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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4947

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 30 1995

x - x

D E C I S I O N

This case involves a claim for the refund or issuance of a tax credit of P616,169.02, allegedly representing overpaid income tax for the year 1990 pursuant to Section 230 of the National Internal Revenue Code.

Petitioner is a corporation duly organized and existing under the laws of the Philippines engaged in the business as a stockbroker and securities broker. Petitioner's principal office is located at 3rd Floor, Asian Plaza; Sen. Gil J. Puyat Avenue, Salcedo Village, Makati, Metro Manila.

For the calendar year ending December 31, 1990 petitioner filed its Corporate Annual Income Tax Return on April 15, 1991 showing a net loss of P1,918,267.00 and a refundable amount of P939,485.30 (Exh. B), computed as follows:

Income			P17,110,912.00
Less: Deductions			19,029,179.00
Net Income			(P1,918,267.00)
Tax Due			Nil
Less: (a) Prior Year's Excess Credit		P323,316.28	
(b) Quarterly Payments 1st Quarter		604,405.46	(927,721.74)
Balance of Tax Due			(P 927,721.74)
Less: Tax Credit			11,763.56
TOTAL AMOUNT DUE/REFUNDABLE			(P 939,485.30)

2. [x] To be Applied as Tax Credit to Succeeding Taxable Year

For the first quarter ending March 30, 1990, petitioner paid the quarterly income tax of P604,405.46 (Exhs. A-1, A-2 and A-3) and the sum of P11,763.56 was withheld by various withholding agents from petitioner representing 5% of the corporation commercial brokers fees paid in the total amount of P235,471.15 (Exhs. A-5 and D). Petitioner included as part of its refundable income tax the amount of P323,316.28, representing prior year's (1989) excess credit. Thus, petitioner's 1990 Income Tax Return showed a total refundable amount of P939,485.30. Petitioner, however, indicated in its return that it will apply said amount as tax credit to the succeeding taxable year (1991).

On April 2, 1992, petitioner through its auditors filed a claim for refund with the respondent in the amount of P616,169.02, representing alleged overpaid income tax for the year 1990, computed as follows:

Total Refundable Amount per 1990 Annual Return	P939,485.30
Less: 1989 excess credit subject to another claim for refund	323,316.28
Actual Refundable amount	P616,169.02

A separate claim for refund and petition for review (CTA Case No. 4786) was filed by petitioner with respect to its 1989 excess tax credit in the amount of P323,316.28. Hence, this petition, filed on January 22, 1993, is now limited to the claim for refund of P616,169.02, representing overpaid income taxes for the year 1990. Only the first quarter payment for 1990 in the amount of P604,405.46 and the creditable taxes withheld in 1990 in the sum of P11,763.56 or a total of P616,169.02 was sought to be refunded or tax credited by petitioner.

The issue is whether or not petitioner is entitled to be refunded or a tax credit certificate be issued in the amount of P616,169.02 as alleged overpaid income tax for the year 1990.

Respondent alleged that the petitioner failed to state in its petition that the tax collected was erroneous and illegal. The claim for refund is still pending investigation with the Bureau of Internal Revenue, hence, this petition is premature. Tax refund is construed strictly against the taxpayer. The burden is on the petitioner to show that taxes were actually withheld and remitted to the Bureau of Internal Revenue.

For its part, petitioner formally offered in evidence the following documents which were properly identified by its witness:

1. First Quarter Income Tax Return for calendar year 1990, filed on March 28, 1990, showing the tax due of

P604,405.43 (Exhs. A, A-1 and A-2) paid under PO No. C 8024507 (Exh. A-4) and CR No. B20095784 (Exh. A-3);

2. 1990 Corporate Annual Income Tax Return together with its attachments consisting of:

a. 1990 Certificates of Creditable Income Taxes Withheld At Source (BIR Form No. 1743.1) showing the 5% tax withheld on commercial brokers fees by various withholding agents (Exhs. C, C-1 up to C-9, inclusive); and

3. Letter claim for refund dated April 2, 1992 filed with the Chief, Appellate Division of the BIR on the same date.

Respondent waived her right to present any evidence. Instead, her counsel opted to submit this case for decision based on the pleadings.

After careful examination of the evidence presented by petitioner we find that the burden of proof in claims for refund or tax credit has not been overcome by petitioner. The evidence offered by petitioner lacks one vital document which is the 1991 Corporate Annual Income Tax Return. Petitioner in its 1990 Income Tax Return marked the box corresponding to the phrase "To be Applied as Tax Credit to Succeeding Taxable Year" showing its intention to credit the income tax refundable amount of P939,485.30 in its 1991 income tax liability if any. Petitioner failed to present the 1991 Income Tax Return to properly appraise this Court of whether said amount was indeed credited to its income tax liability for the succeeding year.

In the case of **BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services,**

Inc.), v. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993, this Court had the occasion to rule:

> "After a thorough review of the arguments raised by both parties this Court arrived with the following findings. In the process of going over the records of the case, the Court noted that the 1990 Income Tax Return was not presented in evidence by the petitioner. Had it been presented in evidence, petitioner may have claimed as tax credit the amount sought for. Accordingly, since the 1990 Income Tax Return was not presented, it cannot be ascertained whether the refundable amount of P199,255.60 was already credited being part of P877,857.60 applied for as tax credit to the succeeding taxable year 1991. There is no way by which this Court can determine how much it is legally entitled to.
>
> Unfortunately, petitioner fall short in its obligation to submit the vital document which would have worked to his advantage. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the time tested doctrine that claims for refund are construed strictly against claimant **[Commissioner of Internal Revenue v. Ledesma, G.R. No. L-17509, January 30, 1970, (31 SCRA 95]**.
>
> To the Court's mind, granting petitioner's prayer will be a dangerous road to follow, thus endangering our time tested maxim that justice will be served to anyone who earnestly seek for it."

The same ruling was adopted by the Court in the case of **BPI Family Savings Bank, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4694, December 24, 1993,** were it was held that where the return showed a refundable income tax which is to be applied as tax credit to succeeding taxable year there arise a presumption that the same was already applied as tax credit on the succeeding taxable year. Such presumption could have been overturned by presentation of the succeeding income tax return by petitioner showing that it did not automatically credit the said amount. For to grant the claim for refund despite the fact that said amount was applied as tax credit would be detrimental to the interest of the government as the same is tantamount to granting petitioner twice the refund of the same amount.

In another case, petitioner's averment that part of the creditable tax withheld in 1988 was partially applied to its income tax liability for 1989 without presenting to the Court its 1989 Income Tax Return for proper evaluation the claim for refund was denied **(AF Holdings and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993).**

Thus, in the case at bar, petitioner failed to substantiate its claim for refund or the grant of a tax credit certificate due to failure or omission on its part to present and offer its 1991 Income Tax Return. Its presentation is necessary to prove to the Court that the refundable amount claimed was not applied as a tax credit to the succeeding taxable year. Petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations **[Caltex (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986].**

WHEREFORE, the instant petition is hereby **DISMISSED** for lack of merit. Petitioner's claim for refund or issuance of a tax credit certificate is **DENIED**. Without pronouncement as to costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals