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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AMF SCIENTIFIC DRILLING INTERNATIONAL, (PHILIPPINE BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 4600

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 05 1995

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D E C I S I O N

Petitioner seeks the refund of alleged overpaid withholding taxes in the amount of P2,939,700.00 for the year 1989.

As borne out by the pleadings, petitioner is a resident foreign corporation duly organized and existing under the laws of the State of Nevada, U.S.A.. It is duly licensed to do business in the Philippines through a Branch with postal address at Desco Compound, Km. 21, Villonco Road, South Superhighway, Sucat Parañaque, Metro Manila. Its primary function is to provide services in relation to oil, geothermal, and mining surveys as well as directional drilling, free point and back off and logging services to companies engaged in oil exploration and power development (See Exhs. A [SEC Certificate of Registration No. 927] and B [BOI Certificate of Authority No. 1247, dated July 14, 1980]). It also leases its tools and equipment to persons or entities engaged in geothermal exploration and development in the Philippines.

For the year 1989, petitioner rendered technical services as sub-contractor for Alcorn (Production) Palawan, Inc. (Alcorn for short), a service contractor engaged in oil or petroleum operations in the Philippines under Presidential Decree No. 87. It also rendered services and receives rental income from the lease of its tools and equipment to Philippine Geothermal, Inc. (PGI), a resident foreign company engaged in geothermal exploration and development in the Philippines.

Petitioner received technical service fees from Alcorn in the amount of P14,602,283.00 (US$670,050.79 x P21.7928) for which it was withheld a final tax in the amount of P1,056,488.00. For services and rental income received from PGI totalling P18,336,092.11, the amount of P2,297,503.20 was withheld and remitted to the BIR, computed as follows:

Final Income Tax Withheld at Source	Amount of Income Payment	Tax Rate	Amount of Tax Withheld
Rental of equipment and tools for its geothermal services	P11,382,381.18	7.5%	P 853,678.58
Payments to Non-Resident Foreign Corporation	P 4,042,021.99	35%	1,414,707.71
			P 2,268,386.29
Creditable Income Tax Withheld at Source			
Payments to Contractors	P 2,911,688.94	1%	29,116.91
Total Final and Creditable Tax Withheld at Source	P18,336,092.11		P2,297,503.20

On April 11, 1990, petitioner filed its Corporate Annual Income Tax Return for the calendar year ending December 31, 1989 showing a refundable income tax of P4,480,300.00, computed as follows:

Gross Income:		
Technical Services		P33,768,163.00
Various		1,316,977.00
Gross Income		P35,085,140.00
Less: Deductions		31,991,772.00
Net Taxable Income		P 3,093,368.00
Income Tax Due		P 1,082,679.00
Less: a) Prior year's Excess Credit	P2,208,988.00	
b) Creditable Tax Withheld	3,353,991.00	5,562,979.00
Amount Refundable		P 4,480,300.00

On August 22, 1990, petitioner filed an Amended Income Tax Return for the year ending December 31, 1989, showing an amended refundable amount of P2,939,700.00, computed as follows:

Gross Income:		
Technical Services		P19,165,880.00
Various		1,316,977.00
Gross Income		P20,482,857.00
Less: Deductions		18,156,234.00
Net Taxable Income		P 2,326,623.00
Income Tax Due		P 814,318.00
Less: a) Prior year's Excess Credit	P1,456,515.00	
b) Creditable Tax Withheld	2,297,503.00	3,754,018.00
Amount Refundable		P 2,939,700.00

On April 12, 1991, petitioner filed a claim for refund or tax credit (Exh. H) in the amount of P2,939,700.00, representing erroneously paid withholding taxes for the year 1989, pursuant to Section 204(3) of the Tax Code. Petitioner claims that the income received from Alcorn should have been excluded from the computation of its gross income and accordingly, the 8% final tax withheld therefrom should therefore be excluded from the creditable income taxes withheld for the current year. Thus, the income of P14,602,283.00 received from Alcorn was deducted from the Technical Service Income of P33,768,163.00. The balance of P19,165,880.00 is the correct Technical Service Income for 1989. Likewise, the original Creditable Income Tax Withheld for the current year (1989) of P3,353,991.00 should be reduced by P1,056,488.00, representing the amount withheld by Alcorn, the balance remain to be P2,297,503.00. Therefore, only the income earned from PGI should be the one subjected to the 35% corporate income tax as incorporated in the Amended Income Tax Return of petitioner for the year 1989.

Respondent in her answer alleged that the petition failed to state a cause of action it appearing that petitioner failed to state the date when the tax sought to be refunded was paid. The burden is on petitioner to show proof that it is entitled to the refund claimed.

The issue presented before us for resolution is whether or not petitioner is entitled to the refund of P2,939,700.00, representing allegedly overpaid income tax for 1989 due to excess withholding.

We answer in the affirmative.

Although the petition failed to allege the date when the taxes sought to be refunded or credited were paid, still a closer scrutiny of the documents attached as Annexes to the petition will show that the creditable income taxes withheld covers the year 1989. The claim for refund or tax credit was filed with the respondent's office on April 12, 1991. In order to toll the two-year prescriptive period for filing a claim for refund or tax credit, petitioner filed the petition for review on April 15, 1991.

Petitioner during the hearings of this case presented documentary as well as testimonial evidence to prove entitlement to the refund or tax credit sought to be recovered by way of this petition for review. The following documents were presented and offered in evidence, to wit:

1) The original Corporate Income Tax Return for 1989 (Exh. F) filed on April 11, 1990, together with its attachments consisting of the following:

(a) The Audited Financial Statements;

(b) Schedule of Taxes and Licenses paid;

(c) Schedular Deductions; and

(d) Schedule of Depreciation.

2) The Amended Corporate Income Tax Return for 1989 (Exh. G) filed on August 22, 1990, together with its attachments similar to the items above-enumerated;

3) Certificate of Final Income Tax Withheld at Source (Exh. E) issued by PGI;

4) Certificate of Creditable Income Tax Withheld at Source (Exh. D) issued by PGI;

5) Certificate of Tax Withheld at Source issued by Alcorn (Exh. C);

6) Summary of Tax Withheld at Source issued by PGI for the months of January (Exh. I), March (Exh. L), June (Exh. O), September (Exh. R), October (Exh. U), and December 1989 (Exh. X) showing the amounts of taxes withheld by PGI from petitioner;

7) Central Bank Confirmation Receipts (Exhs. K, N, Q, T, W, and Z) and BIR Payment Orders (Exhs. J, M, P, S, V, and Y) as proof of remittance and payment of the taxes withheld to the BIR by PGI from petitioner; and

8) BIR Certification dated February 14, 1992 certifying that the Confirmation Receipts presented by petitioner were verified to be correct per their records (Exh. AA).

The income received as a sub-contractor of Alcorn, a service contractor engaged in petroleum operations under P.D. 87, was properly subjected to the 8% final tax, pursuant to the provision of Section 1 of P.D. 1354 [Imposing Final Income Tax On Subcontractors And Alien Employees Of Service Contractors and Subcontractors Engaged In Petroleum Operations In The Philippines Under Presidential Decree No. 87], effective April 21, 1978, to wit:

> "SECTION 1. *Tax on subcontractors.* - Every subcontractor, whether domestic or foreign, entering into a contract with a service contractor engaged in petroleum operations in the Philippines shall be liable to a final income tax equivalent to eight percent (8%) of its gross income derived from such contract, such tax to be in lieu of all taxes, whether national or local: *Provided, however,* that any income received from all other source within and without the Philippines in the case of domestic

> subcontractors and within the Philippines in the case of foreign subcontractors shall be subject to the regular income tax under the National Internal Revenue Code. The term "gross income" means all income earned or received as a result of the contract entered into by the subcontractor with a service contractor engaged in petroleum operations in the Philippines under Presidential Decree No. 87."

As such, the income received from Alcorn should be excluded in the Gross Income for 1989. The tax withheld therefrom being a final tax should also be excluded in the Creditable Tax Withheld at Source.

With respect to the income earned from PGI, petitioner being a resident foreign corporation with an established Branch in the Philippines should be taxed under Section 25(a)(1) of the National Internal Revenue Code, which provides:

> "**Sec. 25. Rates of tax on foreign corporation.** -
>
> **(a) Tax on resident foreign corporations. (1) In general.** - Unless otherwise provided, a corporation organized, authorized or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to a tax equivalent to 35% of the taxable income derived in the preceding taxable year from all sources within the Philippines."

Thus, as correctly pointed out by petitioner, the rental income on equipment and tools and the other service income except those income received as a sub-contractor engaged in petroleum operations under P.D. 87, are subject to the normal rate of 35% instead of the 7.5% and 35% final withholding tax pursuant to the above-cited law.

After having overcome the burden of proof in claims for refund or tax credit, We therefore see no reason why petitioner's claim for refund or issuance of a tax credit in the amount of P2,939,700.00, as appearing in its Amended Corporate Income Tax Return for the calendar year ending December 31, 1989 should not be granted.

WHEREFORE, finding the petition meritorious and in accordance with law, the same is hereby **GRANTED**. Respondent is ordered to refund in favor of petitioner the amount of P2,939,700.00, representing excessively paid income tax for 1989 due to an erroneously withheld tax.

No pronouncement as to cost.

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 this 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