REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

NICHIMEN CORPORATION (Manila Branch),
Petitioner,

- versus -

C.T.A. CASE NO. 5537

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 26 1999

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DECISION

This is a petition for review filed by Petitioner NICHIMEN CORPORATION (Manila Branch) against Respondent COMMISSIONER OF INTERNAL REVENUE for failure of the latter to act on the former's claim for refund in the amount of P1,045,815.00 allegedly representing its erroneously paid income tax.

As represented, Petitioner is the Philippine branch of the Nichimen Corporation, a corporation duly organized and existing under and by virtue of the laws of Japan, with office located at the 20th Floor, Pacific Star Building, corner Makati Avenue and Gil Puyat Avenue, Makati City. It is duly licensed by the Securities and Exchange Commission (SEC) of the Philippines to engage in the trading business thereat under SEC Certificate Registration No. 494.

Petitioner filed with Respondent its Tentative Corporate Annual Income Tax Return (Exh. D) and Final Corporate Annual Income Tax Return (Exh. E) for the fiscal year ending March 31, 1992 on July 16, 1992 and February 27, 1995, respectively, which showed the following details:

Fiscal Year Ending March 31, 1992	Tentative Corporate Annual Income Tax Return (Exh. D)	Final Corporate Annual Income Tax Ret. (Exh. E)
Gross Income	P22,798,407.00	P22,798,407.00
Less: Deductions	24,217,320.00	23,978,571.00
Taxable Income	P(1,418,913.00)	P (1,180,164.00)
Tax due	P - nil -	P - nil -
Less: Prior year's excess credit	-	54,090.00
Quarterly payments	-	106,336.00
Creditable Tax Withheld	-	13,299.00
Total payments/credits	-	173,725.00
Tax Payable/(Refundable)	-	P (173,725.00)

Similarly, for fiscal year ending March 31, 1994, petitioner filed with Respondent its Corporation Annual Income Tax Return on July 15, 1994 (Exh. F) wherein it declared the following details:

Gross Income		P29,790,765.00
Less: Deductions		25,875,746.00
Taxable Income		P 3,915,019.00
Tax Due		P 1,370,257.00
Less: Prior year's excess credit	P337,970.00	
Quarterly payments	62,418.00	
Creditable tax withheld	43,689.00	P 444,077.00
Tax Payable/(Refundable)		P 926,180.00

On March 21, 1995, Respondent issued Revenue Audit Memorandum Order (RAMO) No. 1-95 which prescribed the audit guidelines and procedures for the proper

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determination of the income tax liability of Philippine branches and liaison offices of multinational enterprises (including the Japanese trading companies or "Sogo Shoshas") engaged in soliciting orders, purchases, service contracts, trading, construction, and other activities in the Philippines. Petitioner being engaged in said activities, is therefore placed under the coverage of said RAMO, and should determine its income tax liability based on its specific provisions.

In a letter dated April 17, 1995 (Exh. J), Respondent authorized the members of the Japanese Chamber of Commerce and Industry of the Philippines, including Petitioner, to amend their income tax returns covering all taxable years prior to fiscal year ending March 31, 1995 following the formula under RAMO 1-95 but using 100% attribution rate. Respondent also waived the penalties that accrue with the late remittance of income tax.

On June 30, 1995, Petitioner filed with Respondent its Amended Corporate Annual Income Tax Returns for fiscal years ending March 31, 1992 and March 31, 1994 computing its income tax liabilities for both fiscal years using the formula under RAMO 1-95 but with 100% attribution rate (Exhs. G and H). Its Amended Annual Income Tax Returns for fiscal years 1992 and 1994 showed the following details:

	FY ending March 31, 1992 (Exhibit G)	FY ending March 31, 1994 (Exhibit H)
Taxable Income	P15,185,199.00	P15,003,619.00
Tax Due	P 5,314,820.00	P 5,251,267.00
Less: Tax Credits/Payments		106,107.00
Tax payable	P 5,314,820.00	P 5,145,160.00

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Subsequently, thereafter, petitioner discovered that it had committed an error in the preparation of its Amended Corporate Annual Income Tax Returns for fiscal years ending March 31, 1992 and March 31, 1994. It inadvertently failed to deduct from its income tax liability of P5,314,820.00 for fiscal year ending March 31, 1992 (Exh. G), the amount of P119,635.00, representing the sum of its quarterly income tax payments of P106,336.00 and creditable taxes withheld of P13,299.00 for the same fiscal year. Likewise, for fiscal year ending March 31, 1994, it inadvertently omitted from its computation of the income tax payable the amount of P926,180.00 which was the actual income tax it paid as per its original income tax return filed on July 15, 1994 (Exh. F).

On June 27, 1997, Petitioner filed with Respondent a written claim for refund or tax credit (Exh. I) in the total amount of P1,045,815.00 allegedly representing its overpaid income tax for fiscal years ending March 31, 1992 and March 31, 1994 of P119,635.00 and P926,180.00, respectively.

Without waiting for an action from Respondent, Petitioner filed the instant petition for review with this Court on June 28, 1997 in order to toll the running of the two year period prescribed under Section 230 of the Tax Code.

Petitioner repleads its stance in the instant Petition, while on the other hand, Respondent maintains that Petitioner is not entitled to the claimed refund on the grounds that (1) Petitioner's right to claim refund has already prescribed, more than two years having elapsed from July 15, 1992 and July 15, 1994, the dates when the original returns were filed, (2) the total amount of P1,045,815.00 claimed by Petitioner allegedly representing overpaid income taxes for the fiscal years ending March 31, 1992 and March 31, 1994 was not properly documented, (3) in an action for tax refund, the burden of

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proof is on the taxpayer to establish its right to refund, (4) it is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, and (5) claims for refund are strictly construed against claimants since they partake of the nature of an exemption from taxation.

The issues to be resolved by this Court are as follows:

1) Whether or no Petitioner's claim for refund has prescribed pursuant to the provisions of Section 204 of the Tax Code in relation with Section 230 of the same code; and

2) Whether or not Petitioner has sufficiently established its entitlement to the refund by substantial evidence.

We rule first on the issue of prescription.

Respondent maintains that Petitioner's right to claim a refund has prescribed because more than two years have elapsed from July 15, 1992 and July 15, 1994 to June 28, 1997, the date when this petition was filed in this Court. It is Respondent's contention that the counting of the two-year period should start on July 15, 1992 and July 15, 1994 because these are the dates when the original returns for fiscal years 1992 and 1994, respectively, were filed.

While it is well-settled by the Supreme Court that the two-year prescriptive period for claiming a refund starts from the date of filing of the final income tax returns (CIR vs. Court of Appeals, Court of Tax Appeals and Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation, G.R. No. 117254, January 21, 1999), the peculiar circumstances of the instant case necessitate a broader approach to this issue taking into account the facts as they relate to the applicable provisions of the law on prescription.

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To Our minds, the existence of Revenue Audit Memorandum Order (RAMO) No. 1-95 prescribing new audit guidelines on the proper determination of petitioner's income tax liabilities (see. Pp. 1-6, BIR records) resulting in the amendment of the income tax returns gave rise to a new question as to when to count the start of the two (2) year prescriptive period for claiming a refund. Sections 204 and 230 of the 1994 Tax Code provide as follows:

> **Section 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:
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> x x x x x x x x x
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> (3) 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 credit or refund within two years after the payment of the tax or penalty. (Underscoring supplied)

> **Section 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 written claim therefor, refund or credit any tax, where on the face of the return upon which payments

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> was made, such payment appears clearly to have been erroneously paid. (Underscoring supplied)

It is significant to point out that as a result of the issuance of RAMO 1-95, the then Commissioner of Internal Revenue, Liwayway Vinzons-Chato, in a letter dated April, 17, 1995, authorized petitioner to amend its income tax returns covering all prior years following the formula prescribed in said RAMO (see Exh. J, p. 130, CTA records). Pursuant to said authorization letter, petitioner filed amended income tax returns for fiscal years ended March 31, 1992 and March 31, 1994 on June 30, 1995 (see Exhs. G and H, respectively). Both fiscal years are now the subject of this claim for refund.

It would not be in accordance with the spirit of the law, if we shall still count the two-year prescriptive period from the date of filing of the original income tax returns considering that respondent herself, was the one who authorized the amendment of said returns. But then again, the counting of the two-year period should also depend on the question as to whether or not the refundable amount for these two periods became determinable only at the time of the filing of the amended returns. If the answer to this question is affirmative, then it would be in accord with justice and equity to count it from the time of the filing of the amended income tax returns on June 30, 1995 because the cause of action of the petitioner arose only at this moment in time, therefore the filing of the petition for review on June 28, 1997 was definitely within the two-year prescriptive period.

To this question, this Court, after a searching study of the facts of this case, concludes that petitioner's claim for refund pertaining to fiscal year ended March 31, 1992 falls outside the two-year prescriptive period and should be denied while the claim pertaining to fiscal year ended March 31, 1994 falls within said prescriptive period and should be decided on its merits.

We found that petitioner's claim for refund of P119,635.00 pertaining to the fiscal year ended March 31, 1992 was already determinable at the time it filed its original tentative Corporation Annual Income Tax Return (Exh. D) on July 15, 1992. The amount of P119,635.00 consists of quarterly payments made for said fiscal year in the amount of P106,336.00 and withholding tax credit for same year in the amount of P13,299.00. With or without the existence of RAMO 1-95 and the subsequent amended return, the aforementioned amounts representing petitioner's quarterly payments and withholding tax credits were already known to be refundable even at the earliest stage of filing the tentative income tax return. The fact that the amended return for fiscal year 1992 resulted in a substantial tax liability did not alter nor give rise to the subject claim for refund. Thus, logic dictates that the counting of the two-year prescriptive period should still commence on July 15, 1992, therefore, petitioner's right to claim the same has indeed prescribed and deserves no consideration by this Court.

On the other hand, petitioner's right to claim the refund of P926,180.00 pertaining to fiscal year ended March 31, 1994 falls within the two year prescriptive period because at the time petitioner filed its amended return on June 30, 1995 and was made to pay the new substantial amount of P5,145,160.00 (see Exh. H) as a result of its recomputation pursuant to RAMO 1-95, it had already made a prior payment of the amount of P926,180.00 representing its income tax liability for said period on July 15, 1994 (see Exh. F). This is a case of double payment of income taxes for the same period. Petitioner only knew that there was double payment at the time it filed its amended return

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on June 30, 1995 in accordance with RAMO 1-95, thus the refundable amount of P926,180.00 became determinable only at this time. Therefore, all these things considered, the counting of the two year period should commence on June 30, 1995 making the same fall within the statute of limitations provided by law for claiming a refund.

Having concluded that it is only the refund corresponding to fiscal year ended March 31, 1994 which deserve our consideration, We now go to the factual aspect of this particular claim.

In resolving this issue, this Court found it necessary to first examine Petitioner's 1994 Amended Corporate Annual Income Tax Return filed on June 30, 1995 pursuant to RAMO 1-95 (Exh. H). The said document shows that Petitioner deducted from its income tax due of P5,251,267.00 the amount of P106,107.00. The latter amount represents the sum of its quarterly income tax payments of P62,418.00 and creditable taxes withheld of P43,869.00 declared per its original income tax return filed on July 15, 1994 (Exh. F). To prove the amount of creditable taxes withheld of P43,689.00, Petitioner submitted:

a) Certificates of Income Tax Withheld on Compensation for the year 1993 issued to Hideaki Tsujimura, Pres./Managing Partner, of herein Petitioner, by Super Industrial Corp. amounting to P40,836.60 (pages 107-108, CTA records); and

b) Certificate of Creditable Income Tax Withheld at Source for the year 1993 issued to Petitioner by Belson Development Corporation amounting to P2,851.82 (page 109, CTA records).

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A careful scrutiny of the aforementioned documents discloses that only the document mentioned in letter (b) can be validly accepted as proof of creditable tax withheld at source for fiscal year 1994 representing the amount of P2,851.82. The documents mentioned in letter (a) however cannot be considered in this Court's final evaluation as they all refer to a different payee and pertain to income taxes withheld on salaries. Furthermore, it was also revealed that petitioner failed to present its quarterly income tax payment receipts to prove its payment of quarterly taxes of P62,418.00.

In summary, the total amount of P103,255.00 representing the disallowed P62,418.00 quarterly income tax payments as well as the amount of P40,837.00 mentioned in the aforementioned letter (a) of discussion was not deducted from petitioner's income tax due of P5,251,267.00 for the fiscal year ending March 31, 1994.

However, We deem it just and proper to deduct the amount of P2,851.82 (mentioned in letter [b] of discussion) and the actual income tax payments already made by petitioner in the amount of P926,180.00 (Exh. F) from its income tax due reflected in the amended income tax return of P5,251,267.00 resulting in the correct tax due of P4,322,235.00 for the fiscal year ended March 31, 1994. Thus, Petitioner's excess income tax payment for fiscal year ending March 31, 1994 amounted to P822,925.00 computed as follows:

Income Tax Due for FY 1994 computed Under RAMO 1-95 per Amended Return (Exh. H)		P5,251,267.00
Less: 1) Creditable taxes withheld by Belson Development Corp.	P 2,852.00	
2) Income Tax Payment per Original Return (Exh. F)	926,180.00	929,032.00
Should be Income Tax Payable		P4,322,235.00
Less: Income Tax Payment per Amended Return (Exh. H)		5,145,160.00
Excess Income Tax Payment		P 822,925.00

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WHEREFORE, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE in favor of Petitioner amounting to P822,925.00 as its excess income tax payment for the fiscal year ended March 31, 1994.

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

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