**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**AB CAPITAL AND INVESTMENT CORPORATION,**
Petitioner,

- versus -

**C.T.A. CASE NO. 5627**

**COMMISSIONER OF INTERNAL REVENUE,**

Promulgated:

FEB 01 2000

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# DECISION

Brought before Us is a petition for the refund, or in the alternative, the issuance of tax credit certificate in the sum of P19,620,433.00, representing overpaid income tax for the calendar year 1995.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office located at the AsinaBank Center, Sen. Gil J. Puyat Avenue corner Tordesillas Street, Makati City.

For the calendar year ended December 31, 1995, Petitioner filed its Corporation Annual Income Tax Return on April 15, 1996, declaring a net operating loss in the sum of P14,381,529.00 but with a refundable income tax payment in the amount of P20,112,632.00, arising from prior year's excess credit and the 1995 various creditable withholding taxes at source, detailed as follows:

| | | |
|---|---|---|
| Net loss | | **P14,381,529.00** |
| Tax Due | | P nil |
| Less: Tax Credits/Payments | | |
| a) Prior year's excess credit | P 492,199.00 | |
| b) Quarterly payments | - | |
| c) Creditable Tax Withheld | 19,620,433.00 | 20,112,632.00 |
| Amount Refundable | | **P20,112,632.00** |

Petitioner indicated in the aforementioned return its intention to apply the refundable income tax as tax credit to the succeeding taxable year, 1996. However, the intended application became nugatory due to the fact that in calendar year 1996, Petitioner suffered another net loss from its operations in the amount of P15,366,562.00, thus leaving no income tax liability from which the said overpayment could be applied.

On October 2, 1997, Petitioner, through the law offices of Bautista Picazo Buyco Tan & Fider, filed a letter claim for refund both with the Appellate Division of the Bureau of Internal Revenue and the Legal Division of BIR Regions No. 8, Makati, seeking the refund of overpaid income tax in amount of P19,620,433.29 representing the creditable withholding tax at source for the calendar year 1995.

The inaction of the Respondent on the aforementioned claim compelled the Petitioner to file the instant Petition for Review on April 15, 1998 in order to toll the running of the two-year prescriptive period mandated by Section 230 of the Tax Code, as amended.

During trial, petitioner formally offered in evidence the following documents in order to support its claim for refund:

1. Petitioner's annual income tax returns for the calendar years 1995, 1996 and 1997 together with their corresponding audited financial statements and auditors' reports (Exhs. A, J, L, M, N and O, inclusive of submarkings);

2. The various certificates of creditable withholding tax at source (Exhs. B, C, D, E, F, G, H and I), and

3. That letter claim for refund (Exh. J).

The above documents were properly identified by Petitioner's witness and were all admitted by the Court in its Resolution, dated October 30, 1998.

Respondent elected not to present controverting evidence. This case was eventually submitted for decision sans the memorandum of the Respondent.

The issues now confronting Us are as follows:

1.) whether or not Petitioner is entitled to the claim for refund of alleged overpaid income tax for the period covered by the claim; and if in the affirmative,

2.) whether or not Petitioner has presented sufficient evidence to substantiate the said claim for refund.

We answer both questions in favor of Petitioner.

The legal basis of Petitioner in claiming for the refund of overpaid income tax is Section 69 of the Tax Code, as amended, to quote:

> **Sec. 69.** ***Final Adjustment Return.***-Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.(Underscoring supplied).

It is apparent from the evidence on record that Petitioner incurred successive net operating losses from its business undertaking for the calendar years 1995, 1996 and

1997. The income tax payments arising from creditable withholding tax at source remain unapplied during the years in question, hence, Petitioner appears to be legally entitled to the refund sought. However, Petitioner must still prove its entitlement to the refund by substantial evidence.

Section 230 of the Tax Code, as amended, provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code, as amended, is hereby quoted as follows:

> ***Section 230. Recovery of tax erroneously or illegally collected.-*** No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid (Underlining supplied).

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following three requisites:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;

2. that the income upon which the taxes were withheld were included in the return of the recipient; and

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 vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue, CTA Case No 4046, February 24, 1993).**

The records establish that Petitioner's claim for refund was timely filed within the two-year period from the date of payment of the tax. The letter-request for refund was filed with the Respondent on October 2, 1997, while the instant case was instituted on April 15, 1998. The two-year period commenced to run on April 15, 1996, the date when Petitioner filed its final income tax return for the calendar year 1995 **(Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992).** The income upon which the creditable withholding taxes in question were withheld was included as part of the gross income as reflected under Schedule 1 of Section C of Petitioner's 1995 income tax return (Exh. A). Lastly, the total amount of P19,620,433.29 is duly supported by Certificates of Creditable Income Tax Withheld at |Source (Exh. B C, D, E, F, G, H and I).

**WHEREFORE,** in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or, in the alternative, to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the Petitioner the amount of P19,620,433.29 representing overpaid income tax for the year 1995.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
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