REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STARPACK PHILIPPINES CORPORATION,
Petitioner,

- versus -

CTA Case Nos. 5783 & 5784

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated
MAY 25 2001

x - x

DECISION

These consolidated cases elevated before Us by way of Petition for Review involve a claim for refund or tax credit in the total amount of TWENTY SEVEN MILLION NINETY FOUR THOUSAND FIVE HUNDRED TEN PESOS (P27,094,510.00) representing the alleged excess and unutilized creditable withholding taxes for the taxable year 1996.

The facts of the case as adduced from the Parties' Joint Stipulation of Facts are as follows:

> 1.1 Petitioner formerly known as AR Packaging Corporation is a domestic corporation duly authorized to engage in business in the Philippines, with business address at Felix Manalo St., Punta, Sta Ana, Manila.
>
> 2.1 Petitioner is registered with the BIR with TIN No. 002-201-113 and adopts a calendar year from January 1 to December 31 for purposes of keeping its books of accounts and for filing its annual income tax returns.

3.1 After respondent counsel examined Petitioner's Income Tax Return for the taxable period ended December 31, 1996, it is jointly stipulated that on April 15, 1997 Petitioner duly filed, with the BIR its Corporate Annual Income Tax Return for taxable year ending December 31, 1996

3.1.1 A copy of Petitioner's income tax return for the taxable period ended December 31, 1996 is hereto attached and made an integral part hereof as Exhibit "A".

4.1 After respondent counsel examined Petitioner's income tax return for the taxable period ended December 31, 1997, it is jointly stipulated that on April 15, 1998, petitioner duly filed with the BIR its Corporate Annual Income Tax Return for the taxable year ending December 31, 1997.

4.1.1 A copy of petitioner's income tax return for the taxable period ended December 31, 1997 is hereto attached and made an integral part hereof as Exhibit "B".

5.1 In Petitioner's Annual Corporate Income Tax Return for the calendar year ending December 31, 1997, Petitioner manifested its intention to be refunded the amount of P25,300,639.72.

6.1 Petitioner opted to carry over to the next taxable year, 1998, that portion of its 1996 excess creditable withholding tax in the amount of P1,793,470.00, representing excess creditable withholding tax for its sale of packaging materials to various buyers.

7.1 Petitioner filed a formal written claim for refund with the BIR for the following:

a. The amount of P25,300,639.72 representing unutilized and unapplied creditable income taxes withheld at source on the sale of petitioner's real properties, Petitioner filed a written claim for refund with the BIR on August 20, 1998.

b. The amount of P1,793,470.00 representing unutilized and unapplied creditable withholding income taxes withheld at source on the sale of petitioner's packaging materials to various customers for the 1996 taxable year, Petitioner filed with the BIR a formal written claim for refund on December 28, 1998.

8.1 As of the pre-trial conference last June 23, 1999, Respondent's BIR has not acted finally on any of Petitioner's administrative claim for refund. *(Parties' Joint Stipulation of Facts and Issues, CTA Docket pp.92-94)*

Records would show that on April 14,1999, Petitioner filed before this Court a Petition for Review docketed as CTA Case No. 5783 involving a claim for refund and/or issuance of tax credit in the amount of P1,793,470.00 representing Petitioner's unutilized and unapplied creditable income taxes withheld at source from its sale of packaging materials to various customers for the 1996 taxable year. On that same day of April 14, 1999, Petitioner filed before this Court a Petition for Review docketed as CTA Case No. 5784 involving a claim for refund and / or issuance of tax credit in the amount of P25,300,640.00 representing Petitioner's unutilized and unapplied creditable income taxes withheld at source from its sale of real properties for the 1996 taxable year.

On May 3,1999, Respondent filed two (2) separate answers to the two (2) Petitions for Review and raised the following Special and Affirmative Defenses, both answers containing similar contents, thus:

1. Assuming but not admitting that Petitioner filed an application for refund of unapplied creditable withholding tax, the same in (sic) subject to administrative investigation and resolution;
2. Taxes are presumed to have been collected in accordance with law. Hence, Petitioner must prove that the taxes sought to be refunded were erroneously and illegally collected;
3. Petitioner must show that it has complied with the provisions of Section 69 of the Tax Reform act of 1997;

4. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Company vs. Commissioner of Internal Revenue)

As CTA Case No. 5783 and CTA Case No. 5784 involve the same parties and involve substantially common questions of facts and law, Petitioner moved for the consolidation of the two aforesaid cases. The Court granted said Motion for Consolidation during the hearing held on May 27,1999 followed by a confirming Resolution dated May 31, 1999.

In order to substantiate its claim for refund, Petitioner presented the following documentary evidence:

1. Corporation/Partnership Annual Income Tax Return for calendar year 1996 (Exhibit A);

2. Corporation/Partnership Annual Income Tax Return for Calendar year 1997 (Exhibit B);

3. Corporation/Partnership Annual Income Tax Return for Calendar Year 1998 (Exhibit C);

4. Various Certificate of Creditable Taxes withheld at Source for the taxable year 1996 (Exhibit D to O);

5. Schedule of Petitioner's Partial Application of the 1996 CWTR in payment for its income tax due per company's. ITR (Exhibit P);

6. Certified True Copy of the Original Certification issued by the BIR certifying the fact of remittance of the amount withheld from the income payment made to Petitioner (Exhibit Q);

7. Letter requesting the BIR to lend Petitioner the original of the Certificates of CWT issued by various payors. (Exhibit S);

8. Report and Supplemental Report of the Commissioned Independent Auditor (Exhibits I and V);

9. Summary of Creditable Withholding Taxes for the 1st, 2nd, 3rd and 4th Quarter of 1996 (Exhibits U-I-1 to U-IV-71);

10. Subsidiary Sales list (Exhibits W-1 to w-140)

Respondent, on the other hand, did not present any testimonial or documentary evidence.

The issues to be resolved by this Court as adduced from the Parties' Joint Stipulation of Facts and Issues are as follows:

1. Whether or not Petitioner incurred unutilized and unapplied withholding tax for taxable year 1996 on the sale of packaging materials and its real properties in the amount of P1,793,870.00 and P25,300,640.00, respectively;

2. Whether or not the withholding agents of Petitioner withheld and remitted the subject unutilized and unapplied creditable withholding tax; and

3. Whether or not the excess 1996 creditable withholding taxes being claimed as refund by Petitioner have, in fact, remained unapplied and unutilized in the succeeding taxable year, 1998.

In asseverating its claim for refund, Petitioner mainly draws its legal strength in Section 69 of the Tax Code, which we quote as follows:

> *"Section 69. Final Adjustment Return.* – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar 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 income of that year the corporation shall either:

> a. pay the excess tax still due;
>
> b. be refunded the excess amount paid, as the case may be;
>
> In case the corporation is entitled to the 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."

As the first and third issues are interrelated, we deem it proper to resolve these issues altogether. On the basis of the evidence presented to this Court, we are convinced that Petitioner incurred unutilized and unapplied withholding tax for taxable year 1996. It can be inferred from Petitioner's 1996 Annual Income Tax return that for taxable year 1996, Petitioner incurred a net operating loss of P107,019,790.00 (Exh. A-1). It has a total creditable tax withheld of P33,384,332.00 arising from its sale of real properties and packaging materials (Exh. A-2) which remained unapplied because Petitioner was in a net loss position. Petitioner opted to apply its 1996 excess tax credit to the income tax liability of the succeeding taxable year.

Enumerated hereinbelow are the summaries of Petitioner's 1996 expanded withholding taxes, which were attached to the quarterly and annual income tax returns and duly received by the Bureau's authorized collecting agent:

WITHHOLDING AGENT		TAX WITHHELD
1ST QUARTER (Exh. U-I-1)		
Nestle Phils.,(Bulacan)	P	194,791.10
Pilipinas Shell		52,340.81
Caltex (Phils)		1,608.90
Manly Plastics, Inc.		12,550.03
Sterling Products		14,681.61
Bayer Phils., Inc.		32,348.43
Universal Food Corporation		6,380.49

Eveready Battery Co.		225,939.22
Glaxo Wellcome		2,567.02
Rhone-Poulenc		5,128.23
Rhone-Poulenc		7,038.25
Van Melle		20,799.39
Warner Lambert Phil., Inc.		5,847.20
Nestle Phils.,(Bulacan)		189,323.65
Wrigley Philippines		29,167.92
Sarimanok Feeds Co.		3,746.29
M.Y. San Biscuits		4,906.51
California Mfg. Co.		157,322.43
Pure Foods Corp.		5,755.51
Subtotal	**P**	**972,242.99**
2ND QUARTER (Exh. U-II-1)		
Bayer Philippines	P	22,637.26
California Mfg. Co.		104,133.96
Caltex (Phils)		795.02
Ciba-Geigy (Phils)		11,570.93
Eveready Battery Co. Phils		77,375.41
Food Industries, Inc.		9,885.02
Foodworld Mfg. Corp.		13,441.09
Genpacco, Inc.		32,501.58
Griffith Lab. (Phils)		34,208.55
Hizon Laboratories		4,224.20
Hoechst Philippines		873.11
Metrolab Industries		21,583.26
Nestle Philippines		620,796.37
Organon (Philippnes)		9,528.59
Oriental Tin Can & Metal		34,331.02
Phil. Cocoa Corporation		15,551.11
Purefoods Corp.		26,165.84
Reliable Industries		5,529.45
RFM Corporation		9,152.26
Rhone Poulenc		7,622.14
Rhone Poulenc		5,346.93
Schering-Plough Corp.		975.65
Unilever Philippines		104,401.09
United Laboratories		122,500.35
Universal Food Corporation		7,019.44
Warner Lambert Phil.		49,107.79
Wrigley Philippines		16,941.44
SUBTOTAL	**P**	**1,368,198.86**
3RD QUARTER (Exh. U-III-1)		
Bristol Myers		5,354.58
California Mfg. Co.		49,524.15
Caltex (Philippines)		1,750.80

Eveready Battery Co.		104,397.25
Genpacco, Inc.		8,290.49
Hoechst Philippines, Inc.		1,483.84
Nestle Philippines		389,041.99
Nestle Philippines		301,793.70
Nestle Philippines		450,318.19
Nestle Philippines		635,661.89
Oriental Tin Can & Metal		3,747.69
Phimco Industries		4,587.16
Reliable Industries		2,915.71
RFM Corporation		6,226.05
Rhone Poulenc		7,063.18
Rhone Poulenc		1,559.07
Sarimanok Feeds		3,036.68
Schering-Plough		3,111.36
The Boots Co.		3,993.95
The Boots Co.		5,508.89
The Boots Co.		1,620.39
Unilever Philippines		94,923.73
United Laboratories		125,762.30
Universal Food Corporation		3,678.18
Warner Lambert Phil.		77,178.13
SUBTOTAL	**P**	**2,292,529.35**
4TH QUARTER (Exh. U-IV-1 & U-IV-2)		
Bayer Philippines	P	10,374.27
Bayer Philippines		5,539.77
Boehringer Ingelheim		13,547.71
Bristol Myers		55,378.44
California Mfg. Co.		222,255.84
Caltex (Philippines)		133.20
Ciba-Geigy		6,058.93
Coca-Cola Bottlers		12,088.02
Coca-Cola Bottlers		8,478.90
Del Monte Philippines, Inc.		166.09
Eveready Battery Co.		120,684.87
Food Industries Inc.		8,170.91
Food Industries Inc.		11,021.83
Genpacco, Inc.		24,818.34
Gourmet Farms		8,400.45
Griffith Lab.		5,892.75
Griffith Lab.		4,419.76
Griffith Lab.		6,636.07
Griffith Lab.		9,037.17
Griffith Lab.		8,246.00
Henkel Philippines		7,774.14
Kimberly Clark Phils.		1,395.00
Kraft Foods Philippines		76,365.78
Kraft Foods Philippines		46,799.55

Kraft Foods Philippines		95,861.25
Kraft Foods Philippines		102,015.81
La Tondena Distillers		12,559.42
La Tondena Distillers		14,601.60
La Tondena Distillers		10,063.64
Lapu-Lapu Packaging Corp.		621.41
M.Y. San Biscuits, Inc.		2,454.55
M.Y. San Biscuits, Inc.		2,764.18
Manly Plastics, Inc.		1,314.54
Manly Plastics, Inc.		2,591.07
Nestle Philippines		238,345.25
Nestle Philippines		228,299.76
Nestle Philippines		602,098.78
Nestle Philippines		715,664.18
Nestle Philippines		165,118.34
Organon (Philippines)		7,431.50
Oriental Tin Can & Metal		22,399.96
Phimco Industries		1,554.12
Pilipinas Shell		53,231.36
Phil. Cocoa Corp.		1,789.43
Phil. Cocoa Corp.		14,193.77
Purefoods Corp.		9,459.99
Purefoods Corp.		8,893.96
Purefoods Corp.		22,632.41
RFM Corp.		6,547.00
Rhone Poulenc		2,911.39
Rhone Poulenc		7,498.79
Saisho Onkyo, Inc.		4,279.88
Schering Plough		2,892.65
Schering Plough		1,502.95
SMC Juice, Inc.		27,153.93
SMC Juice, Inc.		8,743.57
Steniel Carton Systems Corp.		8,035,188.37
Steniel Manufacturing		17,265,451.35
Unilever Philippines		90,138.33
United Laboratories		101,778.72
Universal Foods Corp.		6,480.10
Univet Agricultural Products		7,952.05
Univet Agricultural Products		8,101.73
Univet Agricultural Products		9,093.32
Sarimanok Feeds Co.		3,562.90
Van Melle Phils.		34,727.20
Van Melle Phils.		31,380.18
Warner Lambert Phil.		75,188.09
Wrigley Philippines		11,144.07
SUBTOTAL	**P**	**28,751,360.64**
TOTAL	**P**	**33,384,331.84**

For taxable year 1997, Petitioner had a taxable income of P19,325,895.00 with a corresponding tax due of P6,764,063.00. In the same taxable year 1997 Petitioner had total tax credits/payments of P42,871,782.00 broken down as follows:

Prior year's excess tax credit (1996)	P33,384,332.00
1997 Tax credits/payments	9,487,450.00
Total Tax Credits/Payments	P42,871,782.00

Petitioner applied the amount of P6,764,063.00 corresponding to its 1996 tax credit to the 1997 income tax liability leaving an excess tax credit of P36,107,719.00. Out of the amount of P36,107,719.00, only the sum of P25,300,640.00 which is the tax withheld from Petitioner's sale of real properties was opted by Petitioner to be refunded while the balance of P10,807,079.00 was opted to be applied to the income tax liability of the succeeding taxable year.

For taxable year 1998, the records show that Petitioner did not carry over the whole amount of P10,807,079.00, but declared only the amount of P9,013,609.00 as prior year's excess credit because it chose to refund the difference of P1,793,469.00.

Below is the list of 1996 creditable withholding taxes subject of the instant petition.

(a) From sale of real properties

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
Steniel Mfg.Corp.	N	230,206,018.00	P 17,265,451.35
Steniel Cartons	O	107,135,845.00	8,035,188.37

SUBTOTAL	**337,341,863.00**	**P**	**25,300,639.72**

(b) From sale of packaging materials

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT		TAX WITHHELD
Anflocar's, Inc.	K	918,252.00	P	9,182.52
Saisho Onkyo, Inc.	D	427,987.91		4,279.88
Anflocar's, Inc.	L	943,019.00		9,430.19
Eveready Battery Co.	E	12,068,487.00		120,684.87
Flexo Mfg. Corp.	No certificate	536,272.72		5,362.72
Henkel Phils.	F	777,414.99		7,774.14
Kraft Foods Phils.	G	7,636,578.00		76,365.78
Nestle Phils. Alabang	H	23,834,525.00		238,345.25
Nestle Phils. Cabuyao	I	60,209,878.00		602,098.78
Nestle Phils. Cagayan	J	71,566,418.00		715,664.18
Republic Chemical Ind.	M	428,172.00		4,281.72
	SUBTOTAL	**179,347,004.62**	**P**	**1,793,470.03**
	TOTAL	**516,688,867.62**	**P**	**27,094,109.75**

Thus, from the foregoing discussion, it appears that the total refundable amount still due the Petitioner is P27,094,109.75. However, before making such a conclusive stance, it is imperative for the Court to make a circumspect examination of all the pertinent documents in the light of the three basic requirements for the refund of excess creditable withholding taxes, to wit:

1) That the claim for refund was filed within two years as prescribed under Section 230 (now Section 229) of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a 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.

(Section 10, Rev. Reg 6-85; Citytrust Finance Corporation vs The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11,1991; Affirmed by the Court of Appeals in CityTrust Finance Corporation vs. Commissioner of Internal Revenue, CA GR SP No. 28239, March 14,1994; and City Trust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24,1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation and the Court of Tax Appeals, C A G.R. SP No. 31104, April 18,1994.)

These aforementioned requirements were affirmed by the Supreme Court in the case of **Citibank, N.A. vs. Court of Tax Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

As to Petitioner's compliance with the first requisite, we answer in the affirmative. Well settled is the rule that the two-year prescriptive period from which a claim for refund is counted commences to run not from the time the corporation files and pays its quarterly tax return but from the date the final adjustment return is filed after the end of the taxable year ***(Commissioner vs. TMX Sales, Inc., 205 SCRA 184)*** which in this case is April 15,1997 (Exhibit A). It could be gleaned from the records submitted that Petitioner filed its formal claim for refund with the BIR on the following dates:

a. On August 20,1998, Petitioner filed a written claim for refund with the BIR for the amount of P25,300,639.72 representing unutilized and unapplied creditable income taxes withheld at source on the sale of petitioner's real properties.(Joint Stipulation of Facts, Item no 7.1 (a), CTA Docket p.93);

b. On December 28,1998, Petitioner filed with the BIR a formal claim for refund for the amount of P1,793,470.00 representing unutilized and unapplied creditable withholding income taxes withheld at source on the sale of petitioner's packaging materials to various customers for the 1996 taxable year (Joint Stipulation of Facts, Item no. 7.1(b), CTA Docket p.93).

The pertinent Petitions for Review for the above claims were both filed with this Court on April 14, 2001. Thus, counting from the reckoning period to which the two-year prescriptive period begins to run, it is clear that the action undertaken by the Petitioner was filed on time.

Anent the second basic requirement, this Court noticed some minor inadvertence committed by the Petitioner. A cross reference of all the pertinent documents submitted revealed that Petitioner failed to prove that all of the income reflected in the Certificate of Income Tax Withheld at Source were part of the income declared in the Petitioner's Annual income tax return. The independent CPA noted in his report, that Petitioner had a higher income per certificates than what was declared in their sales book. The difference was due to the fact that Petitioner's sales in prior years (e.g. 1994, 1995) were recorded as income in those years but were collected only in 1996 and subjected by the customers/clients to the expanded withholding taxes in the latter year (Exh. V).

This Court disallowed the taxes withheld on Petitioner's income for taxable year 1995 for its failure to show that the income payments pertaining thereto were previously reported in its 1995 income tax return. Petitioner did not present its 1995 income tax return, hence this Court is not in a position to determine what part of the 1995 income subjected to the withholding tax was actually declared in Petitioner's tax return. This disallowance finds support in the case of **ANSCOR INSURANCE BROKERS, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5753, promulgated on January 8, 2001,** where this Court ruled, thus:

"This Court believes, however, that while the discrepancy in Petitioner's 1996 gross income may have been brought about by a "timing difference" where the withholding agent(s) withheld and issued the corresponding certificates after Petitioner has already accrued and reported the income in its annual income tax return, Petitioner should have proven such fact by documentary evidence. The testimony made by Ms. Mia Cabotage should have been corroborated by documents such as the 1995 annual income tax return, reconciliation schedule showing the income amounts reported in 1995 which were subjected to withholding in 1995 and 1996, invoices/receipts or any other document that would clearly show that the discrepancy was already reported in Petitioner's 1995 ITR but the withholding of the corresponding tax was made in 1996"

This Court also excluded the following certificates in the final computation because they pertain to the taxable year 1995 (see Annex A).

	Income Payment	Tax withheld
Bayer Philippines (Exh. U-I-7)	P3,234,843.00	P 32,348.43
Caltex Philippines (Exh.U-I-4)	160,890.00	1,608.90
Glaxo Wellcome (Exh. U-I-10)	256,702.00	2,567.02
Hizon Laboratories (Exh.U-II-19)	422,420.00	4,224.20
Manly Plastics, Inc. (Exh U-I-5)	1,255,002.62	12,550.03
Nestle Phils. Bulacan (Exh. U-I-2)	19,479,110.00	194,791.10
Pilipinas Shell Pet. Corp (Exh U-I-3)	5,234,080.76	52,340.81
Purefoods Corp. (Exh. U-II-32)	861,932.00	8,619.32
Rhone-Poulenc-Agrochem(Exh.U-I-11)	511,823.47	5,128.23
Rhone-Poulenc-Rorer (Exh U-I-12)	703,825.00	7,038.25
T O T A L	P32,121,628.85	P321,216.29

This Court likewise noticed that the tax withheld by Sarimanok Feeds Co. was included in the list of Petitioner's expanded withholding taxes and declared in the income tax return as tax credit but the income was not included in Petitioner's sales list. Since this rans counter to the basic requisites laid down by law, the amount of P3,746.29 which corresponds to the Creditable Withholding Tax of Sarimanok Feeds Co. was likewise disallowed.

However, the Court allowed the refund of taxes withheld arising from the sale/exchange of motor vehicle (Exh. U-II-17) in the amount of P5,333.61 because Petitioner was able to show that the income was declared in the annual income tax return and was part of the list of creditable withholding taxes sought to be refunded.

As to the third requisite, Petitioner was able to prove its receipt of rental income and income from its sales of packaging materials and its payments of corresponding taxes withheld therefrom when it presented the various Certificates of Income Tax Withheld at Source-BIR form Nos. 1743-750, 2307, 1743.1 (Exhs. U-I-2 to U-I-20, U-II-2 to U-II-47, U-III-2 to U-III-26 and U-IV-3 to U-IV-71).

However, a scrutiny of the documents presented in evidence which includes the 1996 Annual Income Tax Return (Exh. A), 1997 Annual Income Tax Return (Exh. B), 1998 Annual Income Tax Return (Exh. C), the reports of the independent CPA (Exhs. S & V), the list of expanded withholding taxes (Exhs. U-I-1, U-II-1, U-III-1, U-IV-1 & U-IV-2), the various Certificates of Income Tax Withheld at Source (Exhs. D to O, U-I-2 to U-I-20, U-II-2 to U-II-47, U-III-2 to U-III-26 and U-IV-3 to U-IV-71) and the Subsidiary Sales List (Exhs. W 1/140 to W-140/140) reveals that some of the taxes withheld which is being sought for refund by Petitioner were not included in the list of expanded withholding taxes attached to the quarterly and annual income tax returns in the amount of P33,384,332.00, thus:

WITHHOLDING AGENT		INCOME PAYMENT		TAX WITHHELD
Anflocar's, Inc.	P	918,252.00	P	9,182.52
Anflocar's, Inc.		943,019.00		9,430.19
Flexo Mfg. Corp.		536,272.72		5,362.72
Republic Chemical Ind.		428,172.00		4,281.72
Total	P	2,825,715.72	P	28,257.15

The Court is of the impression therefore that the above taxes were not originally part of the claim for refund. It was also observed that these taxes were not included in the summaries of expanded withholding taxes attached to the returns, hence, it can be concluded that the income payments were not declared in the income tax returns.

Petitioner likewise failed to present the Certificate of Income Tax Withheld at Source of Rhone Poulenc-Rorer in the amount of P534,693.00, therefore, we are inclined to disallow said amount (See Annex A, page 4 of 5).

Going back to the second stipulated main issue of whether or not the taxes withheld were remitted to the respondent's bureau, this Court in the case entitled **SAN MIGUEL PROPERTIES vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 5621, dated August 06, 1999,** ruled in this wise:

> "All that is required by law and/or implementing regulations to show proof of withholding is the presentation of the statements of tax withheld at source (BIR Form1743.1), showing the income received and the amount of tax withheld therefrom and that the income was included to form part of Petitioner's gross income as stated in its income tax return. The reason for this is simple. The withholding agent is not within the control of the payee-taxpayer but is considered an agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government (Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA-GR SP No. 26839, July 31, 1992)."

In sum, this Court grants Petitioner's claim for refund but in a reduced amount of P25,926,184.49, computed as follows:

Allowable Expanded Withholding Taxes for 1996	
(a) From sales of real properties (Exhs. N & O)	P25,300,639.72
(b) From sales of packaging materials (Annex A)	7,384,274.16
(c) From sale/exchange of motor vehicle (Exhs. U-II-17)	5,333.61
Total	P32,690,247.49
Less: Tax Credit Applied to the 1997 Income Tax Liability	6,764,063.00
Amount Refundable	**P25,926,184.49**

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND**, or in the alternative, **ISSUE** a Tax Credit Certificate in the reduced amount of TWENTY FIVE MILLION NINE HUNDRED TWENTY SIX THOUSAND ONE HUNDRED EIGHTY FOUR AND 49/100 PESOS (P25,926,184.49.00) in favor of the Petitioner, representing the unutilized withholding tax credits for the year ended December 31,1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

STARPACK PHILIPPINE CORPORATION vs. COMMISSIONER OF INTERNAL REVENUE
SUMMARY OF COURT'S DISALLOWANCES ON PETITIONER'S 1996 INCOME TAXES
WITHHELD ON SALES OF PACKAGING MATERIALS

ANNEX A

WITHHOLDING AGENT	EXHIBIT	YEAR COVERED	INCOME PER BOOKS	INCOME PER CERTIFICATE	TAX WITHHELD	DISALLOWANCES A	B	C	D	TOTAL	INCOME PAYMENT	TAX WITHHELD
Bayer Philippines			P 3,249,696.39	P 7,089,973.00	P 70,899.73	P -	3,234,843.00	P 605,233.61	P -	P 3,840,076.61	P 3,249,896.39	P 32,498.96
Bayer Philippines	U-I-7	1995		3,234,843.00	32,348.43							
Bayer Philippines	U-II-2	1996		96,735.00	967.35							
Bayer Philippines	U-II-3	1996		2,166,991.00	21,669.91							
Bayer Philippines	U-IV-3	1996		1,037,427.00	10,374.27							
Bayer Philippines	U-IV-4	1996		553,977.00	5,539.77							
Boehringer Ingelheim	U-IV-5	1996	1,036,141.46	1,354,771.00	13,547.71	-	-	318,629.54	-	318,629.54	1,036,141.46	10,361.41
Bristol Myers Squibb Phils.			6,547,702.27	6,073,302.00	60,733.02	-	-	-	-	-	6,073,302.00	60,733.02
Bristol Myers	U-III-2	1996		535,458.00	5,354.58							
Bristol Myers	U-IV-6	1996		5,537,844.00	55,378.44							
California Manufacturing Corp.			52,929,669.42	53,323,638.00	533,236.38	-	-	393,968.58	-	393,968.58	52,929,669.42	529,296.69
California Mfg. Co.	U-I-19	1996		15,732,243.00	157,322.43							
California Mfg. Co.	U-II-4	1996		10,413,396.00	104,133.96							
California Mfg. Co.	U-III-3	1996		4,952,415.00	49,524.15							
California Mfg. Co.	U-IV-7	1996		22,225,584.00	222,255.84							
Caltex (Philippines), Inc.			267,636.36	428,792.00	4,287.92	-	160,890.00	265.64	-	161,155.64	267,636.36	2,676.36
Caltex (Phils)	U-I-4	1995		160,890.00	1,608.90							
Caltex (Phils)	U-II-5	1996		79,502.00	795.02							
Caltex (Phils)	U-III-4	1996		175,080.00	1,750.80							
Caltex (Phils)	U-IV-8	1996		13,320.00	133.20							
Ciba Geigy			2,049,245.01	1,762,986.00	17,629.86	-	-	-	-	-	1,762,986.00	17,629.86
Ciba-Geigy	U-II-6	1996		125,083.00	1,250.83							
Ciba-Geigy	U-II-7	1996		1,032,010.00	10,320.10							
Ciba-Geigy	U-IV-9	1996		605,893.00	6,058.93							
Coca-Cola Bottlers Phils.			2,056,698.15	2,262,361.48	20,566.92	-	-	205,663.33	-	205,663.33	2,056,698.15	20,566.92
Coca-Cola Bottlers	U-IV-10	1996		1,329,682.48	12,088.02							
Coca-Cola Bottlers	U-IV-11	1996		932,679.00	8,478.90							
Del Monte Philippines	U-IV-12	1996	49,563.55	16,609.00	166.09	-	-	-	-	-	16,609.00	166.09
Eveready Battery Co. Phil.			48,502,977.04	52,839,675.00	528,396.75	-	-	4,336,697.96	-	4,336,697.96	48,502,977.04	485,029.77
Eveready Battery Co.	U-I-9	1996		22,598,200.00	225,939.22							
Eveready Battery Co.	U-II-8	1996		7,737,541.00	77,375.41							
Eveready Battery Co.	U-III-5	1996		10,439,725.00	104,397.25							
Eveready Battery Co.	U-IV-13	1996		12,068,487.00	120,684.87							
Food Industries inc.			2,035,590.91	2,907,772.75	29,077.76	-	-	872,181.84	-	872,181.84	2,035,590.91	20,355.91
Food Industries, Inc.	U-II-9	1996		441,909.10	4,419.10							
Food Industries, Inc.	U-II-10	1996		546,590.91	5,465.92							
Food Industries Inc.	U-IV-14	1996		817,090.91	8,170.91							
Food Industries Inc.	U-IV-15	1996		1,102,181.83	11,021.83							
Foodworld Mfg.	U-II-11	1996	1,344,109.09	1,344,109.00	13,441.09	-	-	-	-	-	1,344,109.00	13,441.09
Gen Pacco			5,731,993.24	6,561,041.00	65,610.41	-	-	829,047.76	-	829,047.76	5,731,993.24	57,319.93
Genpacco, Inc.	U-II-12	1996		3,250,158.62	32,501.58							
Genpacco, Inc.	U-III-6	1996		829,049.07	8,290.49							
Genpacco, Inc.	U-IV-16	1996		2,481,834.64	24,818.34							

WITHHOLDING AGENT	EXHIBIT	YEAR COVERED	INCOME PER BOOKS	INCOME PER CERTIFICATE	TAX WITHHELD	DISALLOWANCES A	B	C	D	TOTAL	INCOME PAYMENT	TAX WITHHELD
Glaxo Wellcome	U-I-10	1995	349,299.11	256,702.00	2,567.02	-	2,567,025.00	-	-	2,567,025.00	-	-
Gourmet Farms, Inc.	U-IV-17	1996	840,529.87	840,045.00	8,400.45	-	-	-	-	-	840,045.00	8,400.45
Griffith Lab.			5,779,984.27	6,310,669.00	63,106.69	-	-	530,684.73	-	530,684.73	5,779,984.27	57,799.84
Griffith Lab.	U-II-13	1996		290,238.00	2,902.38							
Griffith Lab.	U-II-14	1996		475,148.00	4,751.48							
Griffith Lab.	U-II-15	1996		1,740,877.00	17,408.77							
Griffith Lab.	U-II-16	1996		310,413.00	3,104.13							
Griffith Lab.	U-II-18	1996		70,818.00	708.18							
Griffith Lab.	U-IV-18	1996		589,275.00	5,892.75							
Griffith Lab.	U-IV-19	1996		441,976.00	4,419.76							
Griffith Lab.	U-IV-20	1996		663,607.00	6,636.07							
Griffith Lab.	U-IV-21	1996		903,717.00	9,037.17							
Griffith Lab.	U-IV-22	1996		824,600.00	8,246.00							
				6,310,669.00	63,106.69							
enkel Phils., Inc.	U-IV-23	1996	548,324.09	777,414.99	7,774.14	-	-	229,090.90	-	229,090.90	548,324.09	5,483.24
Hizon Laboratories	U-II-19	1995	484,767.09	422,420.00	4,224.20	-	422,420.00	-	-	422,420.00	-	-
Hoechst			1,236,746.71	235,695.00	2,356.95	-	-	-	-	-	235,695.00	2,356.95
Hoechst Philippines	U-II-20	1996		87,311.46	873.11							
Hoechst Philippines	U-III-7	1996		148,383.88	1,483.84							
Kimberly-Clark Phils.	U-IV-24	1996	115,092.89	139,500.00	1,395.00	-	-	24,407.11	-	24,407.11	115,092.89	1,150.93
Kraft Foods Phils.			25,678,257.05	32,104,239.00	321,042.39	-	-	6,425,981.95	-	6,425,981.95	25,678,257.05	256,782.57
Kraft Foods Philippines	U-IV-25	1996		7,636,578.00	76,365.78							
Kraft Foods Philippines	U-IV-26	1996		4,679,955.00	46,799.55							
Kraft Foods Philippines	U-IV-27	1996		9,586,125.00	95,861.25							
Kraft Foods Philippines	U-IV-28	1996		10,201,581.00	102,015.81							
La Tondena Distillers, Inc.			15,951,999.21	3,722,466.00	37,224.66	-	-	-	-	-	3,722,466.00	37,224.66
La Tondena Distillers	U-IV-29	1996		1,255,941.82	12,559.42							
La Tondena Distillers	U-IV-30	1996		1,460,160.00	14,601.60							
La Tondena Distillers	U-IV-31	1996		1,006,363.64	10,063.64							
Lapu Lapu Packaging	U-IV-32	1996	-	62,141.00	621.41	-	-	62,141.00	-	62,141.00	-	-
Y. San Biscuits			1,223,042.07	1,012,523.57	10,125.24	-	-	-	-	-	1,012,523.57	10,125.24
.Y. San Biscuits	U-I-18	1996		490,650.88	4,906.51							
M.Y. San Biscuits	U-IV-33	1996		245,454.55	2,454.55							
M.Y. San Biscuits	U-IV-34	1996		276,418.14	2,764.18							
Manly Plastics, Inc.			2,512,844.73	1,645,562.80	16,455.64	-	1,255,002.62	-	-	1,255,002.62	390,560.18	3,905.60
Manly Plastics, Inc.	U-I-5	1995		1,255,002.62	12,550.03							
Manly Plastics, Inc.	U-IV-35	1996		131,453.45	1,314.54							
Manly Plastics, Inc.	U-IV-36	1996		259,106.73	2,591.07							
Metro Laboratories			-	2,158,326.00	21,583.26	-	-	2,158,326.00	-	2,158,326.00	-	-
Metrolab Industries	U-II-21	1996		696,457.00	6,964.57							
Metrolab Industries	U-II-22	1996		1,461,869.00	14,618.69							
Nestle Phils., Alabang			112,056,255.96	109,811,421.00	1,098,114.81	-	-	-	-	-	109,811,421.00	1,098,114.21
Nestle Philippines, Alabang	U-II-23	1996		20,394,471.00	203,944.71							
Nestle Philippines, Alabang	U-II-24	1996		26,678,226.00	266,782.86							
Nestle Philippines, Alabang	U-III-8	1996		38,904,199.00	389,041.99							
Nestle Philippines, Alabang	U-IV-37	1996		23,834,525.00	238,345.25							

WITHHOLDING AGENT	EXHIBIT	YEAR COVERED	INCOME PER BOOKS	INCOME PER CERTIFICATE	TAX WITHHELD	DISALLOWANCES				TOTAL	INCOME PAYMENT	TAX WITHHELD
						A	B	C	D			
Nestle Phils., Bulacan			83,080,331.08	106,427,701.00	1,064,277.01	-	19,479,110.00	3,868,259.92	-	23,347,369.92	83,080,331.08	830,803.31
Nestle Philippines, Bulacan	U-I-2	1995		19,479,110.00	194,791.10							
Nestle Philippines, Bulacan	U-I-15	1996		18,932,365.00	189,323.65							
Nestle Philippines, Bulacan	U-II-25	1996		15,006,880.00	150,068.80							
Nestle Philippines, Bulacan	U-III-9	1996		30,179,370.00	301,793.70							
Nestle Philippines, Bulacan	U-IV-38	1996		22,829,976.00	228,299.76							
Nestle Phils., Cabuyao			167,876,116.07	105,241,697.00	1,052,416.97	-	-	-	-	-	105,241,697.00	1,052,416.97
Nestle Philippines, Cabuyao	U-III-10	1996		45,031,819.00	450,318.19							
Nestle Philippines, Cabuyao	U-IV-39	1996		60,209,878.00	602,098.78							
Nestle Phils., Cagayan			179,360,634.18	135,132,607.00	1,351,326.07	-	-	-	-	-	135,132,607.00	1,351,326.07
Nestle Philippines, Cagayan	U-III-11	1996		63,566,189.00	635,661.89							
Nestle Philippines, Cagayan	U-IV-40	1996		71,566,418.00	715,664.18							
Nestle Phils., Lipa	U-IV-41	1996	40,868,170.23	16,511,834.00	165,118.34	-	-	-	-	-	16,511,834.00	165,118.34
Organon Philippines			1,166,062.38	1,696,009.00	16,960.09	-	50,104.00	479,842.62	-	529,946.62	1,166,062.38	11,660.62
Organon (Philippnes)	U-II-26	1996		902,755.00	9,027.55							
Organon (Philippnes)	U-II-27	1995		50,104.00	501.04							
Organon (Philippnes)	U-IV-42	1996		743,150.00	7,431.50							
Oriental Tin Can Mfg. Co.			5,909,394.26	6,047,867.00	60,478.67	-	-	138,472.74	-	138,472.74	5,909,394.26	59,093.94
Oriental Tin Can & Metal	U-II-28	1996		1,070,861.05	10,708.61							
Oriental Tin Can & Metal	U-II-29	1996		2,362,241.26	23,622.41							
Oriental Tin Can & Metal	U-III-12	1996		374,769.06	3,747.69							
Oriental Tin Can & Metal	U-IV-43	1996		2,239,996.13	22,399.96							
Philippine Cocoa Corp.			-	3,153,431.00	31,534.31	-	-	3,153,431.00	-	3,153,431.00	-	-
Phil. Cocoa Corp.	U-II-30	1996		756,907.08	6,874.98							
Phil. Cocoa Corp.	U-II-31	1996		963,144.64	8,676.13							
Phil. Cocoa Corp.	U-IV-46	1996		189,010.44	1,789.43							
Phil. Cocoa Corp.	U-IV-47	1996		1,561,313.95	14,193.77							
Phimco Ind., Inc.			27,663,994.27	614,128.00	6,141.28	-	-	-	458,716.00	458,716.00	155,412.00	1,554.12
Phimco Industries	U-III-13	1996		458,716.00	4,587.16							
Phimco Industries	U-IV-44	1996		155,412.00	1,554.12							
Pilipinas Shell Petroleum Corp.			5,235,033.46	10,557,216.71	105,572.71	-	5,234,080.76	88,102.49	-	5,322,183.25	5,235,033.46	52,350.33
Pilipinas Shell	U-I-3	1995		5,234,080.76	52,340.81							
Pilipinas Shell	U-IV-45	1996		5,323,135.95	53,231.36							
Purefoods Corporation			3,191,844.20	7,291,671.00	72,916.71	-	861,932.00	3,237,894.80	-	4,099,826.80	3,191,844.20	31,918.44
Pure Foods Corp.	U-I-20	1996		575,551.00	5,755.51							
Purefoods Corp.	U-II-32	1995		861,932.00	8,619.32							
Purefoods Corp.	U-II-33	1996		958,505.00	9,585.05							
Purefoods Corp.	U-II-34	1996		797,047.00	7,970.47							
Purefoods Corp.	U-IV-48	1996		945,999.00	9,459.99							
Purefoods Corp.	U-IV-49	1996		889,396.00	8,893.96							
Purefoods Corp.	U-IV-50	1996		2,263,241.00	22,632.41							
Reliable Industries, Inc.			1,160,212.00	844,516.00	8,445.16	-	-	-	-	-	844,516.00	8,445.16
Reliable Industries	U-II-35	1996		552,945.00	5,529.45							
Reliable Industries	U-III-14	1996		291,571.00	2,915.71							

WITHHOLDING AGENT	EXHIBIT	YEAR COVERED	INCOME PER BOOKS	INCOME PER CERTIFICATE	TAX WITHHELD	D I S A L L O W A N C E S				TOTAL	INCOME PAYMENT	TAX WITHHELD
						A	B	C	D			
Republic Flour Mills Corp.			3,827,559.33	2,192,531.00	21,925.31	-	-	-	-	-	2,192,531.00	21,925.31
RFM Corp.	U-II-36	1996		833,651.00	8,336.51							
RFM Corp.	U-II-37	1996		81,575.00	815.75							
RFM Corp.	U-III-15	1996		622,604.52	6,226.05							
RFM Corp.	U-IV-51	1996		654,710.00	6,547.00							
Rhone Poulenc-Agrochem			2,775,293.25	3,178,280.00	31,782.80	-	512,823.47	-	-	512,823.47	2,665,456.53	26,654.57
Rhone-Poulenc-Agrochem	U-I-11	1995		512,823.47	5,128.23							
Rhone Poulenc-Agrochem	U-II-38	1996		762,213.19	7,622.14							
Rhone Poulenc-Agrochem	U-III-16	1996		706,317.25	7,063.18							
Rhone Poulenc-Agrochem	U-III-17	1996		155,907.37	1,559.07							
Rhone Poulenc-Agrochem	U-IV-52	1996		291,139.08	2,911.39							
Rhone Poulenc-Agrochem	U-IV-53	1996		749,879.37	7,498.79							
Rhone Poulenc-Rorer			6,822,982.59	1,238,518.00	12,385.18	534,693.00	703,825.00	-	-	1,238,518.00	-	-
Rhone Poulenc-Rorer	U-I-12	1995		703,825.00	7,038.25							
Rhone Poulenc-Rorer	No Certificate			534,693.00	5,346.93							
Saisho Onkyo, Inc.	U-IV-54	1996	-	427,987.91	4,279.88	-	-	427,988.00	-	427,987.91	-	-
Sarimanok Feeds Co.	U-I-17	1996	-	374,629.09	3,746.29	-	-	374,629.09	-	374,629.09	-	-
Schering Corporation			834,218.77	848,261.00	8,482.61	-	-	14,042.23	-	14,042.23	834,218.77	8,342.19
Schering-Plough	U-II-40	1996		97,565.24	975.65							
Schering-Plough	U-III-19	1996		311,135.77	3,111.36							
Schering Plough	U-IV-55	1996		289,265.96	2,892.65							
Schering Plough	U-IV-56	1996		150,295.15	1,502.95							
SMC Inc.			4,761,261.82	3,589,750.00	35,897.50	-	-	-	-	-	3,589,750.00	35,897.50
SMC Juice, Inc.	U-IV-57	1996		2,715,393.00	27,153.93							
SMC Juice, Inc.	U-IV-58	1996		874,357.00	8,743.57							
Sterling Phils.	U-I-6	1996	851,776.60	1,468,161.00	14,681.61	-	-	616,384.40	-	616,384.40	851,776.60	8,517.77
The Boots Co.			1,056,899.73	1,412,322.36	11,123.23	-	-	355,422.63	-	355,422.63	1,056,899.73	10,569.00
The Boots Co.	U-III-20	1996		399,394.54	3,993.95							
The Boots Co.	U-III-21	1996		550,889.27	5,508.89							
The Boots Co.	U-III-22	1996		462,038.55	1,620.39							
Unilever Philippines			30,840,873.45	28,946,309.41	289,463.08	-	-	-	-	-	28,946,309.41	289,463.08
Unilever Philippines	U-II-41	1996		3,206,993.72	32,069.93							
Unilever Philippines	U-II-42	1996		7,233,109.08	72,331.09							
Unilever Philippines	U-III-23	1996		9,492,368.89	94,923.73							
Unilever Philippines	U-IV-61	1996		9,013,837.72	90,138.33							
United Laboratories			31,203,832.71	35,004,148.19	350,041.37	-	-	3,800,315.48	-	3,800,315.48	31,203,832.71	312,038.33
United Laboratories	U-II-43	1996		8,052,706.22	80,527.07							
United Laboratories	U-II-44	1996		4,197,327.20	41,973.28							
United Laboratories	U-III-24	1996		12,576,229.17	125,762.30							
United Laboratories	U-IV-62	1996		10,177,885.60	101,778.72							
Universal Food Corporation			2,355,819.45	2,355,820.65	23,558.21	-	-	1.20	-	1.20	2,355,819.45	23,558.19
Universal Food Corp.	U-I-8	1996		638,049.00	6,380.49							
Universal Food Corp.	U-II-45	1996		701,944.36	7,019.44							
Universal Food Corp.	U-III-25	1996		367,818.19	3,678.18							
Universal Food Corp.	U-IV-63	1996		648,009.10	6,480.10							

WITHHOLDING AGENT	EXHIBIT	YEAR COVERED	INCOME PER BOOK	INCOME PER CERTIFICATE	TAX WITHHELD	D I S A L L O W A N C E S A	B	C	D	TOTAL	INCOME PAYMENT	TAX WITHHELD
Univet Agricultural Products			971,976.59	2,514,709.52	25,147.10	-	-	1,542,732.93	-	1,542,732.93	971,976.59	9,719.77
Univet Agricultural Products	U-IV-64	1996		795,204.54	7,952.05							
Univet Agricultural Products	U-IV-65	1996		810,173.25	8,101.73							
Univet Agricultural Products	U-IV-66	1996		909,331.73	9,093.32							
Van Melle Phils., Inc.			12,732,356.29	8,690,677.00	86,906.77	-	-	-	-	-	8,690,677.00	86,906.77
Van Melle	U-I-13	1996		2,079,939.00	20,799.39							
Van Melle	U-IV-68	1996		3,472,720.00	34,727.20							
Van Melle	U-IV-69	1996		3,138,018.00	31,380.18							
Warner Lambert Phil.			24,276,449.00	20,732,121.00	207,321.21	-	-	-	-	-	20,732,121.00	207,321.21
Warner Lambert Phil.	U-I-14	1996		584,720.00	5,847.20							
Warner Lambert Phil.	U-II-46	1996		4,910,779.00	49,107.79							
Warner Lambert Phil.	U-III-26	1996		7,717,813.00	77,178.13							
Warner Lambert Phil.	U-IV-70	1996		7,518,809.00	75,188.09							
Wrigkey Philippines			7,940,336.03	4,725,344.62	47,253.45	-	-	-	-	-	4,725,344.62	47,253.45
Wrigley Philippines	U-I-16	1996		2,916,793.93	29,167.94							
Wrigley Philippines	U-II-47	1996		1,694,143.04	16,941.43							
Wrigley Philippines	U-IV-71	1996		114,407.65	1,144.08							
		TOTAL	P 939,341,793.68	P 806,307,774.96	P 8,058,022.13	P 534,693.00	P 34,482,055.85	P 35,089,839.48	P 458,716.00	P 70,565,304.24	P 738,427,422.81	P 7,384,274.16

A Not supported by a Certificate of Income Tax Withheld at Source
B Year covered is 1995
C Not declared as part of the 1996 income in the income tax return
D Not included as part of the total tax withheld of P33,384,331.84

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