REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WESTINGHOUSE INTERNATIONAL
PROJECTS CO.,
Petitioner,

- versus -   C.T.A. CASE NO. 4096

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
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4/12/91

D E C I S I O N

This case involves a claim for refund of alleged overpaid income taxes for the taxable year ending December 31, 1984, amounting to P3,415,822.00.

Petitioner is a foreign corporation licensed to do business in the Philippines and had been authorized by the Board of Investments to enter into agreements with Westinghouse Electric, S.A., with respect to contracts entered into by the latter with the National Power Corporation in connection with the Nuclear Power Plant Project in Bataan. For the first two quarters of 1984, petitioner paid the following income tax:

	Quarter	Taxable Net Income	Tax Due	Tax Paid
1.	First Quarter	P14,706,646	P 5,137,326	P 5,137,326
2.	Second Quarter	43,522,302	15,222,805	10,085,479
	Total Paid			P15,222,805

For the third quarter, however, petitioner paid no income tax since its operation resulted in a loss. Petitioner filed its final income tax return on April 11, 1985 showing a net income of P33,762,810.00 which had a corresponding income tax of P11,806,903.00. Consequently, petitioner claims it overpaid its income tax for the taxable year, ending December 1984, by P3,415,822.00, and thereby filed a claim for refund with respondent on August 15, 1986 and this petition for review on August 22, 1986.

In opposing the petition, respondent contends that: a mere allegation that petitioner suffered a loss does not *ipso facto* merit a refund and since actions for refund or tax credit are in the nature of exemptions, they are strictly construed against the claimants; the burden of proof is upon the taxpayer to show that the taxes paid were erroneously or illegally collected such that failure to sustain said burden is fatal to the claim for refund or tax credit; and, the claim with respect to P5,137,326.00 corresponding to the first quarter income tax payment is already barred by prescription pursuant to Sec. 292 of the 1977 Tax Code (now Sec. 230), considering that more than two

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years had already elapsed from the alleged date of payment (May 29, 1984) to the date of filing the written claim with respondent and the filing of this petition for review (August 22, 1986).

Based on the records and evidence presented, this Court finds that the petitioner has a meritorious claim.

It must be noted that respondent submitted this case based on the records and the pleadings. No evidence controverting or disputing petitioner's entitlement to its claim for refund was presented by respondent. On the other hand, petitioner presented the corresponding quarterly, as well as final income tax returns (Exhibits C, D, E and F), and the payment orders and confirmation receipts evidencing the amount of tax paid (for the first quarter, Confirmation Receipt No. B-3830533 and Payment Order No. B-3213497, both dated May 29, 1984, and, for the second quarter, Confirmation Receipt No. A-9749672 and Payment Order No. B-3721649, both dated August 29, 1984, pp. 7 and 9, Records). Hence, the facts as determined from the pleadings and borne by petitioner's evidence may then be considered as not disputed.

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As to respondent's assertion that mere allegation of loss by petitioner does not *ipso facto* merit a refund, suffice it to say that from the time of the filing of petitioner's income tax return until this time, respondent had taken no action on the same. No deficiency assessment has been issued and neither has the respondent placed in issue the correctness of the income reported, the legality of the deductions claimed, nor the fact of substantiation of these deductions.[1]/ On the contrary, the only options raised by the Commissioner of Internal Revenue are "whether or not to grant the taxpayer's request to offset or wait until negotiations with WIPCO are completed" (See letter of Commissioner Jose U. Ong, dated May 15, 1989, BIR Records, p. 169), although the marginal notes of Secretary of Finance Vicente Jayme on the same letter advised to "pursue tax payments due", the claims of the Philippine government being "substantial". Thus, there being no factual or legal matter genuinely in dispute, the records provide ample support for petitioner's claim for refund, without prejudice to the govern-

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[1]/See also **Dataprep (Phils.) Inc. v. Commissioner of Internal Revenue**, CTA Case No. 3600, March 30, 1984 and **Commonwealth Pacific Consultants Ltd. v. Commissioner of Internal Revenue**, CTA Case No. 2953, May 15, 1982.

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ment's efforts to recover whatever just claims it has against petitioner.

As to the alleged prescription of the claim with respect to the tax paid on May 29, 1984, the Supreme Court ruled in Commissioner of Internal Revenue v. Asia Australian Express Ltd. [2]/ that "when a tax is paid in installments, the prescriptive period of two years provided in Section 306 (now Section 292) of the National Internal Revenue Code should be counted from the date of the final payment. The 'final payment' is the last quarter payment at the end of fiscal year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its business operations." Since the two-year period within which the petitioner may claim a refund commenced to run on April 15, 1985, the last day for filing of the final or adjustment return and final payment of income tax, pursuant to Sec. 87(b) & (c) of the 1977 Tax Code, as amended (now Sec. 70(b) & (c), as implemented by Sec. 7 of Revenue Regulations 10-77), both the claim for refund and petition for review were filed well within the two-year prescriptive period.

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[2]/A Resolution, G. R. No. 85956, January 11, 1989, citing **Collector of Internal Revenue v. Prieto**, 2 SCRA 1007 (1961); and **Commissioner of Internal Revenue v. Palanca**, 18 SCRA 496 (1966).

WHEREFORE, the petition is granted. Respondent Commissioner of Internal Revenue is hereby ordered to grant a refund to petitioner Westinghouse International Projects Co. in the amount of P3,415,822.00, representing overpaid income tax for 1984.

SO ORDERED.

Quezon City, Metro Manila, April 12, 1991.

STELLA DADIVAS-FARRALES
Acting Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals