REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE EDS TECHNO-SERVICE, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5580

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 1999

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DECISION

This case involves a claim for refund and/or tax credit in the amount of P383,067.00 representing unutilized creditable taxes withheld for the fiscal year ended March 31, 1996.

Petitioner is a domestic corporation principally engaged in the sale of computer-aided engineering services for the design of automotive wiring harness and component parts thereof.

On April 15, 1996, petitioner filed its Corporate Annual Income Tax Return (Exh. A) for the calendar year ended December 31, 1995 declaring a net loss and the sum of P255,616.00 as refundable creditable taxes withheld for the year (Exh. A-1).

Petitioner was granted Permit to Change Accounting Period from calendar year to fiscal year effective April 1, 1996 to March 31, 1997 (Exh. G) on April 15, 1996. However, petitioner is required to file a transitory short period income tax return for the interim period January 1, 1996 to March 31, 1996. Said mandated return was filed by the petitioner on July 11, 1996 (Exh. B) reflecting a net loss and a total tax credits in the amount of P383,067.00 which comprised the prior year's excess tax credits of P255,616.00 and the creditable taxes withheld for the period in the amount of P127,451.00.

Although petitioner indicated its intention to refund the amount of P383,067.00 (Exh. B-2) it nonetheless opted to carry over the same to the succeeding fiscal year ended March 31, 1997 (Exh. D-2). But the amount of P383,067.00 remained unutilized due to the loss position incurred by the petitioner during the said fiscal year.

Consequently, petitioner filed a letter claim for refund with the Bureau of Internal Revenue (BIR) on July 4, 1997 (Exh. E). Claiming inaction on the part of the BIR and to toll the running of the prescriptive period the instant petition was thus filed on March 10, 1998.

To support its case, the petitioner submitted the following documents, to wit:

a) Corporate Annual Income Tax Return for the Calendar Year Ended December 31, 1995;

b) Transitory Short Period Income Return for the Fiscal Year Ended March 31, 1996;

c) Corporate Annual Income Tax Return for the Fiscal Year ended March 31, 1997;

d) Corporate Annual Income Tax Return for the Fiscal Year ended March 31, 1998;

e) Certificates of Creditable Taxes Withheld at Source;

f) Letter Claim for Refund; and

g) Permit to Change Accounting Period.

Petitioner also presented Miss Minerva Vallesteros, Senior Accountant of Petitioner, who testified and identified the abovementioned documents.

Respondent, by way of Special and Affirmative Defenses, avers, that:

> 1. Petitioner's claim for refund or issuance of tax credit certificate is yet pending administrative investigation;
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> 2. The total amount of P383,067.00 being claimed by Petitioner allegedly representing overpaid creditable withholding tax for the fiscal year ended March 31, 1996 was not properly documented; and
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> 3. In an action for refund and/or tax credit, the taxpayer has the burden of showing that the taxes paid were erroneously collected and the same claims are construed strictly against the claimants since they are in the nature of tax exemption and cannot be allowed unless granted in the most explicit and categorical language.

Respondent did not present any evidence, documentary or testimonial in this case. In fact, he just submitted the case based on the pleadings (CTA rec., p. 111, TSN April 6, 1999). Further, he considered it unnecessary to file a memorandum (CTA rec., p. 121).

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of P383,067.00 representing alleged overpaid income taxes for the fiscal year ended March 31, 1996.

We rule in the affirmative.

Under Section 69 of the 1996 Tax Code, as amended, it is provided that:

> **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 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.

Based on the above provision, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Considering that herein petitioner incurred a net loss in the succeeding fiscal year ended March 31, 1996, as well as in the next fiscal years 1997 and 1998, the amount of P383,067.00 appears to be refundable. However, petitioner must prove by substantial evidence its entitlement to the refund sought. Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, requires that:

> **Section 10.** ***Claim for Tax Credit or Refund.*** -
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Hence, compliance by the petitioner with the following requisites must first be shown, namely:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the NIRC, as amended;
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> (2) that the income upon which the taxes were withheld were included in the return of the recipient; and
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> (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 (see **Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997; Shangri-la Plaza Corporation, vs. Commissioner of Internal Revenue, CTA Case No. 5346, January 9, 1998;**

128

Nestle Philippines, Inc. (formerly, Magnolia Nestle Corporation) vs. Hon. Liwayway Vinzons-Chato, Commissioner of Internal Revenue, CTA Case No. 5350, January 20, 1998; Bank of Commerce vs. The Commissioner of Internal Revenue, CTA Case No. 5101, March 17, 1998; Oranbo Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5335, July 24, 1998; AGP Industrial Corporation (formerly AGP Investment Corporation) vs. Commissioner of Internal Revenue, CTA Case No. 5239, April 13, 1999; The Philippine Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5507, April 30, 1999; Philippine National Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5511, April 30, 1999; Shimizu Philippine Contractors Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5544, May 12, 1999).

Section 230 of the 1996 Tax Code, as amended, provides:

> 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.

In relation thereto, Section 70(b) is quoted, *viz:*

129

> SEC. 70. (a) x x x
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> (b) *Time of filing the income tax return.* — The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year as the case may be.

As can be gleaned from the records, petitioner filed its 1995 Corporate Annual Income Tax Return on April 15, 1996 and the Transitory Short Period Income Tax Return for the fiscal year ended March 31, 1996, on July 11, 1996. The claim for refund was filed with the BIR on July 4, 1997 and the instant Petition for Review on March 10, 1998. Hence, the two-year prescriptive period requirement has been complied with.

Petitioner likewise reported as part of its gross income for the calendar year ended December 31, 1995 (Exh. A) the income payments of P9,606,990.00 from which the creditable taxes in the amount of P255,616.00 were withheld at source (Exh. A-3). Also, for the fiscal year ended March 31, 1996 (Exh. B), it reported the amount of P4,256,051.00 as its gross income from which the creditable taxes of P127,451.00 were withheld at source (Exh. B-3). Lastly, petitioner submitted Certificates of Creditable Income Tax Withheld at Source to prove the fact of withholding, to wit:

136

Withholding Agent	Period	Income Payment	Withholding Tax	Exh.
EDS Manufacturing, Inc.	July 1 to Sept. 30, 1995	P 1,378,750.00	P 68,937.50	C-1
EDS Manufacturing, Inc.	Oct. 1 to December, 1995	3,733,577.00	186,678.86	C-2
1995 Creditable Tax Withheld			P255,616.36	
EDS Manufacturing, Inc.	Jan. 1 to March 31, 1996	2,049,655.00	102,483.00	C-3
EDS Manufacturing, Inc.	March 16 to 31, 1996	499,356.00	24,968.00	C-4
1996 Creditable Tax Withheld			P127,451.00	
T O T A L			P383,067.36	

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **GRANTED.** Respondent is **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the sum of P383,067.00 representing unutilized creditable taxes withheld for the fiscal year ended March 31, 1996.

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

131