REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITHKLINE BEECHAM RESEARCH LIMITED PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 5506

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 15 1998

x - x

D E C I S I O N

This case involves a judicial action for the refund of the amounts of ₱3,449,681.00 and ₱11,244,504.00, representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the calendar years ended December 31, 1994 and December 31, 1995, respectively.

Petitioner is a corporation duly organized and existing under the laws of England. It is registered with the Securities and Exchange Commission to engage in the business of manufacturing pharmaceutical products, through a Philippine branch, with office address located at 5th Flr., JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig, Metro Manila.

For the calendar year 1994, petitioner filed its Corporation Annual Income Tax Return on April 11, 1995, reflecting, among others, a refundable amount of ₱3,499,681.00 (Exhs. A to A-2). This refundable amount was opted by the petitioner to be refunded but was actually carried over to the succeeding taxable year 1995.

For the calendar year 1995, petitioner filed its Corporation Annual Income Tax Return on April 15, 1996 showing a total refundable amount of ₱14,744,185.00 which included the 1994 creditable taxes withheld of ₱3,499,681.00 and the 1995 creditable withholding taxes at source in the amount of ₱11,244,504.00 (Exh. P). Although, the whole refundable amount of ₱14,744,185.00 was "to be applied as credit to next year", this did not materialize because petitioner did not carry it over in 1996 as shown by the amended 1996 income tax return (Exh. HH).

On October 22, 1996, petitioner filed a letter claim for refund with Revenue District No. 43 of the Bureau of Internal Revenue asking for the refund of the amount of ₱14,744,185.00, representing unutilized creditable withholding taxes at source for the years 1994 and 1995 (Exh. FF).

Since respondent has neither granted nor acted upon the claim for refund, petitioner was left with no recourse but to file the instant petition for review on April 14, 1997 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Upon these facts, respondent merely advanced as special and affirmative defenses that petitioner's claim for refund is still undergoing administrative investigation; in an action for tax refund, the burden of proof is upon the taxpayer and failure to sustain this burden is fatal its claim (**Surigao Consolidated Mining Company vs. Commissioner of Internal Revenue, 9 SCRA 728, 734, [1963]**); it is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation with Section 230 of the Tax Code; and claims for refund are construed *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. Tokyo Shipping Company, Ltd., 244 SCRA 332, 336 [1995]**).

In order to support its entitlement to the refund, petitioner presented the following documents:

a. The 1994, 1995, and 1996 final income tax returns with the attachments of audited financial statements and auditors' report (Exhs. A, A-1, A-3, P, GG and HH);

b. The various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. B, C, D, E, F, G, H, I, J, K, L, M, N,

P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, and EE); and

c. The letter-claim for refund with the Bureau of Internal Revenue (Exh. FF).

The aforementioned documents were all admitted by the Court in a Resolution, dated January 8, 1998.

On the other hand, respondent's counsel submitted his case for decision without presentation of any evidence (see Minutes of the Session, February 19, 1998, p. 302, CTA records).

Both parties submitted their respective memoranda.

The Court is now confronted with the following issues:

1. Whether or not petitioner is legally entitled to the refund sought; and

2. Whether or not petitioner has fully substantiated with proper evidence, its claim for refund.

Anent the first issue, petitioner cites as legal bases Sections 51 and 69 of the Tax Code, as amended.

For easy reference, Sections 51, and 69 of the Tax Code, as amended, are hereby quoted as follows:

> "Sec. 51. *Returns And Payments Of Taxes Withheld At Source.* -
>
> (a) Quarterly returns and payment of taxes withheld. xxx
>
> (b) Statement of income payment made and taxes withheld. - Every withholding agent

required to deduct and withhold taxes under Section Fifty-three shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporation

(d) Income of Recipient. - Income upon which any creditable tax is required to be withheld at source under Section 50 shall be included in the return of its recipient but any excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of section 204; if the income collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 49.

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.

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. (Underlining supplied).

The above provisions of law settles petitioner's entitlement to the refund of an excess income tax payment.

We now delve on the second issue which is the factual aspect of the case.

It is already well-settled that three basic requirements must be met before a refund of overpaid creditable withholding taxes may be granted, to wit:

> 1. that it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3. The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom. [Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].

A circumspect study of the records and evidence of the case revealed that petitioner qualifiedly met the requirements mentioned above.

As regards requirement number one, the claim for refund of overpaid income tax arising from the excess payment of withholding tax at source should be filed both with the Commissioner of Internal Revenue and with this Court within the two-year period from the date of payment of the tax as provided under Section 230 of the Tax Code, as amended. A verification of the judicial claim for refund of petitioner for the calendar year 1994 disclosed that petitioner only filed the instant action on April 14, 1997 whereas the date of payment of the tax was on April 11, 1995, the date when the annual income tax return of petitioner was filed. Therefore, the 1994 claim for refund in the amount of P3,,499,681.00 has already prescribed for being filed beyond the two-year period provided by law (Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs.

Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989). With respect to the 1995 overpaid creditable withholding tax in the amount of P11,244,504.00, the filing of the claim for refund was within the two-year period. It appears from the records that the filing of the administrative claim for refund with the Bureau of Internal Revenue was done on October 22, 1996 (Exh. II) and the petition for review with this Court on April 14, 1997. The counting of the two-year period commences to run on April 15, 1996, the time when the petitioner filed its final income tax return for the taxable year 1995.

As to the second requirement, petitioner was able to show that the income upon which the creditable withholding taxes for 1995 were paid was included in its gross income. This was testified to by petitioner's witness, Mr. Robert de Jesus Velilla, Jr. (pp. 18 and 19, TSN, August 26, 1997) and was shown under Section F of the 1995 annual income tax return of petitioner (Exh. P).

With respect to the last requirement, petitioner fell short in proving all the withholding taxes claimed during the year 1995. A summation of the amounts reflected in the certificates of creditable withholding tax at source (BIR Form 1743.1) presented by petitioner shows a lesser amount of ₱7,748,641.36 than what petitioner is claiming for, to wit:

Withholding Agent	Exh.	Amount of Income Payments	Amount of Tax Withheld
Mercury Crug Corporation	Q	₱ 278,520.00	₱ 2,785.20
Mercury Drug Corporation	R	257,400.00	2,574.00
Mercury Drug Corporation	S	270,270.00	2,702.70
Mercury Drug Corporation	T	517,506.00	5,175.06
Mercury Drug Corporation	U	358,860.00	3,588.60
Mercury Drug Corporation	V	428,675.00	4,286.75
Mercury Drug Corporation	W	547,621.00	5,476.21
Mercury Drug Corporation	X	73,256.00	732.56
Mercury Drug Corporation	Y	270,746.00	2,707.46
Mercury Drug Corporation	Z	561,802.00	5,618.02
National Development Company	AA	85,300.00	853.00
Zuellig Pharma Corporation	BB	163,627,081.00	1,636,270.81
Zuellig Pharma Corporation	CC	170,807,910.00	1,708,079.10
Zuellig Pharma Corporation	DD	234,959,638.00	2,349,596.38
Zuellig Pharma Corporation	EE	201,819,551.00	2,018,195.51
T O T A L		₱774,864,136.00	₱7,748,641.36

Therefore, this Court limits petitioner's entitlement to the sum of ₱7,748,641.36 which was supported by evidence.

The allegation advanced by the respondent that the mere averment of net loss does not *ipso facto* merit a refund, suffice it to state that in the case of **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, dated December 20, 1993** such controversy has already been settled, and We quote.

> Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this

> case for decision nothing was shown during the hearing that the return was erroneous nor was there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified this Court if there any. It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of the quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of ₱65,259.00 (see also **Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, dated May 28, 1991**).

Respondent also avers that there is no sufficient proof that the taxes withheld by the payor were remitted to the BIR and that petitioner should have presented certifications from the BIR's Revenue Accounting Division as to the fact of remittance.

We find respondent's contention without merit. The presentation of such certifications are not required by law and/or implementing revenue regulations. All that is required to show proof of withholding is the presentation of the statements of tax withheld at source (BIR Form

1743.1) showing the income received and the amount of tax withheld therefrom and that the income was included to form part of petitioner's gross income as stated in its income tax return.

The reason for this is simple. The withholding agent is not within the control of the payee-taxpayer but are considered as the tax agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government (**Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA-GR SP No. 26839, July 31, 1992**).

Thus, it is significant to note that the presentation of payment orders, confirmation receipts or in the alternative the *admission of withholding agents* are not at all required under the law and regulations. The BIR Form 1743.1 having been signed under the penalties of perjury can be taken on its face (**Filipinas Management & Leasing Services Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4146, dated March 11, 1994**).

WHEREFORE, in view of the foregoing, the petition for review is found to be partially meritorious. The claim for refund of petitioner for the calendar year 1994 is hereby DENIED for being filed out of time but the claim for refund for excess creditable withholding tax for the calendar year 1995 is GRANTED. Accordingly, respondent is ordered to **REFUND** in favor of petitioner the sum of P7,748,641.36.

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