REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGP INDUSTRIAL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5053

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 30 1996

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DECISION

This is a petition for review brought by petitioner AGP Industrial Corporation involving its claim for refund of an alleged overpaid creditable withholding taxes in the amount of P465,423.53 for the year ended December 31, 1991.

Petitioner is a domestic corporation duly organized and existing in accordance with the laws of the Philippines. It is engaged in the business which provides for investment and management services with principal address at SGV I Building, 6760 Ayala Avenue, Makati, Metro Manila.

On April 24, 1992, petitioner filed its amended income tax return for the calendar year 1991 reflecting an operating loss in the sum of P32,892,414.00, a nil income tax liability and with an overpayment of P465,424.00 representing creditable tax withheld (Exh. "B").

For the year 1992, petitioner carried-over the 1991 excess credit of P465,424.00 but was not utilized in said year as there was no income tax due against which said tax credit can be applied of (Exh. "D-24").

Petitioner, believing that it is entitled to the refund of the 1991 excess tax credit, filed a letter claim for refund with the Bureau of Internal Revenue on December 20, 1993 pursuant to Sec. 69 in relation with Sec. 230 of the National Internal Revenue Code, as amended, and Revenue Memorandum Circular Nos. 7-85 and 32-76 (Exh. "D").

Since respondent has neither granted nor acted upon the claim for refund, petitioner is left with no recourse but to file the instant petition for review on December 29, 1993 in order to toll the running of the two-year prescriptive period allowed by law.

Respondent, in her answer, raised the following special and affirmative defenses, to wit:

> 5. In an action for refund of taxes, the burden of proof is upon the taxpayer to prove that the taxes paid or remitted were erroneously or illegally collected. Failure to

sustain said burden is fatal to the action for refund;

6. It is incumbent upon petitioner to show that it has complied with the provisions of Section 230 of the Tax Code regarding the prescriptive period within which to file claims for refund;

7. Petitioner has not shown that the tax sought to be refunded in accordance with the National Internal Revenue Code;

8. Petitioner, who has the burden of proving that it is entitled to tax refund, has failed to establish that the tax subject of its claim for refund was erroneously or illegally collected;

9. The claim for tax refund, being in the nature of an exemption from taxation, must be construed strictly against petitioner (*Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710 [1981]*).

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund in the amount of P465,423.53, representing overpaid creditable withholding tax at source for calendar year 1991.

As proof of its allegations, petitioner presented and offered relevant and material evidence which consist, among others, of:

a. 1991 and 1992 corporation annual income tax returns together with the attachment of auditor's report and financial statements; (Exhs. "D" to "D-15" and "D-24")

b. Certificate of Creditable Income Tax Withheld at Source issued by Royal Undergarment Corporation of the Philippines; (Exh. "A") and

c. the letter claim for refund dated December 29, 1993 received by the respondent on the same date with twenty-eight pages attachments. (Exhs. "B" to "B-28")

Respondent, on the other hand, failed to submit any documentary evidence due to the absence of the report of investigation on petitioner's claim for refund. Instead she submitted the case based on the pleadings and the documents adduced by petitioner.

Both parties, submitted their respective memoranda.

Respondent contended that petitioner can no longer claim for the refund of P465,424.00, representing its alleged overpaid creditable withholding tax for the year 1991. The said amount was included in the amount of P1,378,083.00 which petitioner sought to be refunded in the year 1992 as shown in Exhibit "D-24" of petitioner. Thus, respondent reasoned that "in the absence of evidence to show that petitioner abandoned its claim for refund of the said sum of P1,378,083.00, the instant claim for refund must be dismissed, otherwise, petitioner will be granted the refund twice for the same amount, to the damage and prejudice of the Government". Inasmuch as we want to give credence on the argument of the respondent, the same is defeated when we examined the pending dockets of this Court and found out that petitioner filed a separate claim for refund for the excess creditable withholding tax in the sum of P912,659.00 for year 1992 alone. This claim for refund was docketed as C.T.A. Case No. 5239. Therefore, the government will not be prejudiced if upon examination petitioner will be found entitled to its 1991 excess creditable withholding taxes.

Respondent further argued that petitioner's claim for tax refund of P465,424.00 has no basis in fact and in law, and must necessarily be denied. Petitioner did not actually incur losses during the taxable year 1991. She pointed out that petitioner deducted an expense which is not related to its business. (Respondent is referring to the interest and financing charges in the amount of P34,142,370.000 (Exh. "B-2") which petitioner deducted from its gross income of P10,496,512.00). She analyzed that since the bulk of its income was derived from rendering management services to Royal Undergarment Corporation of the Philippines in the amount of P9,308,470.20, the interest and financing charges should be disallowed since it is not related to its business. She then cited Section 29(a) of the Tax Code which provides:

> Section 29. Deductions from gross income. - In computing taxable income subject to tax under Sec. 21(a); 24(a), (b) and (c); and 25(a)(1), there shall be allowed as deductions the items specified in paragraphs (a) to (i) of this section.
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> xxx xxx xxx
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> (a) Expenses. - (1) Business expenses. - (A) In general. - All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; travelling expenses while away from home in the pursuit of a trade, profession or business, rentals or other payments required to be made as a condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.
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> xxx xxx xxx.

It is clear from the above-cited proviso that an expense to be deductible from gross income, it must satisfy three requirements, to wit:

(1) the expense must be both ordinary and necessary;

(2) the expense must be paid or incurred within the taxable year; and

(3) the expense must be incurred in carrying on a trade or business.

Expense is considered ordinary when it is common to incur in the trade or business of the taxpayer. It is considered necessary if it is appropriate and helpful to the taxpayer's trade or business or occupation. It is mandatory that all expenses be both ordinary and necessary expenditures. An expense to be ordinary must be reasonable in amount (1955 CCH. Fed. Course, par. 403, as cited in the National Internal Revenue Code, Annotated by Arañas, p. 193, Vol. 1; H. Newton Whittlessey, Inc., 9 TC 700 (1947); Arthur A. Ballantine, Jr., 46 TC 272 (1956) Law of Federal Income Taxation, Mertens, Vol. 4A, 25.54.201).

Thus, respondent opined that instead of net loss from operations petitioner has a taxable income of P1,249,956.00 computed as follows:

Gross income	P10,496,512.00
Less general and administrative expenses	9,216,575.00
Net income	P 1,279,937.00

However, to the Court's mind, respondent's contention is out of issue. The deductibility or non-deductibility of an expense should be raised on assessment case or at the time when respondent is authorized by law to examine petitioner's books in their level. This Court is not a proper forum for the respondent to tackle such an issue in the absence of a matured assessment which will call for its jurisdiction.

This is a judicial claim for refund of an excess creditable withholding tax at source and time and again we hold firm on our rule that in the absence of any contrary evidence a taxpayer need only to prove compliance with the following three basic requirements:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (new 230) of the National Internal Revenue Code;
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> (2) that the income upon which the taxes were withheld were included in the return of the recipient; and
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> (3) 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. Regs. 6-85; Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No.

> 4046, February 24, 1993; and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue v. Court of Tax Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994).

Based on the records and evidence of the case, petitioner met all the three requirements we herein set forth. First, the claim for refund was timely filed within the two-year period from the date of payment of the tax which is bolstered under Sec. 230 of the National Internal Revenue Code, as amended. It filed its claim for refund with the Bureau of Internal Revenue on December 20, 1993 (Exh. "D-29") and with this Court on December 29, 1993. The two-year period, in the instant case, commences to start on April 15, 1992, the time required by law for the petitioner to file its final income tax return (Commissioner of Internal Revenue v. TMX Sales, Inc. et al., G.R. No. 83736, January 15, 1992). Second, petitioner declared in its annual income tax return, for the year 1991, the income upon which the tax sought to be refunded was withheld. This is shown in Exh. "B-16" wherein the amount of P9,308,470.00, representing management fee, received from Royal Undergarment Corporation of the Philippines was declared as part of petitioner's gross income. And lastly, the proof of withholding is well established by the presentation of Certificate of Creditable Income Tax Withheld At Source (Exh. "A").

In the absence of a contrary evidence which respondent miserably failed to introduce, this Court finds for the petitioner.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund in favor of petitioner the sum of P465,423.53 representing overpaid creditable withholding tax at source for the calendar year 1991.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among 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