refund/tax credit sought.

Section 69 of the Tax Code, as amended, provides that:

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

Thus, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year. Considering that petitioner incurred net losses for fiscal years ended March 31, 1994 and March 31, 1995, it was not able to utilize its quarterly income tax and creditable income tax payments during the said taxable years. Therefore, the amount of P1,076,820 appears to be refundable.

This Court notes that with the exception of two quarterly payments in the total sum of P22,487.00, petitioner's claim consists basically of creditable withheld taxes from consultancy and technical service fees paid to petitioner. Accordingly, it is necessary that petitioner first comply with certain requirements. Section 51 of the Tax Code mandates that:

> SEC. 51. Returns and Payments of Taxes Withheld at Source.-(a) xxx xxx xxx
>
> (b) *Statement of income payments made and taxes withheld.*-Every withholding agent required to deduct and withhold taxes under Section 50 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later that March 1 of the following year in the case of individual payee for creditable withholding taxes. x x x

x x x x x x x x x

> (d) *Income of the recipient.*-Income upon which any creditable tax is required to be withheld at source under Section 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 204;

Corollarily, Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, requires that:

> Section 10. *Claim for Tax Credit or Refund.*-
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Sections 70(b) and 230 of the Tax Code, also state that:

> SEC. 70. (a) x x x
>
> (b) *Time of filing the income tax return.*-The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.
>
> 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; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun 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; *Provided, however*, That the Commissioner may, even without a written claim therefor, Refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

This Court in numerous cases ruled that the grant of refund when creditable withholding tax is in excess of the amount of the tax due, depends on three factors, *viz*:

> (1) that the claim for refund is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of tax as required under Section 230 of the Tax Code;
>
> (2) it must be shown on the return of the recipient that income payment received was declared as part of the gross income; and
>
> (3) the fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (**Citytrust Finance Corporation vs. The Commissioner of Internal Revenue**, CTA Case No. 4134, November 11, 1991; **Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue**, CTA Case No. 4046, February 24, 1993; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5323, August 25, 1997).

As disclosed by the records of this case, petitioner filed its administrative claim with the BIR on July 28, 1995 and the instant petition for review on July 5, 1996, well within the two-year period required by law. (**Commissioner of Internal Revenue vs. Philippine American Life Insurance Co.**, G.R. No. 105208, May 29, 1995; **Commissioner of Internal Revenue vs. TMX Sales, Inc.**, G.R. No. 837736, January 15, 1992; **ACCRA Investments Corp. vs. Court of Appeals**, G.R. No. 96322, December 20, 1991.)

For fiscal year ending March 31, 1994, petitioner reported as part of its gross income the amount of P11,129,304.00 as tax withheld by Eastern Telecommunications Phils., Inc. (Exh. A-11). The total amount relative thereto which was duly supported by certificates of creditable income tax withheld at source (Form 1743-1) was ₱530,672.20 (Exhs. E, F & H).

For fiscal year ending March 31, 1995, petitioner declared as part of its gross income the amount of P10,937,648.00 (Exh. 1-10) as service fees from which the sum of P517,881.00 was withheld (Exh. 1-8). Petitioner also submitted the corresponding certificates of income tax withheld at source for said fiscal year (Exhs. J, K, L & M).

As adverted to earlier, respondent was able to investigate petitioner's claim and the revenue officer concerned recommended for a denial of said claim after her initial findings that petitioner is liable for deficiency tax amounting to P18,349,527.81. Respondent rested her case on December 22, 1997 although she subsequently manifested that she would be pursuing administratively the above initial findings on the examination so conducted. Whether or not there ensued an assessment pertaining to the said initial findings of the revenue officer or whether or not it was approved, this Court has not been apprised so far.

This Court also finds it pertinent to quote part of the proceedings conducted on November 18, 1997, as follows:

ATTY. TOLENTINO

Thank you, Your Honors.

Q. Madam Witness, could you briefly tell us the result thereof of your report?

A. I recommended for the denial of the request for refund because the case seems to be a tax collectibele one, Sir.

Q. On the basis of that denial, Madam Witness, could you tell us what happened to this recommendation that you recommended?

A. The recommendation was submitted to my Revenue District Officer for transmittal to the Assessment Branch for proper collection, Sir.

Q. And could you tell us the present status of that recommendation, Madam Witness?

A. The recommendation has not been acted upon because the docket is still with the Court. So we cannot transmit the report to the Assessment Branch and the notice will be send (sic) by the time, Sir.

ATTY. TOLENTINO

That will be all for the witness, Your Honors.

JUDGE DE VEYRA

All right.

JUDGE ACOSTA

Cross, Atty. Reyes?

ATTY. REYES

Yes, Your Honors.

JUDGE ACOSTA

All right.

ATTY. REYES

With the permission of this Honorable Court. May I proceed, Your Honors?

JUDGE ACOSTA

All right, proceed.

ATTY. REYES

Thank you, Your Honors.

CROSS EXAMINATION BY ATTY. REYES

Q. Madam Witness, you said earlier that you conducted an examination of the books of accounts of the petitioner to check the validity of its claim for the refund, is that right?

A. Yes, Sir.

Q. And in your examination you found out that the petitioner has an alleged deficiency income tax, Ms. Witness?

A. Yes, Sir.

Q. And based on this recommendation that you prepared, you found out that petitioner has an alleged deficiency income tax of more than P18 million, is that right, Madam Witness?

A. Yes, Sir.

Q. After conducting an examination with the books of accounts of the petitioner and after you have prepared your report, did you give the petitioner a chance to review or contest your recommendation, Madam Witness?

A. No. We're not able to do so because the docket was taken from us by the Legal Branch as soon as you filed your case with the Court, Sir.

Q. But, did you inform the petitioner about your recommendation of the alleged deficiency income tax, Madam Witness?

A. No, we're not able to inform Sir.

Q. So, in effect, you did not give them the chance to review whatever you have alleged in your recommendation, Madam Witness?

A. They were not given a chance, Sir.

Q. And do you agree with me that your recommendation is not yet final, meaning to say, that it is subject to review by your higher authority, Madam Witness?

A. Yes, Sir.

Q. And you have said earlier to this Honorable Court that this is still subject to the review by your Assessment Division, Madam Witness?

A. Yes, Sir.

Q. <u>And there is no pending assessment notice issued to the petitioner regarding your recommendation, Madam Witness?</u>

A. <u>None, Sir</u>.

Q. So, in effect, Madam Witness, so you are saying that there is possibility that your recommendation can be disallowed or even cancelled by your higher authority?

A. Actually, I think there is greater possibility that my findings will be supported by the Assessment Branch, Sir.

Q. That is only your opinion, Madam Witness?

A. Yes, although that is also a possibility, Sir.

ATTY. REYES

That will be all for the witness, Your Honors. (Underscoring supplied.)

In sum, it is crystal clear that the memorandum report is not yet final. No assessment, tentative or final has been issued against herein petitioner.

It is worthy to note also that this case was considered submitted for decision on April 30, 1998. In the interregnum, no motion or pleading was filed by either party.

After a deliberative review of the attending facts and circumstances in this case, issues involved and arguments of the parties as well as the applicable laws and jurisprudence, this Court grants petitioner's claim but in a reduced amount. Herein petitioner failed to present convincing evidence to prove the claim of

P5,780.00 because of the fact that the year when said amount was withheld was not clearly indicated in the Certificate of Creditable Income Tax Withheld and that said certificate was left unsigned (see Exhibit "G", page 93, CTA records).

WHEREFORE, in view of all the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to the petitioner the amount of P1,071,039.30 representing overpaid income tax for the fiscal years ending March 31, 1994 and March 31, 1995.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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