REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

MARUBENI ENERGY SERVICES CORPORATION,
Petitioner,

C.T.A. CASE NO. 6908

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 0 9 2006

x - x

DECISION

ACOSTA, E., PJ.:

Before Us is a Petition for Review seeking a refund or issuance of a tax credit certificate in the total amount of Five Million Seven Hundred Sixty Nine Thousand and Seven Hundred Thirty Four (P5,769,734.00) Pesos allegedly representing excess creditable withholding taxes for the calendar year ended December 31, 2001.

Marubeni Energy Services Corporation ("petitioner") is a corporation duly organized under and by virtue of Philippine laws with principal office located at the 36th Floor, Tower I, The Enterprise Center, Ayala Avenue, Makati City. It is primarily engaged in the business of operating and maintenance services.

227

The Commissioner of Internal Revenue ("respondent") is vested by law with the power and authority to act upon and decide applications for refunds or tax credits of excess internal revenue tax payments and in general, to enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws.

For the calendar year ended December 31, 2000, petitioner filed its annual income tax return on March 29, 2001[1] reflecting excess credits of P1,304,295. On the same return, petitioner indicated its intention to have the aforementioned amount carried-over to the next year/quarter.

On April 12, 2002, petitioner filed its annual income tax return for the calendar year ended December 31, 2001[2] reporting a gross income of P24,555,138.00; creditable tax withheld for the first three quarters in the amount of P4,025,108.00; creditable tax withheld for the 4th quarter in the amount of P3,233,117.00; and total tax credits/payments in the amount of P8,562,520.00. The amount of P8,562,520.00 includes petitioner's prior year's excess credits amounting to P1,304,295.00.

For the same calendar year ended December 31, 2001, petitioner likewise declared corporate income tax amounting to P2,792,786.00. Petitioner then applied its withholding tax credits for the year in the sum of P8,562,520.00 against the corporate income tax due of P2,792,786.00 thereby leaving an excess or unutilized withholding tax credits for the year in the sum of P5,769,734.00. And petitioner indicated its intention to be issued a tax credit certificate with respect to the amount of P5,769,734.00.

On May 20, 2002, petitioner filed with the Bureau of Internal Revenue ("BIR") a written claim for refund or issuance of a tax credit certificate for its unutilized creditable withholding taxes for the year 2001 in the amount of P5,769,734.00.[3]

---

[1] Exhibit A
[2] Exhibit B
[3] Exhibit D

Pursuant to a Letter of Authority dated June 17, 2002 issued by the respondent,[4] the books of accounts and accounting records of petitioner were examined to ascertain and confirm the veracity of the claim.

The claim for refund, however, yielded no action on the part of the respondent. Hence, the instant Petition for Review filed on March 31, 2004.

Respondent, on May 15, 2004, submitted his Answer and admitted that petitioner has indeed filed with it a written claim for refund or issuance of a tax credit certificate on May 20, 2002 for the alleged unutilized creditable withholding taxes for the year 2001 in the amount of P5,769,734.00 but specifically denied the contents of said claim for being erroneous conclusions of facts and/or law. He maintained that the claim for refund, being in the nature of a tax exemption, is to be construed strictly against the claimant and liberally in favor of the taxing authority and that the burden to prove entitlement for the tax refund rests upon the petitioner.

Petitioner presented testimonial and documentary evidence to buttress its case while respondent submitted the case for decision without presenting any evidence. On February 21, 2006, the case was submitted for decision sans the memorandum of the respondent.

The parties stipulated on the following issues for this Court's resolution:

1. Whether or not petitioner's gross income of P24,555,138, the bulk of which amounting to P23,127,379.00 consists of management fees derived from operating and maintenance services;

2. Whether or not the amount of P7,258,255.00 was withheld from management fees paid to petitioner by its client;

3. Whether or not petitioner's total tax credits/payments for the calendar year ended December 31, 2001 is in the amount of P8,562,520.00;

4. Whether or not the income tax liability of petitioner for the taxable year is in the amount of P2,792,786.00; and

---

[4] Exhibit E

227

5. Whether or not petitioner is entitled to the claim for refund or issuance of a tax credit certificate in the amount of P5,769,734.00 representing excess/unutilized withholding tax for the taxable year 2001.

Anent the first issue, a perusal of petitioner's 2001 income tax return (*Exhibit B*) shows that the gross income of P24,555,138.00 is composed of the gross income from operation in the amount of P23,127,379.00 and non-operating/other income in the amount of P1,427,759.00. The gross income from operation of P23,127,379.00 was computed as follows:

Sales/Revenue/Receipts/Fees (Sch.1)	P 109,091,149.00
Less: Cost of Sales/Services (Sch. 22/3)	85,963,770.00
Gross Income from Operation	P 23,127,379.00

A closer look at the attached audited financial statements for taxable year 2001 (*pages 149-156, CTA Records*) reveals that petitioner's declared gross revenues amounting to P109,091,149.00 mainly consisted of service fees in the amount of P108,807,736.00 derived by petitioner from its Operations and Maintenance Assignment Agreement with Oxbow Power Services, Inc., Philippine Branch, a Delaware Corporation, relating to the operations and maintenance of the Mindanao I and Mindanao II Geothermal projects (*pages 150, 155 & 156, CTA Records*) while the remaining portion thereof pertains to other revenues in the amount of P283,413.00. Evidently, petitioner's declared gross income of P24,555,138.00 largely emanated from the management fees derived by petitioner from operating and maintenance services rendered to Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership for taxable year 2001.

As regards the second issue, the various Certificates of Creditable Tax Withheld at Source issued to petitioner by Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership for taxable year 2001 proved that creditable taxes in the amount of P7,258,225.55 were withheld on professional fees received by petitioner from the said entities amounting to P105,184,697.08 , detailed as follows:

922

Exhibit	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
B-4	Jan. 1 - Mar. 31, 2001	Mindanao I Geothermal Partnership	P 21,967,458.26	P 1,098,372.92
B-5	Jan. 1 - Mar. 31, 2001	Mindanao II Geothermal Partnership	7,552,538.58	377,626.94
B-6	Apr. 1 - June 30, 2001	Mindanao II Geothermal Partnership	9,813,929.77	490,696.50
B-7	Apr. 1 – June 30, 2001	Mindanao I Geothermal Partnership	8,437,609.89	421,880.49
B-8	July 31-Sept. 30, 2001	Mindanao II Geothermal Partnership	9,027,836.57	580,112.28
B-9	July 1 – Sept 30, 2001	Mindanao I Geothermal Partnership	16,054,147.40	1,056,418.76
B-10	Oct. 1 – Dec. 31, 2001	Mindanao II Geothermal Partnership	12,305,199.02	1,230,519.89
B-11	Oct. 1 – Dec. 31, 2001	Mindanao I Geothermal Partnership	20,025,977.59	2,002,597.77
			P105,184,697.08	P 7,258,225.55

With reference to the third issue, petitioner's 2001 income tax return reflected a total tax credit amount of P8,562,520.00 representing the sum of the prior year's excess credits of P1,304,295.00 and creditable taxes withheld during the year 2001 of P7,258,225.00 (*lines 26A, 26C, 26D & 26G, Part II, Exhibit B*). As earlier stated, the creditable taxes withheld in the amount of P7,258,225.00 was duly covered by withholding tax certificates issued by Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership for taxable year 2001. As to the prior year's excess credits in the amount of P1,304,295.00, the same represents the excess of the creditable taxes withheld during the year 2000 in the amount of P1,906,017.00 after deducting therefrom petitioner's income tax liability of P601,722.00 (*Exhibit A*). The creditable withholding taxes in the amount of P1,906,017.00 was also properly supported by Certificates of Creditable Tax Withheld at Source issued to petitioner by Oxbow Power Services, Inc., Mindanao I Geothermal Partnership and Mindanao II Geothermal Partnership for taxable year 2000, to wit:

Exhibit	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
A-4	Oct. 1 - Dec. 31, 2000	Mindanao I Geothermal Partnership	P 11,739,596.87	P 586,979.85
A-5	Apr. 1 - June 30, 2000	Mindanao I Geothermal Partnership	2,205,181.77	110,259.09
A-6	Apr. 1 - June 30, 2000	Oxbow Power Services, Inc.	888,766.00	44,438.30
A-7	July 1 - Sept. 30, 2000	Mindanao I Geothermal Partnership	10,563,962.86	528,198.15
A-8	July 1 - Sept. 30, 2000	Mindanao II Geothermal Partnership	6,601,179.37	330,058.98
A-9	Oct. 1 - Dec. 31, 2000	Mindanao II Geothermal Partnership	6,121,658.02	306,082.90
			P 38,120,344.89	P 1,906,017.27

Regarding the fourth issue of whether or not the income tax liability of petitioner for the taxable year 2001 is in the amount of P2,792,786.00, the answer is in the affirmative.

Petitioner's 2001 income tax return (*Exhibit B*) sufficiently proves that it had an income tax liability of 2,792,786.00 for the said year. As can be seen in Part II *(Computation of Tax)* of the same return, petitioner's total gross income of P24,555,138.00 exceeded its deductions amounting to P15,827,683.00 resulting in a taxable income of P8,727,455.00 with an income tax (32%) due thereon in the amount of P2,792,786.00. Inasmuch as the 2001 income tax return was prepared under penalties of perjury, the figures appearing therein are presumed to be true and correct in the absence of contrary evidence (*Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR SP. No. 33589, October 14, 1994*). Moreover, in the case of *Citibank N. A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997,* the Supreme Court held that:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, <u>detailed proof of the truthfulness of each and every item in the income tax return is not required</u>. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. <u>The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC</u>." *(Underlining supplied)*

Proceeding to the final and main issue of whether petitioner is entitled to the claim for refund or issuance of a tax credit certificate in the amount of P5,769,734.00 representing excess/unutilized withholding tax for the taxable year 2001, We rule in the affirmative.

Petitioner anchors its claim for the refund/tax credit of its excess payment on Section 76 of the Tax Code, as amended, which provides:

230

"SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 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 balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

Section 76 offers two (2) options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due, either: (1) to file for a tax refund (either in the form of cash or tax credit); or (2) carry-over/apply the excess tax credits to the succeeding taxable quarters/years. The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund. The second option works by applying the refundable amount, as shown on the Final Assessment Return of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year (*Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 & 162004, December 14, 2005).

In order to be entitled to a refund of unapplied creditable income tax paid, the taxpayer-claimant must prove compliance with the following three (3) basic requirements:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 204 (3) [now Section 204(C)] in relation to Section 230 [now Section 229 of the Tax Code, as amended;

931

2) That the fact of withholding is established by a copy of statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3) That the income upon which the taxes are withheld are included in the return of the recipient [Revenue Regulations No. 12-94 *(amending Revenue Regulations No. 6-85); Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenues, 280 SCRA 459 & ACCRA Investments Corporation vs. The Hon. Court of Appeals, the Commissioner of Internal Revenue and the Court of Tax Appeals, 204 SCRA 957]*.

With respect to the first requisite, Section 204(C) and Section 229 of the Tax Code provide that the claim for refund both in the administrative and judicial levels must be filed within two (2) years from the date of payment of the tax, to wit:

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** - The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or 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 tax credit or refund within (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for refund."
>
> **SEC. 229.** ***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 any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively 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.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) 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."

232

As held by the Supreme Court, the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return ***(ACCRA Investments Corporation vs. Court Appeals, supra; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 [1992]; The Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., represented by Soviamont Steamship Agencies, Inc. and the Court of Tax Appeals, G.R. No. 85956, April 10, 1989)*** because it is only from this time that the refund is ascertained ***(Commissioner of Internal Revenue vs. The American Life Insurance Co., 244 SCRA 446)***.

In the instant case, petitioner filed a written claim with the BIR on May 20, 2002 and the judicial claim with this Court on March 31, 2004. Both were filed well within the time prescribed by law and jurisprudence reckoned from April 12, 2002, the date when petitioner filed its original 2001 annual income tax return.

As regards the second requirement, Revenue Regulations No. 12-94, amending Revenue Regulations No. 6-85, provides that claims for the refund of income taxes deducted and withheld from income payments shall be given due course only: (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when 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 income tax withheld from that amount *(Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637 & 162004, December 14, 2005)*.

Petitioner's claim for refund is substantiated with documents showing the fact of withholding, as shown by various Certificates of Creditable Tax Withholding at Source. Mindanao I Geothermal Partnership withheld taxes for the year ended December 31, 2000 in

233

the total amount of P1,225,437.09 *(Exhibits "A-4", "A-5", and "A-7")*; Mindanao II Geothermal Partnership withheld taxes in the total amount of P636,141.88 *(Exhibits "A-8" and "A-9")* and Oxbow Power Services, Inc. withheld taxes in the total amount of P44,438.30 *(Exhibit "A-6")*.

For the year 2001, petitioner's tax credits arising from creditable taxes withheld at source by its clients amounted to P7,258,225.55. The Mindanao I Geothermal Partnership withheld a total amount of P4,579,269.94 *(Exhibits "B-4", "B-7", "B-9" and "B-11)* while Mindanao II Geothermal Partnership withheld a total amount of P2,678,955.61 *(Exhibits "B-5", "B-6", "B-8", and "B-10)*.

Anent the third requirement, this Court is convinced that the income upon which the creditable taxes withheld were included as part of the gross income declared in petitioner's income tax return. A careful examination of petitioner's 2001 annual income tax return *(Exhibit "B")* shows that there was no falsity in the preparation of the 2001 annual income tax return of petitioner. It is to be stressed that the respondent had already commenced its examination of petitioner's books of accounts. However, up to the time this Petition for Review reached this Court, respondent has failed to render his report of the investigation and examination of book of accounts pursuant to Letter of Authority dated June 14, 2002. And as held in the case of ***Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, G.R. 107434, October 10, 1997***, a detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue.

In addition, the claimed amount of P5,769,734.00 was not carried over as a tax credit to the succeeding taxable year 2002 as shown the petitioner's 2002 annual income tax return.[5]

---

[5] Exhibit C

934

WHEREFORE, in the light of the foregoing, the Court finds the instant petition meritorious. Accordingly, respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P5,769,734.00 representing its excess creditable withholding taxes for the calendar year ended December 31, 2001.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

237