LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CARGILL PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5288

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 1997

x - x

DECISION

This is a judicial claim for the refund of alleged unutilized creditable withholding tax in the amount of P500,000.00 for the fiscal year ending May 31, 1993.

Petitioner is a domestic corporation organized and existing under Philippine laws. It is engaged in the business of manufacturing coconut oil and exporting the same to markets abroad.

The facts are as hereunder stated.

On September 14, 1993, petitioner filed its Corporate Annual Income Tax Return for fiscal year (FY) ending May 31, 1993, showing a net operating loss of P11,528,100.00 and a refundable amount of P500,000.00 (Exh. "A").

Consequently, on February 28, 1994, petitioner filed an administrative claim for refund of said amount with respondent's Bureau (Exh. "H").

On September 11, 1995, however, allegedly on account of respondent's continued inaction, petitioner elevated its claim before this Court in view of the near expiry of the two year prescriptive period, from the date of payment of the tax, within which a timely judicial claim for refund may be instituted (Section 230, National Internal Revenue Code). Hence, this appeal.

By way of special and affirmative defenses, respondent answered, *inter alia*, that petitioner's claim is pending administrative investigation and that the burden of proof is on the petitioner to establish its right to the refund.

The sole issue in this case is simply petitioner's entitlement to its claim for refund.

After a close scrutiny of the evidence on record, We are firmly convinced that petitioner has succinctly proven its claim. It has complied with the basic requisites for the grant of tax refund of creditable tax withheld in excess of the tax due per tax return, namely:

> 1. The claim for refund is filed with the Commissioner [and before this Court] within the two-year period from the date of the payment of the tax as required by [Sections 204 and 230] of the Tax Code;

2. It must be shown in the return of the recipient that the income received was declared as part of gross income; and

3. The fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount of income paid and the amount of tax withheld therefrom. **(Kao [Philippines], Inc. v. CIR, CTA Case No. 4899, February 21, 1995; Benguet Corporation v. CIR, CTA Case No. 5188, August 16, 1996).**

As to the first requisite, petitioner has filed an administrative claim for refund with respondent's Bureau on February 28, 1994, as abovestated, which date is well-within the said two-year period. Likewise, the Corporation/Partnership Annual Income Tax Return (BIR Form 1702, Exh. "A") of the petitioner indicates that the same was filed on September 14, 1993 which when reckoned with the date of filing the instant petition for review on September 11, 1995, the two-year period for a judicial claim has not elapsed yet.

Covering the second requisite, Exhibits "A-5" and "A-6" show that petitioner has reported as part of its gross income the sum of P12,000,000.00 from which herein amount of creditable withholding tax is derived.

On the third requisite, petitioner has submitted two Certificate of Creditable Tax Withheld At Source (BIR Form Nos. 1743-1/1743-750, Exhibits "F" and "G") issued by the withholding agent/payor Agrotex Commodities, Inc.

in the amount of P250,000.00 and P300,000.00, respectively to support its claim.

Lastly, it has been established by the petitioner through its lone witness, Mr. Romeo Versula, that the claimed amount of P500,000.00 was not utilized or applied for FY 1994. Thus:

> Q. What about the amount of P500,000.00 representing the creditable income tax withheld for the FY 1993, was the [same] amount carried over to FY 1994?
>
> A. No. The amount of P500,000.00 pesos was no longer carried over to FY 1994 since it was no longer indicated in CPI's [Cargill Philippines, Inc.] final adjustment return in FY 1994 and more importantly because as early as February of 1994, CPI filed a letter with the BIR requesting for the refund of the said amount."

(pp. 10-13, TSN, January 16, 1996).

Records reveal that respondent attempted to frustrate the instant claim of the petitioner by presenting in evidence an undated memorandum on the audit investigation conducted by her Bureau on petitioner's 1993 FY internal revenue tax liabilities (Exh. 4). Said memorandum recommended the issuance of notice of assessment for deficiencies on income tax, expanded withholding tax and withholding tax on compensation.

A cursory examination on the proposed assessment would tell us readily, however, that absent the additional finding of fraud, falsity or omission, the contemplated assessment is already beyond the three-year period for making a valid assessment as prescribed in Section 203 of the National Internal Revenue Code.

Moreover, even if the said memorandum could still be validly considered, the same is not supported by accompanying documentary proofs in so far as the findings therein are concerned. We cannot rely merely on respondent's counter-allegations without any verification on the truth thereof having been done meticulously by this Court.

WHEREFORE, in view of the foregoing, the instant petition is hereby **GRANTED.** Respondent is ORDERED to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, CARGILL PHILIPPINES, INC. the amount of FIVE HUNDRED THOUSAND PESOS ONLY (P500,000.00). No pronouncement as to costs.

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