REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5492

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:
JAN 27 1999

x - x

DECISION

This is a judicial action for the refund of the sum of ₱12,129,562.58, representing overpaid income tax resulting from an excess payment of creditable withholding taxes at source for the calendar years ended December 31, 1994 and December 31, 1995.

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is a specialty contractor engaged in the foundry business with principal office located at No. 391 J.P. Rizal Street, Mandaluyong City.

On June 19, 1997, petitioner filed its amended 1994 Corporation Annual Income Tax Return reflecting, a net loss from operations in the amount of ₱19,762,692.00, a nil income tax liability but with a refundable amount of ₱9,516,718.00, arising from various creditable withholding taxes at source (Exh. B). On April 10, 1997,

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petitioner filed its amended 1995 Corporation Annual Income Tax Return reflecting another net loss from operations in the amount of ₱378,582.00, a nil income tax liability but with refundable amount of ₱2,612,845.00, arising from various creditable withholding taxes at source (Exh. II).

On March 14, 1997, petitioner filed a letter claim for refund with the Bureau of Internal Revenue in the total amount of ₱12,129,562.58, representing alleged overpaid creditable withholding taxes at source for the years 1994 and 1995 (Exhs. A and A-1).

The inaction of respondent on its letter claim for refund compelled petitioner to file the instant petition for review on April 11, 1997 in order to conform with the reglementary period of two years as prescribed under Section 230 of the Tax Code, as amended.

Respondent, on his part, advanced as special and affirmative defenses that "[P]etitioner's claim for refund is still undergoing administrative routinary investigation; the amount of tax sought by the petitioner to be refunded was paid pursuant to law and BIR implementing rules and regulations, hence the same is not refundable; petitioner's allegations that it overpaid its income tax for the years under review does not *ipso facto* warrant the refund; it must likewise prove that the alleged refundable taxes were neither automatically

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applied as tax credit; claims for tax refund are construed strictly against the claimant as it partakes of the nature of an exemption from tax; and petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

In support of its claim for refund, petitioner presented, among others, the following documentary exhibits:

a. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. A and A-1);

b. The 1993, 1994 and 1995 amended Corporation Annual Income Tax Returns (Exhs. B to B-3, D to D-1, and II to II-3); and

c. The various Certificates of Creditable Withholding Tax at Source [BIR Form 1743.1] for the years 1994 and 1995 (Exhs. E, F, G, H, L, M, to M-3, N, N-1, O, P, P-1, Q to Q-2, R, R-1, S, T, U, V, W to W-2, X, X-1. Y, Z, AA, BB, CC to CC-3, DD, EE, FF, GG, HH, KK, LL to LL-2, MM, MM-1, OO to OO-3, PP, QQ, RR, SS to SS-3, TT, UU to UU-3, VV to VV-3, WW, XX, YY to YY-2, ZZ to ZZ-3, AAA to AAA-2, BBB to BBB-3, CCC, DDD, EEE, FFF to FFF-3, GGG, HHH to HHH-4, III to III-2, JJJ, KKK to KKK-3, LLL to LLL-3, MMM to MMM-3, and NNN).

This case was submitted for decision sans the evidence and memorandum of the respondent.

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The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of ₱12,129,562.58, representing alleged overpaid income tax for the years 1994 and 1995.

The legal basis of petitioner in claiming for the refund of overpaid income tax is Section 69 of the Tax Code, as amended, which reads as follows:

> "**Sec. 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> 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 evident from the amended 1994 and 1995 income tax returns of petitioner that it opted to claim as refund the overpayments instead of applying them as an automatic tax credit to succeeding taxable year as shown by the "x" marks in the box "TO BE REFUNDED" (Exhs. B and II). Thus, petitioner's income tax payments for the years 1994 and 1995 appear to be refundable because they

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were not utilized as payment for income tax liabilities. However, petitioner must support its legal entitlement with substantial evidence which is the factual aspect of the case.

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 is hereby quoted as follows:

> "**Sec. 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 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, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied)

An analysis of the evidence submitted by petitioner reveals that it failed to show that the claim for refund was timely filed within two years from the date of

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payment of the tax. Petitioner failed to present the original Corporation Annual Income Tax Returns for the calendar years 1994 and 1995 to enable Us to verify if the claim for refund was made within the two-year reglementary period. Both documents are needed for the purpose of determining whether petitioner filed the claim for refund with the respondent and the petition for review with this Court within the two-year presoriotive period, reckoned from the actual date of filing of the original final adjustment returns **(Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., 244 SCRA 446)**. The mere allegations by the Counsel of petitioner that the 1994 and 1995 income tax returns were filed in April, 1995 and April, 1996, respectively and that the claim for refund was filed within the two-year period have to be verified. We could not see the reason why such important documents were not presented by the petitioner during the trial of the case. In the absence of these material documents, the Court is constrained to deny petitioner's prayer.

Well settled is the rule that a claim for refund is in the nature of a claim for exemption and should be construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332)**.

WHEREFORE, finding the petition for review without merit, the same is hereby **DENIED** with costs against petitioner.

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

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