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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERMAC, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5794

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 03 2000

x - x

DECISION

This case involves a judicial action for the refund of overpaid income tax in the amount of Six Hundred Eleven Thousand Four Hundred Ninety Five Pesos (P611,495.00) arising from the unutilized creditable income tax withheld at source for taxable year 1996.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in business as a holding company for the purpose, among others, of acquiring and investing in stocks of other corporations with principal office located at 35th Floor, Tower One, Ayala Triangle, Ayala Avenue, Makati City.

For the calendar year ended December 31, 1996, Petitioner filed its Corporation Annual Income Tax Return on April 15, 1997, reflecting a net operating loss of P35,828,670.00 but with a refundable income tax payment in the sum of P842,187.00 arising from the prior year's credit of P230,692.00 and the 1996 various creditable tax withheld at source, the details of which are as follows:

GROSS INCOME		P14,371,997.00
Less: Deductions		50,200,667.00
Net Loss		(P35,828,670.00)
Income Tax Payable		NIL
Less: Prior Year's Excess Credit	P230,692	
Creditable Tax Withheld	611,495	842,187.00
		(P 842,187.00)

Petitioner opted to refund the said amount as indicated by the "x" mark in the box "to be refunded." (Exh. A)

Since Petitioner incurred a net loss in the said year, the 1996 creditable withholding tax of Petitioner in the total amount of P611,495.00 was not utilized and as such it was carried over to the succeeding year as prior year's excess credit.

For the calendar year ended December 31, 1997, Petitioner filed its Corporation Annual Income Tax return on April 15, 1998, reflecting a total creditable tax payment of P629,180.00 which is the sum of its prior year's excess credit of P611,495.00 and the 1997 creditable taxes withheld of P17,685.00 computed as follows:

GROSS INCOME		P14,862,072.00
Less: Deductions		43,447,586.00
Net Loss		(P30,585,512.00)
Income Tax Payable		NIL
Less: Prior Year's Excess Credit	P611,495	
Creditable Tax Withheld	17,685	629,180.00
		(P 629,180.00)

The amount of P611,495.00 which represents prior year's excess credit remained unutilized in the succeeding taxable year since the company again sustained a net loss in the amount of P30,585,512.00 (Exh. "D"). Petitioner opted to have the 1997 unutilized creditable tax payment of P629,180.00 (inclusive of the 1996 excess tax credit of P611,495.00) refunded instead of carrying them over to the succeeding taxable year 1998.

On March 15, 1999, Petitioner filed with the Respondent an administrative claim for refund of the excess creditable withholding tax in the total amount of P842,187.00 (Exh. B). Petitioner subsequently filed on April 13, 1999 an amended claim for Refund with the Respondent reducing the amount of its claim from P842,187.00 to the correct amount of P611,495.00 which represent the total amount of creditable taxes withheld during the taxable year 1996 (Exh. B-2).

The inaction of the Respondent on the aforementioned claim prompted the Petitioner to file the instant Petition for Review on April 14, 1999, in order to toll the running of the two-year prescriptive period mandated by Section 230 (now Section 129) of the Tax Code, as amended.

Petitioner repleads its stance a quo in the instant Petition, while on the other hand, Respondent maintains that Petitioner is not entitled to the claimed refund on the grounds that (1) The Petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid; (2) Claims for refund are construed strictly against claimant, the same being in the nature of exemption from taxes (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35***); (3) One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute (***Asiatic Petroleum vs. Llanes, 49 Phi. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304***); (4) In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund; (5) It is incumbent upon Petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; (6) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable. (Respondent's Answer dated May 24, 1999 CTA docket, p. 22).

During the trial, Petitioner formally offered in evidence the following documents in order to support its claim for Refund:

1. Petitioner's Corporate Annual Income Tax Return for the year ending December 31, 1996 and December 31, 1997 (Exh. A and D, respectively).

2. Letter-claim for Refund dated March 15, 1999 (Exh. B).

3. Amended letter-claim for refund dated April 13, 1999 (Exh. B-2).

4. The various certificates of creditable withholding tax at source (Exhs. E to V).

The lone issue to be resolved in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF P611,495.00, BASED ON THE EVIDENCE SUBMITTED.

Petitioner's claim for refund of the excess internal revenue tax paid is predicated on Section 76 (formerly Section 69) and Section 204 (C) of the Tax Reform Act which provides as follows:

> "**Section 76. Final Adjustment Return.** – Every corporation liable to tax under Section 27 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:

x x x x x x

(C) Be credited or refunded with the excess amount paid as the case may be.

x x x x x x

Section 204. Authority of the Commissioner to compromise, abate, refund/credit taxes. – The Commissioner may –

x x x x x x

(C) Credit or refund taxes erroneously or illegally received or 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 (2) years after the payment of the tax or penalty. Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund."

It is apparent from the corporate income tax return submitted that Petitioner incurred successive net operating losses from its business undertaking for the taxable years 1996 and 1997. By reason of such loss, the 1996 income tax payments arising from creditable withholding taxes at source remain unapplied hence, Petitioner appears to be legally entitled to the refund sought. However, Petitioner must still prove its entitlement to the refund by substantial evidence.

In order to be entitled to a refund of excess creditable withholding tax, Petitioner must sufficiently prove that it complied with the following basic requirements as provided under Revenue Regulations No. 6-85, as amended and on existing jurisprudence, thus:

1. that the claim for refund was filed within the two-year prescriptive period provided under Section 230 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 (***Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957***)

As to the first requisite, the records establish that Petitioner's claim for refund was timely filed within the two-year period from the date of filing of the income tax return. (***Commissioner of Internal Revenue vs. TMX Sales, Inc. et al. GR 837736, Jan. 15, 1992***). It is to be noted that although the BIR stamp of receipt (Exh. B-3) does not indicate the date when the BIR actually received the amended letter-claim for refund, the same is considered to have been filed on April 13, 1999 since Respondent actually admitted this in his pre-trial brief (par. 4 p. 27, CTA records) and memorandum (p. 104, CTA records). Petitioner filed its amended administrative claim on April 13, 1999 (Exhs. B-2 and B-3) and the instant Petition for Review on April 14, 1999. These dates are well within the 2-year prescriptive period counted from April 15, 1997, the date when Petitioner filed its 1996 Annual income tax return. (Exhs. A, A-1 and A-2)

Anent the second requisite, Petitioner was able to prove the fact of withholding of the claimed amount of P611,495.00 by submitting various certificates of creditable tax withheld. at source detailed as follows:

Exh	Period Covered	Withholding Agent/Payor	Income Payment	Income Tax Withheld	Amount Claimed
E	Jan. 1, '96 to Dec. 31, '96	Smart Communications, Inc	P1,108,800.00	P 55,440.00	P 24,076.96
F	Mar. 27, '96 to Mar. 26, '97	DHL Aviations (Phils.), Inc.	1,122,000.00	56,100.00	18,809.86
G	April 1, '96 to June 30, '96	Procter & Gamble Phils.	1,056,000.00	52,800.00	2,423.30

H	1996	Sachiko M. Zobel	7,320,000.00	549,000.00	549,000.00
I	1996	Jaime Zobel De Ayala	94,080.00	4,704.00	4,704.00
J	1996	Jaime A. Zobel De Ayala II	1,636.32	81.84	81.84
K	1996	Fernando Zobel De Ayala	1,636.32	81.84	81.84
L	1996	Beatriz Susana Z. Urquijo	1,636.32	81.84	81.84
M	1996	Patricia Teresa Z. Herrera	1,636.32	81.84	81.84
N	1996	Cristina Z. Suarez De Puga	1,636.32	81.84	81.84
O	1996	Monica Zobel De Ayala	1,636.32	81.84	81.84
P	1996	Sofia Z. Elizalde	1,636.32	81.84	81.84
Q	1996	Carmen P. De Zobel	47,040.00	2,352.00	2,352.00
R	1996	Alfonso Zobel De Ayala, Jr.	23,520.00	1,176.00	1,176.00
S	1996	Alejandro Z. Padilla	47,040.00	2,352.00	2,352.00
T	1996	Georgina P. Maccrohon	47,040.00	2,352.00	2,352.00
U	1996	Maria Victoria Zobel	23,520.00	1,176.00	1,176.00
V	Jan. to Dec.'96	Ayala Corporation	50,000.00	2,500.00	2,500.00
			Total:	P730,524.88	P 611,495.00

However, of the above enumerated certificates, only the following can be considered as valid proof of creditable withholding tax payments as they contain all the necessary information and were duly signed by the payors (withholding agents).

Exh	Period Covered	Withholding Agent/Payor	Income Payment	Income Tax Withheld	Amount Claimed
E	Jan. 1, '96 to Dec. 31, '96	Smart Communications, Inc	P1,108,800.00	P 55,440.00	P 24,076.96
F	Mar. 27, '96 to Mar. 26, '97	DHL Aviations (Phils.), Inc.	1,122,000.00	56,100.00	18,809.86
G	April 1, '96 to June 30, '96	Procter & Gamble Phils.	1,056,000.00	52,800.00	2,423.30
V	Jan. to Dec.'96	Ayala Corporation	50,000.00	2,500.00	2,500.00
			Total:	P 166,840.00	P 47,810.12

As to the rest of the certificates of creditable tax withheld at source supporting the remaining claim for refund of P563,684.88, the same should be disallowed since they were not duly signed by the respective payors (withholding agents) indicated therein but were signed by petitioner's own General Manager, Mr. Teodoro L. Ferrer. As such, these certificates were not actually issued to petitioner (payee) by the payors (withholding agents)) and do not establish that the indicated amounts of creditable income taxes were actually withheld by the named payors (withholding agents). The statement of income payments and the corresponding taxes withheld required under Revenue Regulations No. 6-85, as amended, should come from the withholding agent/payor and not from the income recipient/payee.

The records likewise show that BIR Revenue Officer Ms. Geraldine Consignado, who conducted an investigation on Petitioner's 1996 Internal Revenue tax liability recommended in her report the refund of only the amount of P47,810.51 (BIR Records, pages 155 to 156).

Concerning the third requirement, Petitioner declared in its 1996 annual income tax return as part of its gross income the rental income of P1,379,756.00 (Schedule 3 of Section C {Exh. A}) from which the claimed creditable income taxes of P47,810.12 were withheld. Inasmuch as Petitioner failed to fully satisfy the second requirement regarding the remaining claim of P563,684.88, it is unnecessary to discuss whether the corresponding income payment was declared in Petitioner's 1996 annual income tax return.

In his memorandum, the Respondent argues that the certificates of creditable taxes withheld at source are not conclusive evidence of payment and remittance to the BIR of the withholding taxes on Petitioner's income but are mere proof of the income taxes withheld. He further stated that the best proof of remittance is the certification from the BIR's Revenue Accounting Division as to the fact of remittance of the income taxes withheld.

Contrary to the respondent's assertions, in a claim for refund of excess creditable withholding tax as provided under Revenue Regulations No. 6-85, as amended and as previously held in Commissioner of Internal Revenue vs. Citytrust Banking Corp. CA-GR SP No. 26839, dated July 31, 1992, it is sufficient that the claimant taxpayer presents the certificates of creditable tax withheld at source. Pursuant to Sections 50 & 51 of the then Tax Code, the withholding of income taxes and the remittance thereof to the BIR is the responsibility of the *payor* and *not the payee*. The Petitioner being the payee in this case has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the Respondent. It has no records of payment and receipts in its possession which can be validated with the BIR Revenue Accounting Division.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** in favor of the Petitioner the reduced amount of P47,810.12 representing the excess income tax paid for the taxable year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

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