1B

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROBINSON'S INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 4700

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 30 1996

x - x

DECISION

This appeal involves petitioner's claim for refund of the sum of P910,507.00 representing overpaid income tax for the fiscal year ended September 30, 1989.

Petitioner Robinson's Incorporated is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of leasing commercial area/spaces with principal office at M. Adriatico Street, Manila.

On January 15, 1990, petitioner filed its tentative income tax return for the fiscal year (FY) ended September 30, 1989 showing a net income in the sum of P2,701,971.00 and an income tax payment in the amount of P694,762.00.

A final adjustment return was filed by petitioner on January 15, 1991 reflecting, instead of income, a net operating loss in the sum of P286,440.00, a nil income tax liability and a refundable income tax payment in the amount of P910,507.00, computed as follows:

Income:		
Schedule 1	P131,963,176.00	
Schedule 4	665,856.00	
Schedule 5	8,855,828.00	
Schedule 6	10,021,301.00	P151,506,161.00
Less: deductions		151,792,601.00
Net loss		P 286,440.00
Tax due		P -
Less:		
a) Prior year's excess credit	P 35,183.00	
b) Qtrly payments	863,931.00	
c) creditable tax withheld	11,393.00	910,507.00
Total amount refundable		(P 910,507.00)

This overpayment for FY September 30, 1989 was carried over to FY September 30, 1990 by petitioner pursuant to Section 69 of the Tax Code, as amended (Annex "C"). However, the application was of no significance since in the FY September 30, 1990 petitioner still incurred a net loss from operations for said fiscal year, petitioner opted to claim for refund instead of applying the same to the succeeding taxable year. Thus, as a consequence, petitioner on December 20, 1991 filed a letter with the respondent requesting for a tax refund in the amount of P910,505.25 representing its overpaid income tax for the FY September 30, 1989.

On January 15, 1992, a judicial action was taken by petitioner in order to recover the said amount and to toll the running of the two (2) year prescriptive period provided for under Section 230 of the Tax Code, as amended. Hence, this petition for review.

Is petitioner entitled to the refund of the sum of P910,507.00 representing excess income tax payment for the fiscal year ended September 30, 1989?

We, answer in the affirmative.

The various documents submitted by petitioner which were all admitted by the Court would warrant petitioner's entitlement for the refund. These comprised, among others, of:

a. the 1989 final income tax return of petitioner together with the attachments of auditors' report and income statements (Exh. "A" to "A-8", inclusive of submarkings);

b. the letter-claim for refund with the Bureau of Internal Revenue (Exh. "O");

c. the quarterly income tax returns for fiscal year 1989 together with the proof of income tax payments (Exhs. "B" to "M-5", inclusive of submarkings);

d. the various certificates of creditable withholding tax at source (BIR Form 1743.1) (Exhs. "P" to "BM-5", inclusive of submarkings); and

e. the certification issued by Accounting Revenue Division of the respondent's bureau attesting the remittance of the quarterly income tax payments (Exh. "N").

Respondent failed to submit any document to controvert the evidence introduced by the petitioner. She just raised as a defense that:

> (P)etitioner's claim for refund and/or tax credit in the amount of P910,507.00 allegedly incurred as business losses for taxable years 1989-90 is devoid of merit. Indeed, petitioner's bare allegation anent such "incurred losses" without any supporting documentary proof and/or evidence is at best self-serving to which no probative value may be validly accorded. Besides, there is no showing, as none was shown that petitioner had in fact remitted tax payments to the BIR, albeit, the corresponding tax returns were filed.

This allegation by respondent is unavailing. Petitioner presented in evidence its income tax return for the FY September 30, 1989 and annexed the income tax return for FY 1990 in the petition for review which show that in both years petitioner suffered net loss from operations. This Court firmly stand that the burden of proving whether petitioner's income tax returns are accurate or not has been shifted to the respondent. It is within the her competence to examine petitioner's financial statements and auditors' report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records but failed to do so. (**Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993**). Respondent is thereby considered to have admitted the truth of the contents of these exhibits in the absence of any evidence that will show that the returns were erroneous or that there exist any irregularity in their computation or preparation. Note is hereby given that respondent failed to substantiate its allegation, as no evidence was shown, that will taint the reliability, sufficiency and competency of the income tax returns of petitioner. Therefore, this Court gives credence on the income tax returns and other supporting documents (Exhs. "A" to "N-2") offered by petitioner as a proof of net loss from its operations (**Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991**).

As to the allegation of respondent that petitioner failed to show the fact of income tax remittance to the bureau, suffice it to state that the bureau's Accounting Revenue Division acknowledged the receipts thereof (Exhs. "N", "N-1", and "N-3"). Therefore, petitioner is entitled to the following excess income tax payments:

Quarterly Income Tax Payments

Qtr.	CBCR	Date	Exh.	Amount
1st	B16236914	2-28-89	C	P 58,834.65
2nd	B16981950	5-29-89	F	50,597.75
3rd	B17814546	8-29-89	I	59,734.85
Tentative	B18247508	1-15-90	L	694,762.00
				P863,929.25

Creditable Tax Withheld (Exhs. "B" to "M-5", inclusive)	P 46,576.00
TOTAL	P910,505.25

It should be emphasized that petitioner submitted its memorandum while respondent did not. Respondent may thus be considered as not questioning seriously petitioner's entitlement for the refund as it merely submitted its case based on the pleadings.

WHEREFORE, in view of all 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 P910,505.25 representing overpaid income tax for fiscal year ended September 30, 1989.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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