REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISUZU MOTORS PILIPINAS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5236

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 21 1998

x - x

DECISION

This is a judicial action for the refund or issuance of tax credit certificate in the sum of P2,468,909.00 representing overpaid or excess tax payments for calendar year 1992.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws.

On April 15, 1993, petitioner filed its 1992 Annual Corporation Income Tax Return reflecting a total income tax due in the amount of P10,748,648.00 as against its 1992 quarterly income tax payments in the total amount of P16,922,618.00 and creditable taxes withheld at source in the total amount of P2,181,779.00 resulting in the alleged overpayment of its 1992 income tax in the total amount of P8,355,749.00 (Exhs. "A" to "A-4", inclusive).

Petitioner opted to carry over this alleged overpayment as tax credit to the succeeding taxable year 1993, pursuant to Section 69 of the Tax Code, as amended. However, although the excess credit was applied and partially utilized against petitioner's income tax due for the year ended December 31, 1993, the Annual Corporate Income Tax Return of the petitioner (Exhs. "F", "F-1") still showed a net refundable tax in the total amount of P2,721,258.00, computed as follows:

Gross Income		P46,209,099.00
Less: Deductions		29,389,557.00
Net Income		P16,819,542.00
Net Rate		35%
Income Tax Due		P 5,886,840.00
Less:		
a) Prior Year Excess Credit	P8,355,749.00	
b) Creditable Tax Withheld	252,349.00	P 8,608,098.00
Total Refundable Tax		P 2,721,258.00

Subsequently, on December 22, 1994, petitioner, through its tax adviser, Sycip Gorres Velayo & Co., filed with the Bureau of Internal Revenue a claim for refund of the above-overpaid income tax in the amount of P2,721,258.00 allegedly representing overpaid or excess income tax for the year 1992 (Exh. "K").

The apparent inaction of the respondent on the claim for refund prompted the petitioner to file this present judicial action on April 11, 1995 and to toll the running of the two-year period allowed under Section 230 of the Tax Code, as amended. It should be noted that petitioner reduced its claim of P2,721,258.00 to P2,468,909.00 in the judicial level.

Upon these facts, respondent advanced the following special and affirmative defenses, thus:

> 1. The claim for refund has already prescribed considering that the alleged quarterly excess payments subject of the claim were made in 1992 while the application for refund was made only on December 22, 1994 and the instant petition was filed on April 21, 1995 which, in both instances, were already beyond the two-year reglementary period within which to file a claim for refund and the appropriate petition for review under Section 204(3) and 230 of the Tax Code;
>
> 2. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid, withheld and remitted to the BIR in accordance with the provisions of the Tax Code;
>
> 3. The claim for a tax refund requires sufficient time for respondent to examine the income tax records and business operations of petitioner for the years 1992 and 1993 which is the standard procedure in any claim for tax refund, therefore, the claim for refund is still under investigation;
>
> 4. In an action for refund, the burden of proof is upon the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action;

2ω

5. The allegations regarding refundability does not ipso facto merit the refund claimed;

6. Any claim for tax refund is construed strictly against the claimant, the same being in the nature of an exemption from taxation.

In support of its claim for refund, petitioner presented various documentary exhibits which consist of the following:

a. The 1992 Annual Income Tax Return (Exhs. "A" to "A-4", inclusive)

b. The 1993 Annual Income Tax Return (Exhs. "F" to "F-4", inclusive)

c. The 1994 Annual Income Tax Return (Exhs. "M" to "M-2", inclusive)

d. The 1990 Annual Income Tax Return (Exhs. "L" to "L-5", inclusive)

e. The 1991 Annual Income Tax Return (Exhs. "D" to "D-5", inclusive)

f. The Letter-claim for refund with the Bureau of Internal Revenue (Exh. "K")

g. The various Certificates of Creditable Withholding Tax At Source [BIR Form 1743.1] (Exhs. "B", "C", "G", "H", "I")

h. The Financial Statements and report of the independent auditors (Exh. "E")

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of ₱2,468,909.00 representing alleged overpaid or excess tax payments for calendar year 1992.

The legal basis of petitioner in claiming for the refund of its alleged overpaid or excess 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 taxable 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 quarter of the succeeding taxable year." (Underscoring supplied)

The pertinent provision of Revenue Memorandum Circular (RMC) Nos. 7-85 and 32-76, also states, that:

> "In the above provision of the Regulation (Section 7 of the Revenue Regulations No. 10-77), the corporation may request for the refund of the overpaid income tax or claim for automatic credit. To insure prompt action on corporate annual income tax returns showing refundable sum from overpaid quarterly income taxes, this office has promulgated Revenue Memorandum Order No. 32-76, dated June 11, 1976, containing the procedures in processing said returns. Under these procedures, the

262

> returns are merely pre-audited consisting mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted; and this procedure was adopted to facilitate immediate action on cases like this. x x x" (Underscoring supplied)

The aforesaid provisions of law and Revenue Memorandum Circular allow the automatic carry-over and application of the excess tax credits against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Thus, since the prior year's excess tax credit of petitioner was not fully utilized against its income tax liabilities for the succeeding taxable year 1993, petitioner appear to be entitled to the refund of the excess amount paid. However, petitioner must satisfactorily prove its entitlement to the refund by substantial evidence. It must prove that there was indeed an overpayment of income taxes as appearing in the face of its final adjustment returns for the taxable years 1992 and 1993.

Section 230 of the Tax Code 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 of 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 collected 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, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without 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.

A perusal of the evidence submitted by petitioner reveal that petitioner's claim for refund was timely filed within two (2) years from the date of payment of the tax. Petitioner's claim for refund with the Bureau of Internal Revenue (BIR) was filed on December 22, 1994 (Exh. "K") and its Petition for Review with this Court was filed on April 11, 1995. The two-year period commenced on April 15, 1993 the time required by law for the petitioner to file its final income tax return for the calendar year 1992 (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., GR No. 837736, January 15, 1992**).

Ue4

Respondent, in her Memorandum, dated July 31, 1997 (CTA records, pp. 225-227), insists that there was an error in the deduction of realized foreign exchange losses from the 1992 gross income of the petitioner despite the fact that such supposed losses were already taken up in the years 1990 and 1991.

We are not swayed by the findings of respondent's Revenue Enforcement Officer Armando Tria. Contrary to his claim, petitioner presented its 1990 and 1991 Annual Income Tax Returns with the attached audit report and financial statements duly prepared by an independent CPA (Exhs. "L" to "L-5", inclusive; "D" to "D-5", inclusive). It shows that such foreign exchange losses (₱26,576,357.98 for 1990 and ₱2,979,136.50 for 1991) were not deducted from gross income for the purpose of computing the tax due since they were not yet realized nor sustained in calendar years ended 1990 and 1991. They were also considered as unallowable deductions in the reconciliation of income and computation of tax due for the period in question. Thus, these foreign exchange losses were only deducted in 1992 when they were realized or sustained, and taken up in the computation of the income tax due for the calendar year ended 1992.

"The loss is deductible only in the year it is actually sustained. It is sustained during the year in

2165

which the loss occurs as evidenced by closed and completed transactions and as fixed by identifiable events occurring in that year. A closed transaction is a taxable event which has been consummated. No taxable event has yet been consummated prior to the remittance of the scheduled amortization. Accordingly, foreign exchange losses sustained as a result of devaluation of peso vis-a-vis the foreign currency, e.g., US dollar, but which remittance of the scheduled amortization consisting of principal and interest payments on a foreign loan has not actually been made are not deductible from income for income tax purposes." (BIR Ruling No. 144-85, dated August 26, 1985). Thus, We rule that the foreign exchange loss of ₱29,555,494.48 was properly deducted from gross income for income tax purposes in calendar year 1992, the time when they were actually sustained or realized.

The Court also noted that the findings made by Revenue Enforcement Officer Tria on the existence of the alleged undeclared revenue cannot be given consideration or much weight. On cross examination, he admitted that he did not verify whether the income from which tax was withheld in arriving at the alleged undeclared revenue was included in the gross receipts reported by the petitioner for the year. In this regard, it is natural

266

and logical to conclude that the findings were not based on actual facts but merely on presumptions and inferences (TSN, June 19, 1996, pp. 36-37).

In conclusion, We find petitioner to be entitled to the reduced amount of ₱1,577,115.74 instead of ₱2,468,909.00 as stated in its memorandum. Petitioner failed to substantiate its alleged overpaid income taxes for the taxable year 1991 in the sum of ₱850,614.00 (Exhibit D-1) because it did not present any evidence of quarterly income tax payments corresponding to said taxable year. Without these evidence of quarterly income tax payments, this Court cannot verify the alleged overpayment. So based on the evidence presented, We have made the following computation:

Tax Due for 1992 (Exh. A)					₱10,748,648.00
Less:					
a. Prior Year's Excess Credit				₱ -	
b. Quarterly Payments Made This Year:					
Qtr.	*Exh.*	*Date*	*Amount*		
1st	A-1	05-28-92	₱4,556,641.44		
2nd	A-2	08-28-92	6,359,225.81		
3rd	A-3	11-26-92	6,006,750.68	16,922,617.93	
c. Creditable Tax Withheld:					
Withholding Agent	*Exh.*		*Amount*		
Gencars, Inc.	B		₱1,007,624.00		
Southern Motors of Davao, Inc.	C		282,361.81	1,289,985.81	18,212,603.74
Balance					₱ 7,463,955.74
Less: Partially Applied As Tax Credit In 1993 (Exh. F)					5,886,840.00
TOTAL AMOUNT REFUNDABLE					₱ 1,577,115.74

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a tax credit certificate in favor of petitioner the amount of ₱1,577,115.74 representing overpaid income tax.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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
Court of Tax Appeals