REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PACKAGING PRODUCTS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4858

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 19 1995

x - x

DECISION

This appeal involves petitioner's claim for refund of the sum of P5,366,018.00 representing overpaid income tax for the fiscal year ended June 30, 1990.

Petitioner Packaging Products Corporation is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is registered with the Board of Investment on a preferred non-pioneer status under RA 6135 (Exh. A-1). It is engaged in the manufacture, distribution and sale of packaging materials (corrugated carton and paperboard).

On October 15, 1990, petitioner filed its tentative income tax return for the fiscal year (FY) ended June 30, 1990 and final adjustment return on February 12, 1991 reflecting an operating loss in the sum of ₱936,080.00 and a nil income tax liability. However, during the first three quarters of the FY June 30, 1990, petitioner paid an income tax amounting to ₱7,348,659.12 which consists of cash, BOI Tax Credit Certificates, and creditable withholding tax at source. This payment was not utilized in FY June 30, 1990 for there was no income tax liability. Thus, it resulted to an overpayment.

Petitioner pursuant to Sec. 69 of the Tax Code, as implemented by Revenue Regulations No. 10-77, applied its overpayment of income tax for FY June 30, 1990 to FY June 30, 1991 which has an income tax liability of ₱1,982,641.50. Thus, the excess payment in the sum of ₱7,348,6659.12 for FY June 30, 1990 was reduced to ₱5,366,017.50.

On October 7, 1992, petitioner filed a letter with the respondent requesting for a tax refund or issuance of a tax credit certificate in the amount of ₱5,366,018.00 representing overpaid income tax for the fiscal year ended June 30, 1990 (Exh. "N").

Since no action was taken by the respondent and the two (2) year period was about to expire on October 9, 1992, this petition for review was filed with this Court.

Respondent in her answer raised the following, by way of special and affirmative defenses:

7. The mere averment that petitioner's business operations resulted in a net loss in the amount of P936,080.00 for the fiscal year 1990 does not *ipso facto* merit the refund being claimed.

8. The instant petition states no cause of action as it does not allege the date when the tax sought to be refunded or credited was paid (**Manufacturer's Bank & Trust Co., as Trustee for Gem Trust Plans v. Commissioner of Internal Revenue, CTA Case No. 1659, November 19, 1965**).

9. Petitioner's claim for tax refund or credit is pending administrative investigation.

10. The amount of P7,348,659.00 representing the cumulative total of the income tax payments consisting of cash, BOI Tax Credit Certificates and creditable tax withheld at source for the fiscal year ended June 30, 1990, was collected in accordance with law and regulations.

11. In an action for tax refund or credit, the burden of proof is upon the taxpayer to establish its right to refund.

12. It is incumbent upon the petitioner to show compliance with the provisions of Sections 204 and 230 of the National Internal Revenue Code, as amended.

13. Claims for tax refund or credit is construed strictly against the claimants since they partake of the nature of an exemption from taxation (**Resins, Inc. v. Auditor General, 25 SCRA 754 [1968]**).

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund or tax credit in the amount of P5,366,018.00 representing excess income tax payment for the fiscal year ended June 30, 1990.

In support of its case, petitioner presented in evidence various documents which, among others, consist of (1) corporation annual income tax returns for FY June 30, 1990 and 1991 together with the attachments of audited financial statements and auditor's report [Exhs. "F" and "K"]; (2) quarterly income tax returns pertaining for said fiscal years [Exhs. "B",, "C", "G", "H", and "I"]; (3) confirmation receipts and payment orders [Exhs. "C-2", "C-2-a", "D-1-a", and "D-1-b"]; (4) tax credit certificates/debit memos [Exhs. "B-1-d-1", "B-1-d-2", "B-1-d-3", "B-1-d-4", and "D-2-d"]; and (5) certificate of creditable withholding tax at source [Exh. "C-3"]. On the other hand, respondent's counsel failed to submit any controverting evidence.

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.

The allegation advanced by respondent that the mere averment of net loss does not *ipso facto* merit a refund, is unavailing. Suffice it to state, that in the recent case of **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of**

Internal Revenue, CTA Case No. 4257, December 20, 1993 such controversy has already been settled. Said we:

> Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this case for decision nothing was shown during the hearing that the return was erroneous nor was there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified this Court if there any. It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of the quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of P65,259.00.

This was exactly the same ruling laid by Us in the case of Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991:

> Respondent's contention that a mere allegation of loss in 1985 does not ipso facto merit a refund, is likewise unmeritorious. As stated, respondent did not present any evidence which will effectively dispute the correctness of the returns and other materials facts

therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence the income tax returns should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by petitioner in 1985.

As to the issue that the petition states no cause of action since it did not allege the date(s) when the taxes were paid, this Court has ruled time and again:

> Respondent further contends that the petitions state no cause of action because they do not allege the date(s) when the taxes were paid. Time and again this Court has ruled that "petitioner is not required to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayers either made profit or suffered a loss in its operations. **(Sun Insurance Office Ltd. v. Acting CIR, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. CIR, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989; and Paseo Realty & Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 45289, April 30, 1993;** *cited* **in Jardine Davies, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 3839, 4013 and 4124, January 20, 1994).**

Moreover, after careful study of the records of the case, this Court is convinced that petitioner was able to prove its entitlement for the refund. The burden of proof was overcome by the petitioner. Its claim for refund is well supported with evidence and has a basis in law. Further, it is very clear that the remaining income tax payment of petitioner for FY June 30, 1990 is indeed excessive and have not been applied up to present (Exhs. "M", "Q-3", "R-3"), to wit:

Prior year	
Excess income tax payments	46,181.00[1]
Qtrly Payments	
CBCR# B18856292	2,372,814.97[2]
CBCR# B18856292	174,589.73[3]
Tax Credits	
TCC# 006688 Indo-Phil Textile Mills (for duties paid on raw materials)	2,324,817.00[4]
TCC# 007715 Evertex Industries Inc. (for duties paid on raw materials)	198,584.00[5]
TCC# 007606 Evertex Industries Inc. (for duties paid on raw materials)	192,433.00[6]
TCC# 007696 Evertex Industries Inc. (for duties paid on raw materials)	183,601.00[7]
TCC# 001860 Gimbels Garment Mfg. Corp. (under BP 391 on net local content) Tax Debit Memo No. 90-061	1,824,127.00[8]
Creditable tax withheld (contractor) Mar. to June 1989	31,511.42[9]
Total	P7,348,659.00[10]
Less portion applied in FY June 30, 1991	1,982,641.50
Unapplied income tax payment	P5,366,017.50

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[1]Exhs. C-1-a, C-1-b, and C-1-c.

[2]Exhs. C-2 and C-2-a.

[3]Exhs. D-1-a and D-1-b.

[4]Exhs. B-1-a, B-1-a-a, B-1-b, B-1-c, B-1-d, and B-1-d-1.

[5]Exhs. B-2, B-2-a, B-2-1, B-2-c, and B-1-d-2.

[6]Exhs. B-3, B-3-a, B-3-c, and B-1-d-3.

[7]Exhs. B-4, B-4-a, B-4-c, and B-1-d-4.

[8]Exhs. D-2, D-2-a, D-2-a-1, D-2-a-2, D-2-a-3, D-2-b, D-2-b-1, D-2-c, D-2-c-1, and D-2-d.

[9]Exh. C-3.

[10]Rounded-off to the nearest peso.

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner in the amount of P5,366,018.00 representing overpaid income tax for fiscal year ended June 30, 1990. No pronouncement as to cost.

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 the 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