LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5323

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 25 1997

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DECISION

In the case at bar the issue which is presented for our consideration is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P28,613,183.04, allegedly representing its excess creditable withholding tax for the taxable year 1993.

As represented, petitioner is a domestic corporation, engaged in mining activities including, among others, the exploration, development and operation of mining properties for purposes of commercial production. On April 15, 1994, petitioner filed with the Bureau of Internal Revenue its Corporate Annual Income Tax Return for the calendar year ending December 31, 1993 (Exh. A) declaring a net loss of P45,341,101.00. In the said return, petitioner declared a tax credit/refundable in the total amount of P28,613,183.00, which allegedly represents the creditable tax withheld, from its rental and service income and from the gains it derived from sale of real properties during the year 1993, by various withholding agents, as follows:

Withholding Agent	Amount of Income	Withholding Tax at 5%
A. From Rental of Real Properties		
Far East Bank & Trust Co.	P1,114,438.20	P 55,721.91
Metropolitan Bank & Trust Co.	602,154.00	30,107.70
Engineering Equipment, Inc.	500,000.00	25,000.00
Petrofields Exploration and Development Co., Inc.	109,143.36	5,457.17
	2,325,735.56	116,286.78
B. From Sale of Real Properties		
To Consortium of Banks (BPI, FEBTC, MBTC & PCIB) thru Public Bidding	569,300,001.00	28,465,000.05
C. From Sale of Services		
Manila Mining Corp.	3,189,621.00	31,896.21
TOTAL	P574,815,357.56	P28,613,183.04

Since petitioner incurred a net loss position for the year 1993, the aforestated creditable withholding tax was not utilized for the said taxable year neither was it utilized or deducted from petitioner's income tax liability for the succeeding taxable year of 1994 as it likewise suffered a net loss position.

In a letter dated March 22, 1995, which was received by the respondent's Bureau on March 27, 1995, petitioner filed a claim for refund or issuance of a tax credit certificate of the aforesaid amount of P28,613,183.04, inasmuch as it had no tax liability for the years 1993 & 1994 against which to credit the amount withheld.

The aforesaid claim was not acted upon by the respondent, hence, on January 26, 1996, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that it is entitled to the refund of the aforementioned excess creditable withholding tax since it falls squarely within the ambit of Sec. 69 of the Tax Code, which provides:

> SEC. 69. ***Final Adjustment Return.***-Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (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.

Further, petitioner pointed out that the instant claim for refund was well within the two (2) year period prescribed in Sections 204 and 230 of the Tax Code, which provides:

> SEC. 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.***-x x x (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

> 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 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.
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> 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 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.

Respondent in her answer stressed that the petitioner's application for tax refund of the alleged excess creditable withholding tax is pending investigation/verification rendering the institution of the instant action premature. Further, respondent raises in the usual token of a defense that (1) petitioner has failed to show that the tax subject of the claim was erroneously or illegally collected (2) petitioner has failed to show that it has complied with the provisions of Section 230 of the Tax Code (3) the tax sought to be refunded is presumed to have been collected in accordance with law, and (4) a claim for tax refund partakes of the nature of an exemption from taxation, hence, must be construed against the petitioner.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P28,613,183.04 allegedly representing its creditable withholding tax for the taxable year 1993.

We find nothing ambiguous nor obscure in the language of Section 69 of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. However, before the claim for tax credit or refund of income tax deducted and withheld on income payments shall be given due course, claimant or petitioner as in the case at bar must show compliance with the following requisites:

1). that it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. CA, 204 SCRA 957)

2). the fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (*ibid.*)

3). that the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code;

In establishing its claim for refund, petitioner during trial presented evidence (Exhibits A to R) to substantiate its claim that (1) It filed its Corporate Annual Income Return on April 15, 1994, (2) the income upon which the taxes were withheld were included in the return of the petitioner, and (3) the amount claimed to be refunded were in fact withheld and remitted to the respondent by the withholding agents. Petitioner presented as evidence the photocopies of Certificates of Creditable Tax Withheld at Source (Form No. 1743.1) (Exhibits B, C, D, E, F, G, H, I, J, K, K-3, L, M, N, O, P and R) to show the amount of income tax withheld by various withholding agents during the period covered by the claim for refund. Further, petitioner presented Exhibits S and T, to show that it also suffered a net loss position for year 1994 and that it filed its claim for refund of the aforesaid amount with the respondent on March 27, 1995. Respondent did not object to the existence of the exhibits offered by the petitioner as proof of its claim of excess payments but took exception to the relevancy of the purposes and the probative value for which the same were offered in evidence. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the authenticity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proof of excess payments or excess creditable withholding tax despite the fact that it is well within their competence to do so. Respondent is thereby considered to have vouched the veracity of these exhibits.

A minutiose scrutiny of the BIR records reveals that the petitioner's claim for refund was actually recommended for refund by the Revenue Officer who investigated/examined the case (pages 81 to 85, BIR records). In the said findings of the Revenue Officer, it was stated that there was an erroneous typing made per Deed of Absolute Sale wherein it appeared in the Deed that Benguet Management Corp. was the owner of Transfer Certificate of Title No. TCT-296, instead of petitioner (see p. 7, BIR records). Thus, the issue raised by the respondent in her memorandum that petitioner is not the proper party to seek for the refund of P28,465,000.05 was negated.

Apropos to the issue of prescription, We find merit in the petitioner corporation's ratiocination that its claim for refund has not yet prescribed. As resolved by the Supreme Court on April 10, 1989 in the case of *Commissioner of Internal Revenue vs. Asia Australia Express, Ltd. (G.R. No. 85956)*, the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return *(ACCRA Investment vs. Court of Appeals, supra)*. Records show that petitioner filed its

Corporate Annual Income Tax Return for the year 1993 on April 15, 1994 (Exh. A). The date of the filing of the instant petition which was on January 26, 1996 is clearly within two (2) years from April 15, 1994.

IN THE LIGHT OF ALL THE FOREGOING, we are persuaded to extend the relief sought by the petitioner. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein petitioner in the amount of ₱28,613,183.04, without pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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