REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION,
Petitioner,

-versus -

C.T.A. CASE NO. 4201

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - x

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D E C I S I O N

This is a petition for refund of alleged excess tax payments by petitioner in the amount of P273,876.05 for the year 1985 and P1,126,065.40 for the year 1986 or a total amount of P1,399,941.45.

Petitioner arrived at the foregoing amount in this wise:

<u>1985</u> -

Prior years's excess income tax payments		P3,016,841.00	(Exh. A)
Plus:			
Taxes Withheld on -			
Interest	P 255,864.00		
Rentals, etc.	812,380.00	1,068,244.00	(Exh. A)
		P4,085,085.00	
Less:			
Income Tax	P2,620,347.00		
1981 tax credit claimed in CTA Case No. 3964	1,190,861.95	3,811,208.95	
Excess tax payment		P 273,876.05	(Exh. D)

1986

Taxes Withheld by withholding Agents	1,126,065.40	(Exh. C)
Total excess tax payments	P1,399,941.45	

Petitioner submitted its evidence during the trial, to which respondent did not interpose any objection to their admission except as to the purposes for which they are offered. Respondent did not present any evidence for his case and submitted the case for decision based on the pleadings and the evidence.

In his memorandum, respondent points out that the amount of P255,864.00 representing taxes withheld from interest income should not be included in computing the income tax for 1985 since it is "evidenced by the Statement of Final Withholding Tax On Interest Income" (Exhibit A-4) executed by the withholding agent Paper Industries Corporation of the Philippines (PICOP)". This seeming error, however, is adequately explained by petitioner, thus:

> "x x x the interest income of petitioner on its shareholdings in PICOP Debenture bond was included as part of its gross income (as can also be seen in Schedule 5, Interest Not Subject to Withholding Tax, of Exh. A). x x x

> "In the preparation of the 1985 annual ITR (Income Tax Return) of petitioner, the interest income on the PICOP debenture bond amounting to P1,705,760.00 was inadvertently included as part of its gross income even if it should not be included anymore as it was already subjected to a final withholding tax of P255,864.00 (Exhibit A-4, No. 1 & No. 2). Since the interest income of P1,705,760.00 (Exh. A-4, No. 1 & 2) was included as part of the gross income, logically, the supposedly final withholding tax of P255,864.00 should also be included as part of domestic tax credit in the 1985 ITR, in order that the interest income will not be subjected to tax twice, that is, a final withholding tax on one hand and corporate income tax on the other, This explains why despite the term "final withholding tax", this tax withheld was still included as part of the tax credit."

Respondent also takes exception to the probative value of evidence of petitioner pertaining to attestations by withholding agents on taxes withheld from petitioner, particularly Exhibit C-4. Official BIR Forms 1743 and 1743.1 should have been used and submitted to the Bureau of Internal Revenue. A statement or return in official form executed by the withholding agent is thought to be the best evidence to prove the withholding of the tax.

In the light of the course respondent has chosen to prove his case, the approach turns out short. In a very recent case (**Citytrust Banking**

Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991) we concluded, under similar circumstances:

> "Respondent did not object to the existence of statements and certificates which were offered by petitioner as proof of the withholding taxes but took exception to their contents and purposes. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the veracity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proofs of the taxes withheld despite the fact that it is well within their competence to do so. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, those amounts of withheld taxes which are supported by corresponding statements or certificates of withholding taxes admitted in eividence shall be allowed as tax credits."

Nor does the failure of respondent affect only the subject of 1985 taxes. Against the claimed deductions by petitioner for 1986, which it supported with tax returns as evidence, respondent could only give out the perfunctory resistance such as that "mere allegation of net loss does not **ipso facto** merit a refund". But respondent for his part, did not present any evidence that would have disputed the correctness of the tax returns and other material facts therein **(Citytrust v. Commissioner of Internal Revenue, supra).**

As so reiterated in an earlier case (A. Soriano Corporation, CTA Case No. 3694) the pertinent part of which we find apt to be quoted another time,

> "The case before Us hardly present a gripping question or require a tortured ratiocination. As thus shown the basis for the claims are not short of specific support in terms of tractable data openly laid and fully disclosed. Going by the records, petitioner's income tax returns for the subject taxable years have shown losses and excess income tax payments. Respondent points to no factual errors nor superfluities which need be abridged. xxx.
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> "We see no reason and none is vouchsafed why these simple cases where fact and fabrication are no longer indistinguishable, should remain curiously unperturbed. It may be necessary to repeat what this Court said in what so plainly apply to the cases at bar that, "But as should be expected, the action could be maintained on the basis of the pleadings, admission and affidavit unsettling questions nor involves material factual issues genuinely in dispute."

WHEREFORE, the petition is hereby GRANTED. Respondent is ordered to issue a tax credit memorandum to petitioner in the sum of

P1,399,941.45 to be used as payment for its internal revenue tax liabilities.

SO ORDERED.

Quezon City, Metro Manila, August 7, 1991.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

ERNESTO D. ACOSTA
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.

ALEX Z. REYES
Presiding Judge