REPUBIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL TILEMAN LIMITED -
Phiippine Branch,
Petitioner,

- versus -

C.T.A. CASE NO. 5553

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 04 1999

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DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on October 10, 1997 seeking for a refund of the sum of ONE MILLION EIGHT HUNDRED NINETY FOUR THOUSAND SEVEN HUNDRED EIGHTEEN PESOS (₱1,894,718.00) or in the alternative, the issuance of a Tax Credit Certificate for the said amount, representing allegedly overpaid creditable withholding tax for the fiscal year ending June 30, 1995.

The antecedent facts of this case are undisputed.

Petitioner is the Philippine branch of Hopewell Tileman Limited, a corporation duly organized and existing under and by virtue of the laws of HongKong. It is duly licensed to do business here in the Philippines and primarily engaged in the design, installation, erection, assembly, testing and commissioning of projects related to power generating stations, industrial plants and related facilities.

Records show that on October 16, 1995, Petitioner filed with the Respondent Bureau of Internal Revenue its Corporate Annual Income Tax Return for the fiscal year ended June 30, 1995 reporting a creditable taxes withheld at source in the amount of ₱2,318,364.00 which it applied against its corporate annual income tax in the amount of ₱423,646.00, thereby leaving an excess unutilized creditable withholding tax in the amount of ₱1,894,718.00 computed as follows:

Gross Income		₱ 37,703,604.00
Deduction		36,493,186.00
Net Income		1,210,418.00
Taxable Income		1,210,418.00
Tax Due		423,646.00
Less: Tax Credits/Payments (Section E)		
a) Prior Year's Excess Credit		
b) Quarterly Payments		
c) Creditable Tax Withheld	₱ 92,293.00	
	20,051.00	
	34,156.00	
	2,171,414.00	
		2,318,364.00
Excess Creditable Withholding Tax		₱1,894,718.00

On January 23, 1997, pursuant to Section 230 of the Tax Code (now Section 229 of the NIRC of 1997), Petitioner filed with the Bureau of Internal Revenue, an administrative claim for refund of the aforesaid excessive income tax payment.

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Fearing that its claim would be barred by the two-year mandatory period of prescription within which to file a judicial claim for refund as mandated by the aforesaid section, Petitioner filed on October 10, 1997 a Petition for Review with this Court.

In his Answer filed through registered mail on November 10, 1997, Respondent assailed the validity of the claim of the Petitioner and interposed the following Special and Affirmative Defenses, to wit:

> 5.) The Petitioner's claim has partially, if not totally prescribed;
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> 6.) The documents submitted to the Respondent's Bureau as attached in the Petitioner's claim for refund filed on January 23, 1997 are insufficient and are not in conformity with the requirements provided under Section 10 of Revenue Regulations No. 6-85, hence, the said claim for tax refund does not even merit to be given due course by the Respondent;
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> 7.) The Petitioner has not shown proof of actual payment and remittance of the alleged excess creditable withholding taxes withheld, much less, the exact date of payment thereof to the Bureau in order for the Respondent's officers to be able to verify the same;
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> 8.) In claiming for refund, it is incumbent upon the Petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it woud be fatal to the claim for refund;
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> 9.) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes.

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Forming the crux of the controversy in the case at bar is whether or not Petitioner is entitled to the issuance of a Tax Credit Certificate or refund of the amount of ₱1,894,718.00.

We rule in the negative.

From a reading of the pleadings of both parties and looking at the case as a whole, it would appear that the Petitioner complied with the legal requirements for the grant of tax refund of its overpaid income tax representing excess unutilized creditable taxes withheld at source. True enough, Petitioner filed its judicial claim for refund on January 23, 1997 which is within the two-year period from payment of the aforementioned tax as prescribed by Section 230 (now 229) of the NIRC. Records of this case further show that the Petitioner's income tax return for the fiscal year 1995 included the income payments upon which the creditable taxes were withheld. Likewise, the fact of withholding was established by the Petitioner through presentation of Certificates of Tax Withheld at source duly issued to it by Hopewell Power (Philippines) Corporation showing the amount paid and the amount of tax withheld therefrom. In other words, the Petitioner was able to comply with the three basic requirements for the refund of excess creditable withholding taxes provided in Section 10 of Revenue Regulations No. 6-85 which reads, thus:

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> 1) That Petitioner filed a claim for refund within the two (2) year period as prescribed by Section 230 (now 229) of the Tax 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 estabished by a copy of the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom.

If we go solely by the legal requirement set forth above, a considerable degree of plausibility, as we have intimated earlier in this decision, this case may be conceded to the pose of Petitioner. However, a thorough scrutiny of the evidence constrained Us to rule otherwise.

While it is true that the total creditable withholding tax payment of ₱2,318,364.00 was supported by Certificates of Creditable Tax Withheld at source issued by Petitioner's withholding agent Hopewell Power Phils. Corp., what is plainly of record which Petitioner cannot deny is the fact that a creditable tax withheld in the amount of ₱2,170,975.21 for an income payment of ₱43,419,504.20 refers to the period July 1 to September 30, 1995 (see Exh. H, page 96, CTA records). It must be pointed out that the present claim for refund covers the fiscal year which ended on June 30, 1995, thus said amount of ₱2,170,975.21 falls outside the period involved in this petition. Petitioner erroneously reported income tax withheld during the period July 1 to September 30, 1995, in its annual income tax return for fiscal year ended June 30, 1995, as part of its total creditable tax payment (see, Exh. B-5). In addition, based on the invoices (Exhs. I-1) and the summary of invoice (Exh. U) submitted by Petitioner, it appears that part of the ₱43,419,504.20 income from which the ₱2,170,975.21 taxes were withheld pertains to income earned by Petitioner during the Fiscal Year 1996. Thus, We find it ineluctable to disallow as creditable tax payment the reported amount of ₱2,171,414.00.

All the above premises taken into account, the allowable creditable tax payment amounted only to ₱146,950.00 (₱2,318,364.00 less the disallowed creditable tax payment of ₱2,171,414.00) and which when deducted from the income tax due of the Petitioner in the fiscal year ended June 30, 1995 in the amount of ₱423,646.00 would even result in a tax deficiency of ₱276,696.00 computed as follows:

Tax Due per Income Tax Return (Exh. B)		₱ 423,646.00
Less: Tax Credit Payments		
As reported per Income Tax Return	₱2,318,364.00	
less: unallowable creditable with tax payment	₱2,171,414.00	146,950.00
Tax still due		₱ 276,696.00

Considering the oft-repeated dictum that refund of taxes partakes the nature of a tax exemption and is construed in strictissimi juris against the taxpayer and

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in favor of the taxing authority (Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation and the Court of Tax Appeals, G.R. Nos. L-83583-84, March 25, 1992, 207 SCRA 549), Our considered conclusion and judgment is that Petitioner's claim for refund or prayer for issuance of Tax Credit Certificate shall be **DENIED.**

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **DISMISSED** for lack of merit.

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 consutation 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

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