REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SHIMIZU PHILIPPINE CONTRACTORS INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5544

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 12 1999

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate of the amount of P41,969,870.00 representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the fiscal years ended March 31, 1995 and March 31, 1996; and for the transitory short period of April 1, 1996 to December 31, 1996.

Petitioner 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 providing services for the construction of buildings, production plants and warehouses with office address located at the 5th Flr., Kings Court Building, #2129 Pasong Tamo Street, Makati City.

On July 17, 1995, petitioner filed its tentative Corporation Annual Income Tax Return for fiscal year ended March 31, 1995, reflecting an overpaid income tax in the amount of P29,634,873.00 (Exhs. A-7, A-8 and A-9). This adjustment return was later amended on March 26,1996, which shows a lesser excess income tax payment in the sum of P26,050,578.00, computed as follows:

Gross Income:		
Schedule 1 (Sale of goods)	P3,180,538.00	
Schedule 3 (Other income)	565,027.00	P 3,745,565.00
Less: Deductions		16,203,892.00
Taxable Income		**(P12,458,327.00)**
Tax Due		P nil
Less: Tax Credits/Payments		
a. Prior Year's Excess Credit	P 9,763,173.00	
b. Quarterly Payments	-	
c. Creditable Tax Withheld	16,287,405.00	26,050,578.00
Total Amount Refundable		**P26,050,578.00**

Petitioner chose to apply the excess creditable tax withheld of P16,287,405.00 as tax credit to the succeeding taxable year. However, the intended application of overpaid income tax became nugatory because in fiscal year 1996 petitioner suffered another net loss from business operations as borne out by petitioner's income tax return for fiscal year ended March 31, 1996. Thus, the overpayment of income taxes of petitioner now rose to P34,713,753.00 due to creditable tax withheld for fiscal year 1996 in the amount of P18,426,348.00 (Exhs. B, B-1, and B-2).

In the meantime, Petitioner filed two letters of request with RDO No. 48 - West Makati of the Bureau of Internal Revenue. The first request is for the change of accounting period - from fiscal year to calendar year and the second is for the change of accounting method of recognizing income - from completed contract method (which petitioner used in its previously filed income tax returns) to percentage of completion method (Exhs. C, C-1, and E). These requests were both granted by the Regional Director, Mr. Antonio I. Ortega, through the respective letters dated July 22, 1996 and

382

December 18, 1996 (Exhs. D and F). The effectivity of change of accounting period is in the year 1996 while the change of accounting method is in the year 1997.

On March 24, 1997, petitioner filed a transitory short period income tax return for the period April 1, 1996 to December 31, 1996 reflecting, among others, a nil income tax liability but with a refundable income tax payment in the amount of P41,969,870.00 (Exhs. G, G-1, G-2, and G-3). An amended return was later filed by petitioner on June 14, 1996, in order to correct the overpaid income tax in the sum of P25,682,465.00 instead of P41,969,870.00, detailed as follows: (Exhs. H, H-1, H-2, H-3 and H-4)

Gross Income:		
Schedule 1 (Sale of goods)	(P29,731,416.00)	
Schedule 3 (Other income)	228,361.00	(P 29,503,055.00)
Less: Deductions		85,764,121.00
Taxable Income		**(P115,267,176.00)**
Tax Due		P nil
Less: Tax Credits/Payments		
a. Prior Year's Excess Credit	P17,207,238.00	
b. Quarterly Payments	-	
c. Creditable Tax Withheld	8,475,227.00	25,682,465.00
Total Amount Refundable		**P25,682,465.00**

Petitioner manifested that the prior year's excess credit in the sum of P17,207,238.00 representing the excess creditable withholding taxes for fiscal year ended March 31, 1996, was reduced by P1,219,110.00 due to an erroneous withholding of tax of one of its withholding agents.

On July 10, 1997, petitioner in anticipation of incurring losses from business operations, decided to file an administrative claim for refund of excess income tax payments covering the fiscal years ended March 31, 1995 and March 31, 1996 and for

383

the interim period of April 1, 1996 to December 31, 1996, in the total amount of P41,969,870.00, broken down as follows:

Period Involved	Amount
FY Ended March 31, 1995	P16,287,405.00
FY Ended March 31,1996	17,207,238.00
Short Period April 1, 1996 to Dec. 31, 1996	8,475,227.00
Total	**P41,969,870.00**

As respondent did not act upon this claim for refund, the petitioner filed the instant petition for review with this Court on July 14, 1997, in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

The issues now confronting Us are the following:

1) whether or not petitioner is entitled to the claim for refund of alleged overpaid income tax for the periods covered by the claim; and if in the affirmative,

2) whether or not petitioner has presented sufficient evidence to substantiate the said claim for refund.

We answer both questions in the affirmative.

The legal basis of petitioner in claiming for the refund of overpaid income tax is Section 69 of the Tax Code, as amended, to quote:

> **Section 69.** ***Final adjustment return***. - Every corporation liable to tax under Section 24 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 excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> 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).

384

It is apparent from the evidence on record that petitioner incurred successive net operating losses from its business undertakings for fiscal years ended March 31, 1995 and March 31, 1996 and for the period April 1, 1996 to December 31, 1996. The income tax payments arising from creditable withholding tax at source remain unapplied during the years, hence, petitioner appears to be legally entitled to the refund sought. However, petitioner must still prove its entitlement to the refund by substantial evidence.

Section 230 of the Tax Code, as amended, provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code, as amended, is hereby quoted as follows:

> **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.
>
> 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 a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid (Underlining supplied).

Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following three requisites:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;

385

2. that the income upon which the taxes were withheld were included in the return of the recipient; and

3. the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom. **(Sec. 10, Rev. Regs. 6-85; Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993).**

The records establish that petitioner's claim for refund was timely filed within the two-year period from the date of payment of the tax. The letter request for refund was filed with the respondent on July 10, 1997, while the instant case was instituted on July 14, 1997. The two-year period commences on July 17, 1995, the date when petitioner filed its final income tax return for fiscal year ended March 31, 1995 **(Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992)**. The income upon which the creditable withholding taxes in question were withheld were included as part of the gross income reflected in petitioner's income tax returns which were supported by the Schedules of Revenues and Collection and as testified to by petitioner's witness Mr. Saturnino Roberto during the hearing held on April 16, 1998 (Exhs. A-5, A-6, B-5, B-6, H-5, H-6, OOOOO, PPPPP, QQQQQ-2, and RRRRR-2; see TSN, April 16,1998, pp. 1 to 35). However, We deemed it fit to grant only the amount of P41,969,397.44 as this amount is duly supported by Certificates of Creditable Income Tax Withheld at Source (Exhs. J to NNNNN, inclusive of their submarkings; Exh. MMMMM for detailed computation).

Respondent, on the other hand, contends that petitioner is no longer entitled to the refund/credit because a mere allegation of net loss in the corporate annual income

386

tax returns does not *ipso facto* merit a tax refund/credit. He further reasons that there are no evidence to show that deductions claimed against petitioner's gross income are allowable deductions under the Tax Code.

We find the foregoing arguments of respondent without merit.

In the case entitled **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993,** the said issue was already rendered when We ruled:

> "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 was 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."

It should be pointed out that the annual income tax returns of petitioner, Shimizu Philippine Contractors, Inc., were prepared and signed under the penalties of perjury. In fact these income tax returns were examined by independent CPAs, as required under Section 232 of the Tax Code, wherein the auditors expressed an unqualified opinion on the financial position of petitioner for fiscal years ended March

387

31, 1995 and March 31, 1996 and for the interim period of April 1, 1996 to December 31, 1996. Moreover, petitioner is not required to show detailed proof of the truthfulness of each and every item in the income tax return because this function belongs to the Commissioner of Internal Revenue as mandated 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 (**Citibank, N.A., vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997**).

Respondent also avers that there is no sufficient proof that the taxes withheld by the payor were remitted to the BIR and that petitioner failed to prove that the taxes withheld went to the coffers of the government.

We find respondent's contention without merit. All that is required by law and/or implementing regulation to show proof of withholding is the presentation of the statements of tax withheld at source (BIR Form 1743.1) showing the income received and the amount of tax withheld therefrom and that the income was included to form part of petitioner's gross income as stated in its income tax return. The reason for this is simple. The withholding agent is not within the control of the payee-taxpayer but is considered an agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government (**Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA-GR SP No. 26839, July 31, 1992**).

Thus, it is significant to note that the presentation of payment orders, confirmation receipts or in the alternative the admission of withholding agents are not at all required under the law and regulations. The BIR Form 1743.1 having been signed

388

under the penalties of perjury can be taken on its face (**Filipinas Management & Leasing Services Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4146, dated March 11, 1994**).

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 the petitioner the amount of P41,969,397.44 representing overpaid income tax.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On Leave)
RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals