REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5351

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 27 1998

x - x

DECISION

This is a judicial action for the refund of the sum of ₱5,720,080.00, representing overpaid income tax resulting from an excess payment of creditable withholding tax at source for the calendar years ended December 31, 1993 and December 31, 1994.

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. Its principal office is located at the 7th Flr., Pacific Star Building, Makati Avenue corner Gil J. Puyat Avenue, Makati City.

On April 13, 1994, petitioner filed its 1993 Corporation Annual Income Tax Return reflecting a net loss from operations in the amount of ₱94,472,837.00, a nil income tax liability but with amount refundable of ₱5,000,225.00, arising from prior year's excess credit of ₱1,630,689.00 and the 1993 creditable withholding tax at source in the sum of P3,369,536.00 (Exhs. A to A-13, inclusive).

Petitioner initially opted for the refund of the full amount of P5,000,225.00 overpaid income tax as shown by the "x" mark on the box labeled "To Be Refunded" but later on changed its course of action and instead chose to carry over its 1993 creditable withholding tax in the amount of P3,369,536.00 as tax credit to the succeeding taxable year 1994 pursuant to Section 69 of the Tax Code, as amended. However, for the year 1994, petitioner continued to suffer net losses from its operations (Exhs. S to S-10, inclusive). Thus, petitioner's application of its 1993 overpayment against anticipated income tax liability in 1994 became nugatory. Furthermore, the amount reflected as refundable was increased to P5,720,080.00 due to the 1994 creditable withholding tax in the sum of P2,350,544.00.

On December 1, 1995, petitioner filed a letter claim for refund with the Bureau of Internal Revenue in the amount of P5,720,080.00, representing alleged overpaid creditable withholding tax at source for the years 1993 and 1994 (Exhs. RR to RR-3, inclusive).

The inaction of respondent on its letter claim for refund compelled petitioner to file the instant petition for review on April 12, 1996 in order to conform with the reglementary period of two years as prescribed under Section 230 of the Tax Code, as amended.

Respondent, on her part, advanced as special and affirmative defenses, that "[P]etitioner's claim for refund and/or tax credit in the amount of ₱5,720,080.00 allegedly representing overpaid creditable taxes withheld for the years ending December 31, 1993 and 1994 are pending administrative investigation and are not properly documented; taxes paid are presumed to have been collected in accordance with law and regulations, hence, not refundable; in an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to said action; well-settled is the rule that claims for refund are construed strictly against claimants since they partake of the nature of an exemption from taxation (**Resin Inc. vs. Auditor General, 25 SCRA 754, 1968**).

In support of its claim for refund, petitioner presented the following documentary exhibits:

a. The 1993 and 1994 Corporation Annual Income Tax Returns (Exhs. A to A-13, S to S-12, inclusive);

b. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. RR to RR-2, inclusive); and

c. The various Certificates of Creditable Withholding Tax at Source [BIR Form 1743.1] for the years 1993 and 1994 (Exhs. B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, T, U, V, W, X, Y, and Z, inclusive of their sub-markings).

Respondent presented two documents, namely: (1) the Letter of Authority No. 88873; and (2) the Memorandum Report of Revenue Officer Romeo U. Suiza (Exhs. 1, 1-a, 2, and 2-a).

This case was submitted for decision in the absence of memoranda of both parties.

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of P5,720,080.00, representing allegedly overpaid income tax for the years 1993 and 1994.

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

> "**Sec. 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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. (Underscoring supplied)

The aforequoted law is clear that the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Thus, petitioner is correct when it carried-over only the 1993 creditable withholding tax to succeeding taxable year 1994, although, this did not materialize because petitioner's business operations during the year 1994 resulted to losses. Thus, petitioner's income tax payments for the years 1993 and 1994 appear to be refundable because they were not utilized as payment for income tax liabilities.

To support its legal entitlement to the refund, petitioner must prove the factual aspect of its claim 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 is hereby quoted as follows:

> "Sec. 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 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." (Underscoring supplied)

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

> 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;
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> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
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> 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. Reg. 6-85; see 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).**

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within two years from the date of payment of the tax. Its claim for refund with the Bureau of Internal Revenue was filed on December 1, 1995 and its Petition for Review with this Court was filed on April 12, 1996. The two-year period commences to run on April 13, 1994, for income tax paid in 1993 and April 17, 1995, for income tax paid in 1994 (**Commissioner of Internal Revenue v. TMX Sales, Inc. et. al., G.R. No. 837736, January 15, 1992**).

Petitioner also established that the income upon which these creditable withholding taxes were paid were included in petitioner's final adjustment returns (Exhs. A-3, A-7, A-8, S-3, S-11, and S-12).

The creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source (BIR Form 1743.1) in accordance with the requirements of Revenue Regulations No. 6-85, as amended, itemized as follows:

For 1993:

Withholding Agent	Exh.	Amount of Tax Withheld	Total
Phelps Dodge Phils., Inc.	B	P1,866,183.72	
Nin Bay Mining Company	C	75.00	
Aboitiz Air Transport Corp.	D	19,022.86	
Seagull Shipmanagement & Transport Inc.	E	18,300.17	
Marajo Land Corporation	F	746,400.00	
Meridien Far East Properties, Inc.	G	692,250.00	
Far East Bank & Trust Company	H	10,239.19	
Far East Bank & Trust Company	I	1,706.53	
Far East Bank & Trust Company	J	1,706.53	
Far East Bank & Trust Company	K	1,706.53	

Far East Bank & Trust Company	L	1,706.53	
Far East Bank & Trust Company	M	1,706.53	
Far East Bank & Trust Company	N	1,706.53	
Far East Bank & Trust Company	O	1,706.53	
Far East Bank & Trust Company	P	1,706.53	
Far East Bank & Trust Company	Q	1,706.53	
Far East Bank & Trust Company	R	1,706.53	
Sub-Total			₱3,369,536.24

For 1994:

Withholding Agent	Exh.	Amount of Tax Withheld	Total
Phelps Dodge Phils., Inc.	T	₱1,906,807.99	
Nin Bay Mining Company	U	20.00	
Aboitiz Air Transport Corp.	V	18,266.92	
Aboitiz Air Transport Corp.	W	9,124.18	
Aboitiz Air Transport Corp.	X	14,094.02	
Eyco Properties	Y	379,675.00	
Seagull Shipmanagement & Transport Inc.	Z	22,556.06	
Sub-Total			2,350,544.17
T O T A L			₱5,720,080.41

With regard to the objection of respondent that the claim for refund should be denied on the basis of a memorandum report submitted by Revenue Officer Romero U. Suiza which recommended a proposed deficiency assessment for income tax, value-added tax, expanded withholding tax, withholding tax on salaries, and documentary stamp tax on capital stock/sale of properties, the same holds no water. The Court cannot tackle such an issue without the actual formal assessment having been issued by the respondent. To deny the instant claim for refund on the basis of a "proposed assessment" will cause injustice to the taxpayer because assessments usually pass through specific administrative processes where the remedy of protest is made available to said taxpayer.

WHEREFORE, finding the petition for review meritorious, respondent is hereby ordered to **REFUND** in favor of petitioner the sum of ₱5,720,080.00, representing overpaid income tax for the years 1993 and 1994.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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