REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE MINING SERVICE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5666

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 21 2000

x - x

DECISION

This is a claim for refund of alleged overpaid withholding taxes on dividend payments for the year 1996 amounting to ₱160,000.00.

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office located at 11/F, Allied Bank Center, Ayala Avenue, Makati City.

The facts are simple.

On April 30, 1996, the Board of Directors of herein Petitioner declared cash dividends in favor of all its stockholders of record as of March 1, 1997, payable on or before April 30, 1997. On even date, the declared cash dividends were accrued in Petitioner's books of accounts. One of the stockholder-recipients of such dividends was Kawasaki Steel Corporation of Japan, a foreign corporation, whose accrued share earnings allegedly amounted to ₱1,600,000.00. Pursuant to the RP-Japan Tax Treaty, the corresponding 10% final withholding tax due thereon in the amount of ₱160,000.00 was withheld and remitted to Respondent's Bureau on September 25, 1996.

On February 27, 1997, the share equity investment of Kawasaki Steel Corporation of Japan was assigned and transferred, and on same date recorded in the stock and transfer books of herein Petitioner, to its new owner the Kawasaki Steel Philippines Corporation, a domestic corporation.

On April 30, 1997, Petitioner fulfilled its cash dividend declaration by paying cash dividends to its stockholders of record as of March 1, 1997.

Subsequently, upon the advise of its tax counsel, Sycip Gorres, Velayo & Company, a written claim for refund of the remitted amount of ₱160,000.00 was filed by the Petitioner with the Respondent on August 14, 1998 allegedly due to erroneous overpayment. It contended therein that as of March 1, 1997, Kawasaki Steel Philippines Corporation, a domestic corporation, was already the stockholder of record and no longer the Kawasaki Steel Corporation of Japan. Hence, pursuant to Section 24 (e)(4)[now Section 27 (D)(4)] of the Tax Code, as amended, which provides that inter-corporate dividends received by a domestic corporation from another domestic corporation shall not be subject to tax, the subject amount of ₱160,000.00 which has been withheld and remitted to the Bureau of Internal Revenue should be properly refunded.

On August 28, 1998, Petitioner elevated the instant Petition allegedly due to Respondent's inaction.

At bar, Petitioner reasserts its stance a quo. Respondent, on the other hand, is able only to state as special and affirmative defenses, some general precepts of taxation regarding refunds, namely, that taxes are presumed to have been paid and collected in accordance with law; that petitioner has the burden of showing that the taxes were erroneously collected; and that refunds are construed strictly against claimants since they are in the nature of exemptions from taxation.

Respondent contends in his memorandum that the return for the withheld taxes on cash dividends should have been made within 25 days from the close of the quarter covering the time of declaration of such cash dividends, as provided in Section 50 in relation to Section 51 of the Tax Code, as amended. He asseverates that at the time the cash dividends were declared on April 30, 1996, Kawasaki Steel Corporation of Japan was already taxable, without the need of actual receipt of the income one year later or on April 30, 1997; and that the subsequent transfer of the equity investment of the latter corporation to Kawasaki Steel Philippines Corporation was of no consequence.

In response to Respondent's preceding argumentation, Petitioner succinctly avers in its memorandum that it was only on March 1, 1997 and not on April 30, 1996 that the right to receive dividends has accrued to its stockholders; that prior to said date, no income in the form of dividend payments has accrued to any of Petitioner's stockholders since it was not until March 1, 1997 when the stockholders entitled to the dividends could be determined and known; and that lastly, there was therefore no obligation on the part of the stockholders prior to March 1, 1997 to pay income tax dividend payments.

Based on the foregoing facts and circumstances, We are confronted with the issue of whether or not Petitioner is entitled to its claim for refund on the alleged overpaid withholding taxes on dividends declared in the amount of ₱160,000.00.

We peremptorily rule against the granting of the instant claim for refund on the ground of insufficiency of evidence. As evidence to support its allegation that it has withheld and remitted the amount corresponding to it claim at bar, Petitioner merely presented a copy of its monthly remittance return of income taxes withheld filed on September 25, 1996 which shows the sole amount of ₱160,000.090 as taxes withheld for dividends paid to a non-resident foreign corporation whose country allows a tax deemed paid credit of 20% (Exhibit B). We find this singular evidence of alleged proof of payment to Kawasaki Steel Corporation of Japan as not credible enough to convince Us that indeed such remittance return pertains truly to the dividends remitted to the said corporation.

There is no showing in the above mentioned monthly return that Kawasaki Steel Corporation of Japan is the actual payee, except for the unilateral averments of Petitioner that it is so. In order to be believable, Petitioner should have submitted in evidence the copy of its reconciliation statement of quarterly payments and *list of payees and income payments*, as required under Par. (c) of Section 51 of the Tax Code, as amended, on returns and payment of taxes withheld at source. This piece of document would not have been required by law without any reason. It reveals the obvious fact that a monthly return alone does not contain the name of payees corresponding to the withheld taxes declared therein, hence, the need to submit the list of the payees. Without the latter, the amount of ₱160,000.00 shown in the monthly return (Exhibit B) tells Us nothing of who is the rightful payee thereto.

Also, Our curiosity is aroused by the amount of remittance made by the Petitioner. It is well conceivable within the realms of real possibility that the monthly return herein submitted in evidence could be for some other transactions or payees. This observation is substantiated by the fact that the cash dividend declaration of

₱4,000,000 (Exhibit A) corresponds only to a dividend earning of ₱1.00 for every share of stock totalling 4,000,000 shares (Exhibit E). If the number of shares purchased by Kawasaki Steel Philippines Corporation amounted to 1,599,997 shares only (Exhibit E; Schedule A of Exhibit C), then the 10% tax withheld and remitted should have been ₱159,970.00 only and not exactly for ₱160,000.00.

Coupled with the above, if Petitioner duly accrued the cash dividend payments on April 30, 1996, then why is it that it did not withhold and remit the taxes due on the following month for filing monthly remittance return of income taxes withheld? Why did petitioner file it only on September 25, 1996 or nearly five months thereafter? On this note, the arising doubt on the probability that the slightly larger amount of ₱160,000.00 could have been for another transaction and payee is brought to focus once more.

Petitioner is reminded that claims for tax refund are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and are to be construed in *strictissimi juris* against the person or entity claiming refund. The burden of proof is upon the taxpayer who claims the refund in his favor. It cannot be permitted to exist upon vague implications. **(Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710; Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, 207 SCRA 549; Emmanuel & Zenaida Aguilar vs. Commissioner, CA-GR No. Sp. 16432, March 30, 1990).**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate 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