REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4976

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 1997

x - x

DECISION

This is a claim for the refund or tax credit in the total amount of P9,193,477.00, representing alleged overpaid creditable income tax withheld at source for calendar years 1990 and 1991.

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws. It is engaged in business in the Philippines as an investment and management corporation. It also leases some of its properties to various tenants.

A substantial portion of petitioner's income comes from the activity of leasing its realties to several entities who in turn withhold taxes from the rentals they pay to petitioner corporation.

For the taxable year 1990, petitioner filed with the Bureau of Internal Revenue its final corporate income tax return (Exhibit "B", pp. 91-92, CTA rec.) on April 15, 1991, showing a net loss of P84,827,684.00 with an excess creditable withholding income tax of P7,372,547.00 detailed as follows:

Gross Income for Calendar Year 1990

Management fees (Sch. 2)	P108,071,304.00
Rentals/leases (Sch. 4)	5,778,829.00
Interest not subject to final tax (Sch. 5)	4,333,487.00
Other income (Sch. 6)	123,863.00
Total Gross Income for 1991	P118,307,483.00
Less: Deductions	203,135.167.00
Net Loss for 1990	P 84,827,684.00
Tax Due:	NIL
Less: c. Creditable tax withheld	
Prior years	P 5,784,901.00
Various (1990)	1,587,746.00
Total Amount Refundable	P 7,372,547.00

For the taxable year 1991, petitioner's final corporate income tax return (Exhibit "C", pp. 108-109, CTA rec.), likewise showed a net loss this time amounting to P151,599,423.00 with an excess creditable withholding income tax of P9,193,477.00 which now included the prior years' excess creditable withholding income tax detailed as follows:

Gross Income for Calendar Year 1991

Management fees (Sch. 2)	P 73,371,833.00
Rentals/leases (Sch. 4)	7,125,003.00
Interest not subject to final withholding tax (Sch. 5)	2,523,564.00
Miscellaneous (Sch. 6)	4,075,136.00

Sales or exchanges of prop. other than capital asset (Sch. 7)	37,262.00
Total Gross Income for 1991	P 87,132,798.00
Less: Deductions	238,732,221.00
Net Loss for 1991	P151,599,423.00
Tax Due:	NIL
Less: a) Prior Year's Excess Credit	P 7,372,547.00
b) x x x	-
c) Creditable tax withheld	1,820,930.00
Total amount refundable/creditable	P 9,193,477.00

On April 2, 1993, petitioner filed an administrative written claim for refund in the total amount of P9,193,477.00 covering the alleged excess creditable withholding taxes for the taxable years 1990 and 1991 (Exhibit "A-1", pp. 88-90, CTA rec.).

Without waiting for the action of the respondent, petitioner filed a petition for review with this Court on April 14, 1993 well aware of the impending lapse of the two-year prescriptive period for filing a claim for refund or tax credit.

The issue presented for resolution is whether or not petitioner is entitled to the refund or tax credit of P9,193,477.00 representing alleged excess creditable withholding taxes for the taxable years 1990 and 1991.

To support its claim for refund, petitioner presented, among others, the following relevant documentary evidence:

1) Claim for Refund or Tax Credit, filed on April 2, 1993, supra.;

2) 1990 Corporate Annual Income Tax Return filed on April 15, 1991 (Exhibit "B", supra)

3) 1989 Corporate Annual Income Tax Return showing a total creditable withholding tax of P5,784,801.00 to be applied as tax credit to the succeeding taxable year (Exhibit "B-8", p. 93, CTA rec.);

4) 1991 Corporate Annual Income Tax Return filed on April 11, 1992 (Exhibit "C", supra);

5) 1992 Corporate Annual Income Tax Return filed on April 15, 1993 reflecting a net loss of P144,300,097.00 to prove that petitioner did not incur any income tax liability for 1992, hence, was unable to utilize its 1991 excess creditable income tax withheld at source (Exhibit "G", p. 176, CTA rec.);

6) Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1) issued by various withholding agents to prove that several amounts of money were withheld from petitioner's income for the taxable years 1990 and 1991 (Exhibits "B-15", "B-18", "B-21", "B-24", "B-27", "B-30", "B-33", "B-36", "B-39", "B-42", "B-45", "B-48", "B-51", "B-54", "B-57" (found in pages 94-107, CTA rec.), "C-11" up to "C-26", inclusive, (found in pages 110-125, CTA rec.);

7) Certification, dated April 12, 1991 (Exhibit "D", p. 126, CTA rec.), issued by the United Coconut Planters Bank; and

8) Paper Industry Corporation of the Philippines check disbursement receipts stubs (Exhibit "E", p. 127, CTA rec.).

Respondent does not deny the existence of the aforementioned exhibits of petitioner but takes exception to the veracity of the figures appearing therein. To rebut the claim of the petitioner, respondent offered as evidence the memorandum report prepared by revenue officer, Dolores Matias (Exhibit "2", p. 206-208, CTA rec.), dated September 19, 1994, which declared that for the year 1990 petitioner had a total revenue of P510,112,343.00 but its corporate annual income tax return reflected a taxable income of only P118,307,483.00. Furthermore, the revenue officer reported that of the P117,644,691.00 interest expense claimed by the petitioner, P87,445,293.00 was disallowed resulting in an income tax deficiency of P1,852,330.38 for the taxable year 1990. As a consequence of such recommendation, an assessment notice, dated December 27, 1994, was issued for petitioner's 1990 tax deficiencies in the total amount of P2,001,297.16 inclusive of surcharge, interest and compromise penalty.

By the documents offered, respondent seems to be pointing out that the petitioner's claim for refund/tax credit, particularly for the year 1990, cannot be wholly granted due to the adjustments made by the revenue officer of the figures appearing in the 1990 corporate annual income tax return of the petitioner resulting in an income tax deficiency and not a net loss contrary to the claim alleged in this petition.

A review of the records of this case shows that the petitioner is partially entitled to the refund claimed for the taxable years 1990 and 1991. The assessment of petitioner's tax liabilities for 1990 does not serve as a bar to the present claim for refund because it was issued beyond the three-year prescriptive period provided by Section 203 of the Tax Code, pertaining to the period of assessment for internal revenue taxes, thus:

> Sec. 203. ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: **Provided**, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (As amended by B.P. Blg. 700)

Evidence revealed that a Letter of Authority was issued to Revenue Officer Dolores Matias as early as September 27, 1991 to enable her to conduct an examination on petitioner's books of accounts and other accounting records for the taxable year 1990 (Exhibit "1"). It was only on September 19, 1994 that a Memorandum Report (Exhibit "2", supra) was finally released containing a recommendation for the issuance of an assessment for the taxable year 1990. A subsequent assessment notice, dated December 27, 1994, was rendered futile due to the delay of its issuance taking into consideration that the annual corporate income tax return of petitioner for 1990 was filed on April 15, 1991 (see Exhibit "B-5").

In the computation of the final amount to be refunded to petitioner, this Court took note of the fact that petitioner has several related refund cases pending before this Court docketed as follows:

CTA Case No.	Year(s) Involved	Amount
4574	1989	P 5,784,801.00
4976	1990 & 1991	9,193,477.00
5242	1992	1,630,689.00
5351	1993	5,720,000.00

This instant claim for refund in the amount of P9,193,477.00 included the excess creditable taxes of 1989 in the sum of P5,784,801.00 which is already a subject of deliberation in CTA Case No. 4574 filed on December 31, 1991 under a similar title, hence it could no longer be considered herein lest there be double recovery on the part of the petitioner.

With regard to the amount actually pertaining to the 1990 and 1991 excess creditable taxes, the evidence shows that petitioner has satisfactorily complied with the requirements of the law and relevant regulations to warrant a grant of the refund or credit claimed.

It is already a well-entrenched rule that a refund of excess creditable taxes shall be granted upon compliance with the following three requirements, thus:

> a. That it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;
>
> b. That the income upon which the taxes were withheld were included in the return of the recipient; and
>
> c. The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom. **(Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993).**

Petitioner filed its claim for refund with the Bureau of Internal Revenue on April 2, 1993 and subsequently filed a petition for review in this Court on April 14, 1993 well within the two-year prescriptive period from the date of payment of the tax. The excess creditable taxes claimed as refund were duly supported by certificates of creditable withholding tax at source (BIR

Form No. 1743.1). The evidence offered also showed that the income upon which these creditable withholding taxes were paid were included in petitioner's income tax returns for 1990 and 1991. As mentioned earlier, the amount of ₱5,784,801.00 pertaining to CTA Case No. 4574 was not included in our final computation and only the amount of ₱3,380,106.85 duly supported by evidence shall be granted to petitioner. The details of this Court's computation are shown hereunder:

1990

Withholding Agent	Management Fee	Rental	Amount of Tax Withheld	Exhibit
National Steel Corporation	₱ 2,871,000.00		₱ 143,550.00	B-15
Anscor Insurance Brokers, Inc.		₱ 481,500.00	24,075.00	B-18
Far East Bank and Trust Company		488,659.20	24,432.96	B-21
Far East Bank and Trust Company		81,443.20	4,072.16	B-24
Far East Bank and Trust Company		81,443.20	4,072.16	B-27
Far East Bank and Trust Company		81,443.20	4,072.16	B-30
Far East Bank and Trust Company		81,443.20	4,072.16	B-33
Far East Bank and Trust Company		81,443.20	4,072.16	B-36
Phelps Dodge Philippines, Inc.	22,976,805.80		1,148,840.29	B-39
Anscor Travel Corp.		33,305.60	1,665.28	B-42
Nin Bay Mining Company	1,000.00		50.00	B-45
Atlas Fertilizer Corporation	1,378,704.17		68,935.21	B-48
Roco Bunag Kapunan & McGallos Law Offices		330,000.00	16,500.00	B-51
Siguion Reyna, Montecillo & Ongsiako		522,500.00	26,125.00	B-54
Carmen V. Perfecto (Sale)		2,050,000.00	102,500.00	B-57
U C P B, Certification, dated 4/12/91, received by the BIR on 4/15/91		159,445.00	7,972.25	D
Total	₱27,227,509.97	₱4,472,625.80	₱1,585,006.79	

1991

Withholding Agent	Management Fee	Rental	Amount of Tax Withheld	Exhibit
Phelps Dodge Philippines, Inc.	₱27,692,278.60		₱1,384,613.93	C-11
Nin Bay Mining Company	800.00		40.00	C-12
National Steel Corporation	7,125,000.00		356,250.00	C-13
Far East Bank and Trust Company		P 81,443.20	4,072.16	C-14
Far East Bank and Trust Company		81,443.20	4,072.16	C-15
Far East Bank and Trust Company		81,443.20	4,072.16	C-16
Far East Bank and Trust Company		81,443.20	4,072.16	C-17
Far East Bank and Trust Company		93,659.68	4,682.98	C-18
Far East Bank and Trust Company		81,443.20	4,072.16	C-19
Far East Bank and Trust Company		81,443.20	4,072.16	C-20
Far East Bank and Trust Company		81,443.20	4,072.16	C-21
Far East Bank and Trust Company		81,443.20	4,072.16	C-22
Far East Bank and Trust Company		118,092.64	5,904.63	C-23
Far East Bank and Trust Company		93,659.68	4,682.98	C-24
Far East Bank and Trust Company		93,659.68	4,682.98	C-25
Anscor Travel Corp.		33,305.60	1,665.28	C-26
Total	₱34,818,078.60	₱1,083,922.88	₱1,795,100.06	

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of ₱3,380,106.85 as overpaid creditable withholding tax for the taxable years 1990 and 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SABA
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