REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ARROW FREIGHT CORPORATION,
Petitioner,

- versus -

BUREAU OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5215

Promulgated:
SEP 07 1998

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DECISION

This is a petition seeking for the refund of alleged excess income tax payments made by petitioner for taxable year 1992 in the amount of Five Hundred Fifty One Thousand Twenty Eight Pesos (₱551,028.00).

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under Philippine laws and is primarily engaged in the trucking business.

For the calendar year ending December 31, 1992, petitioner's Annual Income Tax Return which was filed with herein respondent on March 26, 1993 reflected a loss of ₱228,396.00 (Exh. G). Previous to said filing, however, petitioner had already made income tax payment for the first quarter of 1992 amounting to ₱163,805.75 (Exh. I). Likewise, for the same year, there were several income tax payments made by petitioner which were withheld at source by various withholding agents totalling ₱386,471.24 (Exhs. J to Z). Thus, on February 9, 1994, petitioner filed a letter-claim for the refund or issuance of a tax credit certificate in the amount of ₱551,028.00, since it was allegedly not able to apply the tax payments made to any tax liability. Petitioner at the same time requested for an investigation and examination of their books.

As borne out by the records of the case, on August 15, 1994, a pre-assessment notice was received by petitioner from respondent informing the former that in the investigation conducted by respondent for the year 1992, it was ascertained that petitioner is liable for ₱10,677,316.65, representing deficiency taxes and increments (Exh. 5, p. 349, BIR records). On August 17, 1994, petitioner wrote a letter to respondent protesting the assessment (Exh. 6, p. 399, BIR records). This was followed by a letter on September 15, 1994, explaining the reasons for the protest (Exh. 7).

In the meantime, on March 21, 1995, the instant Petition for Review was filed by petitioner to forestall the running of the two-year prescriptive period for claiming a refund.

One week later, or on March 28, 1995, respondent asked petitioner to execute a Waiver of the Statute of Limitations as a condition to the reinvestigation of the case and to submit proofs, documentary or otherwise, to

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support its protest. Petitioner obliged and executed said Waiver on March 29, 1995 (p. 413, BIR records).

The reinvestigation conducted nonetheless resulted to a deficiency liability but this time lowered to ₱8,640,087.43.

On April 29, 1995, another pre-assessment notice was sent to petitioner (Exh. 14, p. 437, BIR records) which was again questioned by petitioner through a letter protest, dated May 17, 1995 (Exh. 15, p. 440, BIR records). A second reinvestigation was conducted but the findings were the same again (Exh. 16).

On October 9, 1995, through a letter, dated October 5, 1995, petitioner was informed of the results of the reinvestigation (Exh. 17). This was finally followed by the assessment notice which was issued on October 26, 1995, sent to petitioner through registered mail on October 27, 1995 and received by the latter on October 30, 1995 (Exh. 27).

On January 24, 1996, petitioner wrote a letter to respondent requesting that their documents and evidence be re-evaluated (Exh. 26).

The issue that confronts Us is whether or not petitioner is entitled to the refund sought considering: first, the evidence adduced by it; and second, the deficiency assessment issued by respondent.

In her Answer With Counter Claim, respondent set up the following Special and Affirmative Defenses and Counterclaims:

SPECIAL AND AFFIRMATIVE DEFENSES

> 4. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 5. Claims for tax refunds are strictly construed against the Taxpayer. Taxpayer-petitioner has no cause of action;

COUNTER CLAIMS

> 6. In the review of the tax case of petitioner it was discovered that petitioner has a deficiency income tax liability for the year 1992 in the amount of ₱3,058,909.23 and a deficiency value-added tax liability in the amount of ₱5,022,898.68 or a total of ₱8,092,778.85;
>
> 7. Petitioner was duly informed of such deficiency taxes last May 15, 1995 as shown in the Annexes "A" to "E" of respondent already submitted before this Honorable Court together with its motion to dismiss.

As to whether petitioner is entitled to be refunded on the basis of the evidence presented, it bears stressing that in claims for refund of excess creditable withholding tax, there are three basic requirements:

> (1) that the claim for refund was filed within the two (2) year period prescribed under Section 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
>
> (3) that the fact of withholding is established by a copy of the 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.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on February 9, 1994 as well as its Petition for Review filed with this Court on March 21, 1995, are both within the two-year period from the date of the payment of the subject taxes. Petitioner has also submitted its various Certificates of Creditable Income Tax Withheld at Source (Exhs. J to Z) to prove that petitioner was deducted of withholding taxes by its clients.

Clearly, petitioner was able to meet the first and third requirements.

Unfortunately, however, petitioner failed to include in its 1992 return the income upon which the taxes were withheld. Petitioner's 1992 return reflected only a gross income of ₱6,661,567.00 but the Certificates of Creditable Income Tax Withheld at Source (Exhs. J to Z) revealed a total income of ₱37,829,791.82. If the said amount was declared as part of petitioner's gross income, then petitioner might have ended into a gain rather than a loss position at the end of 1992, thus, giving rise to a liability rather than a refund.

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Added to this is the fact that petitioner declared in its income tax return that the refundable amount of ₱551,028.00 is to be applied as tax credit to the succeeding taxable year 1993. It is to be noted that the entries made by the taxpayer in its return were made under the penalties of perjury, thus, We give weight to said intention of petitioner.

In the instant case, petitioner seeks the refund of ₱551,028.00 representing tax payments made for the year 1992 when it ended in a net loss position, but it declared in its return that the said amount shall be applied as tax credit to the succeeding year 1993. However, petitioner failed to present its 1993 Income Tax Return as proof that the ₱551,028.00 which it is now seeking to be refunded was not applied in 1993. Claims for refund of taxes are strictly construed against the claimant and cannot be taken lightly. The burden of proof is upon the claimant to establish his right to the refund sought. Its failure to present its 1993 return proved fatal to its case.

Upon the other hand, the question of whether or not petitioner is entitled to a refund considering the issuance by respondent of a deficiency assessment against it, is rendered moot and academic by the denial of this claim in view of the petitioner's failure to include in its 1992 return the income upon which the taxes were withheld and the fact that it applied the said refundable amount as tax credit to the succeeding taxable year.

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DISMISSED.** Accordingly, petitioner's claim for refund is **DENIED.**

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

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