L1B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN MOTORS SOUTH SUPER, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5616

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 04 2000

x - x

DECISION

The present appeal involves a judicial action for the refund or in the alternative for the issuance of a tax credit certificate in the amount of P19,707,833.00, allegedly representing overpaid income tax arising from unutilized creditable withholding tax at source for calendar year ended December, 31, 1995.

The facts as borne out by the records of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the assembly and manufacture of automobiles, including the sale and distribution of automotive spare parts with business address located at Km. 16 West Service Road, South Superhighway, Bicutan, Parañaque, Metro Manila.

On April 15, 1996, petitioner filed its 1995 Tentative Corporation Annual Income Tax Return declaring an overpaid income tax in the amount of P35,913,007.00 (Annex A). This adjustment return was later amended on October 7, 1996 which shows a lesser excess income tax payment in the sum of P19,707,388.00, computed as follows: (Exh. A)

Gross Income:		
Sale of Goods (Schedule 1)		
Gross Sales During the Year	P 950,108,423.00	
Less: Cost of Sales	1,157,444,654.00	
Gross Profit/(Loss)		(P207,336,231.00)
Sale of Services (Schedule 2)		
Assembly Fees	P 212,226,920.00	
Management Fees	67,216,988.00	279,443,908.00
Interest Income (Schedule 3)		8,513,007.00
Total		P 80,620,684.00
Less: Deductions (Section D)		79,863,842.00
Taxable Income		P 756,842.00
Tax Due		P 264,895.00
Less: Tax Credit/ Payments (Section E)		
a) Prior Year's Excess Creit	P 0.00	
b) Quarter Payments Made this Year	0.00	
c) Creditable Tax Withheld	19,972,283.00	19,972,283.00
Tax Refundable		P 19,707,388.00

Petitioner alleges that the total creditable tax withheld of P19,972,283.00 pertains to income payments received from rendering professional services and sales of goods to top 5,000 corporations and was partially applied to income tax liability in the amount of P264,895.00 for the year 1995. While the remaining unutilized creditable tax withheld of P19,707,388.00 was opted by petitioner to be carried over as tax credit to the succeeding taxable year (Exhs. A, A-1 to A-4). Later, on April 14, 1998, petitioner changed its mind and chose instead to refund the 1995 excess income tax payment by filing a letter-claim for refund with the Revenue District No. 52 of the respondent's bureau (Exh. G). On that same day, April 14, 1998, Petitioner filed the instant petition for review.

Upon these facts, respondent merely raised the following Special and Affirmative Defenses:

> 4. The alleged income tax returns for the year 1995 and the corresponding application for claiming a refund thereto are yet under administrative investigation;
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> 5. The amount of P19,707,388.00 sought to be refunded was not properly documented while taxes paid are presumed collected in accordance with law and regulations, hence, not refundable;
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> 6. In an action for tax refund such as in the instant case, the burden of proof is upon the taxpayer to establish its right thereto and to show compliance to the provisions in Section 229 of the Tax Code, as amended; and
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> 7. Well-settled is the rule that claims for refund are construed strictly against taxpayers/claimants, since the same partake of the nature of exemption. (Resins vs. Auditor General, 25 SCRA 754, 1968).

During trial, petitioner presented the following documentary exhibits in order to support its judicial claim for refund:

a. The final Corporation Annual Income Returns for the calendar years ended December 31, 1995, 1996 and 1997 (Exhs. A, H, and I, inclusive of submarkings);

b. The various Certificates of Creditable Income Tax Withheld At Source (Exhs. B, C, D, E, and F); and

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

Respondent for his part, elected not to present controverting evidence. This case was submitted for decision after both parties presented their respective memoranda.

The issues now confronting Us are as follows:

1. Whether or not petitioner is entitled to the claim for refund of alleged overpaid income tax for the year 1995; and if in the affirmative;

2. Whether or not petitioner has presented sufficient evidence to substantiate the said claim.

We shall resolve the issues in the light of the law and existing jurisprudence.

Section 69 of the Tax Code, as amended, provides a taxpayer with two options in case it incurred an excess income tax payment shown on its final adjustment return, to wit:

> **Section 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. (Underlining supplied).

It is apparent from the evidence on record that petitioner chose to refund the excess income tax payment for the year 1995 (Exhs. A and G), and based on the afore-quoted law petitioner is legally entitled to the refund sought. However, petitioner must still prove its entitlement thereto by substantial evidence.

In the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459,** the Supreme Court ruled that before a claim for refund of unutilized creditable withholding tax at source can be granted, petitioner must first comply with the following basic requirements, to wit:[1]

1) That it filed a claim for refund within the 2 year period as prescribed under Sec. 230 of the NIRC;

2) That the income upon which the taxes were withheld was included in the return of the recipient (Revenue Regulation 6-85); 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, as amended by Rev. Reg. 12-94).

The records establish that petitioner's claim for refund was timely filed within the two-year period from the date of payment of the tax. The letter request for refund with the Bureau of Internal Revenue was filed on April 14, 1998 and the instant petition for review was instituted on the same day, April 14, 1998. The two-year period commences on April 15, 1996, the date when petitioner filed its tentative final income tax return for the taxable year 1995 (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992**). At this point, We would like to emphasize that filing a claim for refund with the respondent and a petition for review

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[1] Cited in **Columbian Motors South Super, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5503, dated October 5, 1999,** with Entry of Judgment dated October 27, 1999.

with this Court on the same day is allowed under existing jurisprudence (**Finley J. Gibbs and Diane P. Gibbs vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. L-17406, November 29, 1965 (15 SCRA 318, 325); and Commissioner of Internal Revenue vs. Bank of the Philippine Islands, as Liquidator of Paramount Acceptance Corporation and The Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994**).

The income upon which the creditable withholding taxes in question were withheld was included as part of the gross income reflected in petitioner's 1995 income tax return (Exh. A). Likewise, the creditable withholding taxes at source in the gross amount of P19,972,283.00 were duly supported by Certificates of Creditable Taxes Withheld at Source duly issued by the withholding agents (Exhs. B, C, D, E, and F).

As regards respondent's argument that petitioner is not entitled to the refund because it failed to show that the creditable taxes withheld were remitted to the Bureau of Internal Revenue, this Court in numerous cases had already ruled that the fact of remittance is not required by law, and/or implementing revenue rules and regulations. The matters that are required to be shown are the proof of withholding and the inclusion of the income payments in the income tax return. The reason for this is simple. The withholding agent is not within the control of the payee-taxpayer but is considered an agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government (**Philippine Airlines Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5536, February 17, 1999; Shimizu Phil. Contractors, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5399,**

March 3, 1999, San Miguel Properties, Inc. (formerly: Monterey-/San Miguel Properties, Inc. which as Monterey Farms Corporation originally) vs. Commissioner of Internal Revenue, CTA Case No. 5483; Shimizu Philippine Contractors Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5544, May 12, 1999; and Macondray & Company, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5614, June 11, 1999).

In conclusion, We find petitioner's evidence sufficient to prove its entitlement to the relief prayed for.

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of petitioner the amount of P19,707,833.00, representing unutilized creditable withholding tax at source for year 1995.

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 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