REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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JS STEEL CORPORATION,
Petitioner,

C.T.A. CASE NO. 5520

Members:

\- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 13 2007 2:50 pm

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DECISION

ACOSTA, E., P.J.:

Before Us is a case remanded by the Supreme Court for the proper and immediate determination of the amount to be refunded to petitioner on the basis of the latter's 1996 final adjusted return involving excess or overpaid income tax for the calendar year ended December 31, 1995 pursuant to Section 69 of the 1977 National Internal Revenue Code, as amended.

Petitioner Calamba Steel Center, Inc. (formerly JS Steel Corporation) is a domestic corporation duly organized under Philippine laws and is engaged in the business of manufacturing steel blanks for use by various manufacturers of automotive, electrical, electronics, industrial and household appliances.

Respondent Commissioner of Internal Revenue is the duly designated authority to collect all taxes under the National Internal Revenue Code (NIRC) of 1977, as amended, grant refunds, issue and abate assessments, among others.

On June 4, 1996, petitioner filed an amended Annual Income Tax Return declaring a net taxable income of P9,461,597.00, tax credits of P6,471,246.00 and tax due in the amount of P3,311,559.00. Petitioner likewise reported quarterly payments for the second and third quarters of 1995 in the amounts of P2,328,747.26 and P1,082,108.00, respectively.

According to petitioner, for the year 1995, several of its clients, including those belonging to the top 5000 corporations, withheld taxes from their income payments to petitioner and remitted the same to the Bureau of Internal Revenue (BIR) in the sum of P3,159,687.00. Due to its loss positions for the three (3) quarters of 1996, petitioner was allegedly not able to utilize the excess tax paid for and its behalf by the withholding agents.

Thus, on April 10, 1997, petitioner filed a formal request with the BIR for the refund of the amount of P3,159,687.00. On April 18, 1997, petitioner filed a Petition for Review with this Court.

On January 12, 2000, this Court promulgated a Decision[1] denying the Petition for Review due to insufficiency of evidence. This Court ruled that although petitioner appears to have a refundable amount of P3,159,687.00, it could not be determined whether such amount was utilized in 1996 because petitioner failed to submit its Annual Corporate Income Tax Return for 1996.

Petitioner filed a Motion for Reconsideration of the Decision of this Court on February 2, 2000[2] which was denied in a Resolution of this Court dated April 25, 2000.[3]

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[1] Records, page 580-584.
[2] *Ibid.*, pages 586-589.
[3] *Id.*, pages 604-605.

173

Petitioner then filed a "Petition for Review" with the Court of Appeals on June 21, 2000 (FN Id., pages 614-622.) In his "Comment" thereto, respondent reiterated the importance of the 1996 Annual Income Tax Return in determining petitioner's entitlement to a tax refund. In response, petitioner filed its "Reply to Comment (Re: Respondent's Comment to Petitioner's Petition for Review)" and therein attached as Annex "A" a certified copy of the "Petition for Review" for CTA Case No. 5799, a case then pending with this Court involving the same parties, together with attachments consisting mainly of petitioner's 1996 Annual Income Tax Return.

On January 10, 2002, the Court of Appeals rendered a Decision upholding this Court's ruling and denying petitioner's claim (FN Id., pages 680-688).

Aggrieved, petitioner appealed to the Supreme Court, on March 14, 2002 (FN Id., pages 690-706).

The High Court subsequently promulgated a Decision on April 28, 2005 setting aside the decisions of the Court of Appeals and the Court of Tax Appeals (CTA). It noted that the 1996 final adjustment return of petitioner was attached to its Reply filed with the Court of Appeals and the same 1996 final adjustment return was also attached in CTA Case No. 5799. The Supreme Court held that petitioner is entitled to a refund but the amount must still be proved in proper proceedings before the Court of Tax Appeals. Thus, this case was remanded to Us for the determination of the amount on the basis of petitioner's 1996 final adjusted return.

In accordance with the above Decision trials were conducted before this Court. During the hearing on October 27, 2005, petitioner marked as Exhibits CE, CE-1 and CE-2 its 1996 Annual Income Tax Return. The same were formally offered on November 3, 2005 and admitted by this Court on December 20, 2005.

974

On August 16, 2006, this case was submitted for decision taking into consideration the respective memoranda filed by the parties and petitioner's reply memorandum. Hence, this Decision.

The sole issue for this Court's determination is whether or not petitioner is entitled to the refund of the amount of P3,159,687.00 allegedly representing its excess/overpaid income tax for the calendar year ended December 31, 1995.

In determining the proper amount of tax refund that petitioner may be entitled to receive, it is important to ascertain first petitioner's compliance with the "Three Basic Requirements on Refund of Excess Creditable Withholding Taxes", to wit:

1. That the claim for refund (or issuance of a tax credit certificate) was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;

2. That the fact of withholding is established by a copy of a 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 were withheld was included in the return of the recipient (*Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*).

Anent the first requirement, petitioner originally filed its 1995 income tax return on April 15, 1996. Therefore, it had until April 15, 1998 within which to file its administrative and judicial claims. Considering that petitioner filed its letter claim for refund with the BIR on April 10, 1997 and the Petition for Review with this Court on April 18, 1997, the above requirement has been complied with. Moreover, petitioner's compliance with the same had already been put to rest by the Supreme Court itself in its Decision of April 28, 2005, when it declared:

> "xxx Petitioner filed its claim in 1997 — well within the two-year prescriptive period. Thus, its unused tax credits in 1995 may still be refunded."

To prove compliance with the second requirement, petitioner submitted various Certificates of Creditable Tax Withheld at Source.[4] A review of these documents shows that only the amount of P2,779,547.04 was really withheld by its various customers, detailed are as follows:

Exhibit	Withholding Agent	Period Covered	Income Payment	Tax Withheld
Sale of goods				
E	Concepcion Industries	Oct-Mar 1995	P 9,440,413.76	P 94,404.12
F	Concepcion Industries	Jul-Sep 1995	15,668,696.54	156,686.93
G	Concepcion Industries	Oct-Dec 1995	8,426,055.88	84,260.54
H	Dai-ichi Denshi Ind.	Oct-Dec 1995	258,081.38	2,580.82
I	Dai-ichi Electronics	Jan-Mar 1995	1,674,419.22	16,744.19
J	Dai-ichi Electronics	Apr-Jun 1995	2,791,760.44	27,917.60
K	Dai-ichi Electronics	Oct-Nov 1995	3,087,337.94	30,873.39
R	Matshusita Electric Phils	Oct-Dec 1995	23,069,441.00	230,694.41
S	Matshusita Electric Phils	Jul-Sep 1995	15,871,093.00	158,710.93
T	Matshusita Electric Phils	Apr-Jun 1995	19,396,411.00	193,964.00
U	Matshusita Electric Phils	Jan-Mar 1995	13,056,745.00	130,567.00
V	Mercury Tinsmith Corp	Jan-Mar 1995	426,575.36	3,877.96
W	Mercury Tinsmith Corp	Apr-Jun 1995	309,576.38	2,814.33
X	Mercury Tinsmith Corp	Jul-Sep 1995	180,895.78	1,644.51
Y	Mercury Tinsmith Corp	Oct-Dec 1995	248,400.00	2,258.18
Z	Mitsuboshi Cutlery	Jan-Mar 1995	34,027.00	340.27
AA	Mitsuboshi Cutlery	Apr-Jun 1995	183,416.82	1,834.17
AB	Mitsuboshi Cutlery	Jul-Sep 1995	155,792.00	1,557.92
AC	Mitsuboshi Cutlery	Oct-Dec 1995	211,256.00	2,112.56
AD	Mitsui Industria Corp	Apr-Jun 1995	27,240.00	272.40
AE	Mitsui Industria Corp	Oct-Dec 1995	1,060,972.00	10,609.72
AF	Mitsui Industria Corp	Jan-Mar 1995	179,082.50	1,790.82
AH	Nissan Motors Phils	Jan-Mar 1995	2,259,204.48	22,592.04
AI	Nissan Motors Phils	Jul-Sep 1995	9,567,892.00	95,678.92
AJ	Nissan Motors Phils	Oct-Dec 1995	13,825,998.39	138,259.98
AK	Norkis Trading Corp	Feb 1995	233,234.00	2,332.34
AL	Norkis Trading Corp	Mar 1995	221,854.00	2,218.54
AM	Norkis Trading Corp	Apr 1995	889,725.00	8,897.25
AN	Norkis Trading Corp	Jun 1995	668,396.00	6,683.96
AO	Norkis Trading Corp	Jul-Sep 1995	824,907.00	8,249.07
AP	Norkis Trading Corp	Oct-Dec 1995	3,156,513.00	31,565.13
AQ	Philippine Appliance Corp	Jan-Dec 1995	65,786,137.00	657,961.37
AR	Saisho Denshi Industries	Apr-Jun 1995	20,316.16	203.16

[4] Exhibits E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, AN, AO, AP, AQ, AR, AS, AT, AU, AV, AW, AX, AY, AZ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, BL, BM, BN, BO, BP, BQ, BR, BS, BT, BU, BV, BW, BX, BY, and BZ.

AS	Saisho Onkyo Inc	Apr-Jun 1995	3,996,040.90	39,960.39
AT	Saisho Onkyo Inc	Oct-Dec 1995	2,137,729.00	21,377.28
AU	Saisho Onkyo Inc	Jan-Mar 1995	1,949,514.42	19,495.12
AV	Sanyo Phils	Jan-Mar 1995	1,622,659.00	16,226.59
AW	Sanyo Phils	Apr-Jun 1995	3,194,298.00	31,942.98
AX	Sanyo Phils	Jul-Sep 1995	4,552,980.00	45,529.80
BB	Sharp (Phils) Corp	Jul-Sep 1995	402,078.00	4,020.78
BC	Sharp (Phils) Corp	Oct-Dec 1995	1,738,910.00	17,389.10
BD	Standard Electric Mfg	Jan 1995	5,121,970.91	51,219.70
BE	Standard Electric Mfg	Mar 1995	1,272,252.45	12,722.53
BF	Standard Electric Mfg	Feb 1995	558,455.63	5,584.56
BG	Standard Electric Mfg	Apr 1995	234,305.32	2,343.05
BI	Standard Electric Mfg	Jun 1995	1,326,057.23	13,260.58
BJ	Standard Electric Mfg	Jul 1995	1,513,702.14	15,137.02
BK	Standard Electric Mfg	Aug 1995	1,331,801.97	13,318.02
BL	Standard Electric Mfg	Sep 1995	471,484.38	4,714.85
BM	Standard Electric Mfg	Nov 1995	1,148,273.18	11,482.73
BN	Standard Electric Mfg	Dec 1995	361,808.14	3,618.08
BO	Suzuki Phils	Jan-Mar 1995	237,434.00	2,374.34
BP	3D Industries, Inc	Apr-Jun 1995	3,905,133.39	39,051.33
BQ	3D Industries, Inc	Oct-Dec 1995	1,594,780.45	15,947.81
BR	3D Industries, Inc	Jul-Sep 1995	3,523,120.06	35,231.21
BS	3D Industries, Inc	Jan-Mar 1995	2,774,459.99	27,744.61
BT	Tisdall Industrial Corp	Jan-Mar 1995	1,098,439.37	10,984.42
BU	Tisdall Industrial Corp	Apr-Jun 1995	1,338,614.73	13,386.18
BV	Tisdall Industrial Corp	Jul-Sep 1995	1,988,515.72	19,885.20
BX	Universal Stainless Ware	Apr-Jun 1995	75,806.00	758.06
BY	Universal Stainless Ware	Jul-Sep 1995	160,562.00	1,605.62
BZ	Universal Stainless Ware	Oct-Dec 1995	168,838.00	1,688.38
	Subtotal		**P263,011,890.41**	**P2,629,158.85**
Sale of Service (Payment to Contractors)				
L	Honda Philippines	Jan-Mar 1995	P 328,402.54	P 3,284.02
M	Honda Philippines	Jul-Sep 1995	21,280.54	212.80
N	Honda Philippines	1995	197,983.18	1,979.83
O	Honda Philippines	Oct-Dec 1995	114,772.73	1,147.73
P	Jacinto Marketing & Trading	1995	310,385.00	2,821.68
AG	Nissan Motors Phils	Apr-Jun 1995	5,499,124.18	54,991.24
AY	Sharp (Phils) Corp	Jan-Mar 1995	387,052.00	3,870.52
AZ	Sharp (Phils) Corp	Apr-Jun 1995	1,407,522.00	14,075.22
BA	Sharp (Phils) Corp	Apr-Jun 1995	388,015.00	3,880.15
	Subtotal		**P 8,654,537.17**	**P 86,263.19**
Sale of real property				
Q	JS Steel Cebu Corporation	Jan-Dec 1995	**P 855,000.00**	**P 64,125.00**
	Total		**P272,521,427.58**	**P2,779,547.04**

977

In summary, the amount of P2,779,547.04 (taxes withheld) is composed of the following:

Nature of Income	**Income Payment**	**Tax Withheld**
Sale of Goods	P263,011,890.41	P2,629,158.85
Sale of Services	8,654,537.17	86,263.19
Sale of Real Property	855,000.00	64,125.00
Total		P2,779,547.04

Finally, with regard to the last requirement, a review of petitioner's amended 1995 income tax return (pp. 57-58, BIR Records) reveals the following items of income:

Sale of Goods	P553,618,809.00
Processing Service Income	4,163,600.00
Foreign Exchange Gain	10,084,489.00
Insurance Claims	795,984.00
Commissions & Others	8,499,551.00

Comparing the above items with the composition of the "taxes withheld" would show that petitioner declared its income from sale of goods and sale of services related to the creditable withholding taxes of P2,629,158.85 and P86,263.19, respectively, but failed to declare the income from its sale of real property related to the creditable withholding taxes of P64,125.00. Petitioner did not indicate any amount of income from sale of real property in its 1995 annual income tax return. Although petitioner reported the amount of P8,499,551.00 as "Commissions & Others", it cannot be verified from the records whether the income referred to as "Others" pertained to its income from sale of real property of P855,000.00. In other words, petitioner failed to prove that it declared the income of P855,000.00 corresponding to the creditable withholding taxes of P64,125.00.

Based on the above discussion, it appears that petitioner is entitled to a refund in the amount of P2,715,422.04 only which is the resulting amount after deducting P64,125.00 *(the amount it failed to declare representing income from sale of real property)* from P2,779,547.04 *(the amount of taxes proved to have been withheld).*

978

However, this Court is still constrained to deny petitioner's claim for refund because petitioner carried over the subject claim to the succeeding taxable years, particularly 1996 to 1998 and the succeeding years.

Section 69 of the 1977 NIRC, as amended, (now Section 76 of the 1997 NIRC) provides:

> "Section 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 net 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 quarters of the succeeding taxable year." *(Underlining Supplied)*

In interpreting this provision, the Supreme Court pronounced that these two options are alternative in nature. The choice of one precludes the other. Indeed, in ***Philippine Bank of Communications vs. Commissioner of Internal Revenue***,[5] the Court ruled that a corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding option box provided in the Final Adjusted Return (FAR). One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.

This Court, in deciding this case, undertook to review once more the records of this case. Likewise, justified by the principle of judicial notice, We also reviewed the records of another decided case involving the same parties *(JS Steel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6071, February 19, 2002)* wherein petitioner's 1997 and 1998 Annual Income Tax Return were submitted as evidences.[6]

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[5] G.R. No. 112024, January 28, 1999.
[6] Annexes A & C, CTA Case No. 6071.

After a meticulous examination of all the pertinent documents, We found that petitioner's 1996 Income Tax Return *(Exhibit CE-2)* shows that the 1995 overpaid income tax in the amount of P3,159,687.00 *(subject of claim in the instant case)* was carried over to 1996 as "prior year's excess credit" <u>but remained unutilized since petitioner suffered a loss in 1996</u>.

In 1996, the overpaid income tax of petitioner amounted to P6,617,410.00 comprising of the prior year's excess credit of P3,159,687.00 and current year's tax credits in the amount of P3,457,723.00 which was again carried over to 1997 as "prior year's excess credit".

The 1997 Income Tax Return of the petitioner[7] reflects that it incurred an overpaid income tax of P10,250,857.00 which comprised of the prior years' excess credit of P6,617,410.00 and the current year's tax credits of P3,633,447.00. The amount of P3,633,447.00 was the subject of a claim for refund in CTA Case No. 6071 and this Court found that the amount of P3,633,447.00 was partly utilized to pay for the 1998 Minimum Corporate Income Tax (MCIT) liability of petitioner in the amount of P710,523.00 thereby leaving an excess tax credit of P2,922,924.00. This Court ruled therein that the excess tax credit of P2,922,924.00 could no longer be claimed as refund because it was carried-over to the succeeding year 1999 as evidenced by the "x" mark in the box corresponding to the option "To be carried as tax credit next year" in its 1998 return. Said decision was affirmed by the Court of Appeals on May 31, 2004 with final judgment on July 28, 2005 and a writ of execution was received by respondent on April 4, 2006.[8]

Clearly from the foregoing, petitioner availed of the automatic carry-over insofar as its 1995 substantiated excess creditable withholding taxes of P2,715,422.04 is concerned. It follows therefore that petitioner's claim for refund for the year 1995 must be denied because

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[7] Exhibit A-3, CTA Case No. 6071.
[8] CTA Case No. 6071 Docket.

petitioner cannot be allowed to avail of a tax refund and a tax credit at the same time for the same excess income taxes.

WHEREFORE, premises considered, petitioner's claim for refund of excess or unutilized creditable withholding taxes for the taxable year 1995 is hereby **DENIED**.

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
Chairman, First Division