-13

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROBINSON'S INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 4943

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 1996

x - x

DECISION

This is a claim for refund or tax credit of the sum of P263,993.00 representing overpaid income tax for the fiscal year ended September 30, 1990.

Petitioner, Robinson's Incorporated, 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 general merchandise retailing with principal office at 110 E. Rodriguez Jr. Avenue, Libis, Quezon City.

For the fiscal year (FY) ended September 30, 1990, petitioner filed its annual income tax return with the Bureau of Internal Revenue declaring a refundable income tax payment in the amount of P1,200,713.00, computed as follows:

Income		
Schedule 1	P150,286,281.00	
Schedule 3	31,631,300.00	
Schedule 4	924,395.00	P182,841,976.00
Less deductions		182,870,310.00
Net loss		(P 28,334.00)
Tax due		P -

Less:			
a) Prior year's excess credit		P 910,507.00	
b) Quarterly payments			
Qtr. CR/ROR No.	Date		
1st 8-18912483	2-28-90	P 99,198.00	
2nd 8-20020333	5-29-90	72,415.00	
3rd 8-20364600	8-28-90	80,380.00	
		P 251,993.00	
c) Creditable tax withheld		P 38,218.00	
Total payment/credit			1,200,718.00
Tax refundable			(P 1,200,718.00)

Petitioner opted for this refundable amount of P1,200,718.00 to be refunded by marking the appropriate box in the lower portion of the aforesaid income tax return (Exh. "A"). However, when the 1991 income tax return was filed, petitioner changed its choice by carrying over 1990 excess income tax payment in the amount of P1,200,718.00 as prior year's excess credit (Exh. "I").

Petitioner alleged that out of P1,200,718.00 excess income tax payment as of FY 1990, only the amount of P290,211.00, representing 1990 quarterly income tax (Exhs. "B-2", "C-2" and "D-2") and creditable withholding tax payments (Exhs. "H", "H-1" to "H-11", inclusive), was actually carried over to FY 1991.[1]

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[1]This is because petitioner filed a separate claim for refund regarding the prior year's (1989) excess credit in the amount of P910,507.00 docketed as CTA Case No. 4700.

In fiscal year 1991, petitioner declared a net income in the sum of P74,908.00 with a corresponding tax due of P26,218.00 (Exh. "1"). Petitioner then partially applied the carried over 1990 excess income tax payment in the amount of P290,211.00 to answer for the income tax liability of 1991 in the amount of P26,218.00, but the sum of P263,993.00 remained unutilized.

On December 18, 1992, Petitioner filed a letter claim for refund with the Bureau of Internal Revenue on the belief that it is entitled to the refund of the unapplied portion of the tax credit as at September 30, 1990 (Exh. "F").

On January 13, 1993, petitioner instituted the present action in order to toll the running of the two (2) year prescriptive period provided for under Section 230 of the National Internal Revenue Code, as amended.

Hence this petition for review.

In her answer, respondent raised, by way of special and affirmative defenses, that petitioner's claim for refund is still under administrative investigation. It is incumbent upon petitioner to show that he has complied with the provisions of Sections 204(3) and 230 both of the Tax Code, as amended. The mere allegation of refundability does not *ipso facto* merit a refund of taxes legally paid and collected. Petitioner's claim for refund has prescribed for having been filed beyond the two-year reglementary period provided for under Section 230 of the Tax Code, as amended. The complaint does not state a cause of action.

To support its contention that it is entitled to the refund of P263,993.00, petitioner presented various documentary exhibits which comprise, among others, of:

a. the 1990 final income tax return of petitioner together with the attachments of auditors' report and income statements (Exh. "A");

b. the 1991 income tax return which also has an attachment of auditors' report and income statements (Exh. "E");

c. the letter-claim for refund with the Bureau of Internal Revenue (Exh. "F");

d. the quarterly income tax returns for fiscal year 1990 together with the proof of income tax payments (Exhs. "B", "B-1" to "B-3, "C", "C-1" to "C-3, "D", "D-1" to "D-3", inclusive);

e. the various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. "H", "H-1" to "H-11", inclusive); and

f. the certification of the accounting department of the respondent's bureau as to the remittance of the quarterly income taxes (Exh. "6").

Petitioner further filed its memorandum.

On the other hand, respondent failed to submit both the formal offer of evidence and the memorandum.

This case was submitted for decision based on the pleadings, the documentary and testimonial evidence of petitioner, and the testimony of respondent's witness.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit of the amount of P263,993.00, representing unutilized portion of overpaid income tax for fiscal year ended September 30, 1990.

We rule against petitioner.

The documentary exhibits offered by petitioner failed to convince this Court that the amount sought to be refunded herein was not utilized in succeeding year. This Court, in evaluating the 1991 income tax return of petitioner, noted that the amount of P263,993.00 was part and parcel of P1,215,713.00 which petitioner intended to be carried over as tax credit to the succeeding taxable year (FY 1992).

The intention was evident. Petitioner marked the appropriate box in its 1991 annual income tax return "TO BE APPLIED AS TAX CREDIT TO SUCCEEDING TAXABLE YEAR". However, petitioner is remiss in not presenting its 1992 income tax return. Such document is very necessary in determining whether or not petitioner applied the 1991 excess payment to its income tax liability in 1992. Of course, petitioner cannot expect this Court to make wild conjecture on whether or not the same was applied or not.

Court rules based on evidence and it cannot guess.

In fact, this issue was raised during the hearing of October 22, 1993. The pertinent portion of which reads as follows:

JUDGE ACOSTA

> I have one question. This refundable amount of P263,993.00, did you carry it over to the next succeeding taxable quarter which is 1992?
>
> A. Yes.
>
> JUDGE ACOSTA
>
> How come you are claiming for a refund?
>
> A. That P263,000.00, sir?
>
> JUDGE ACOSTA
>
> This case... CTA Case 4943 pertains to your claim for refund in the amount of P263,993.00. Correct?

A. Yes.

JUDGE ACOSTA

And this pertains to you overpaid income tax for the calendar year 1991. My question is, did you carry over this amount to your 1992 income tax liability.

A. Yes, Your Honors. But, we did not use it.

JUDGE ACOSTA

I beg your pardon?

A. Yes. But we did no use it

JUDGE ACOSTA

How come you said you carried it over and you did not use it?

A. Just for the process of reporting the income tax return. It was carried over.

JUDGE ACOSTA

Why? You don't have any income tax liability for 1992?

A. I am not so sure and I can't recall at this moment if we have paid any taxes for 1992.

JUDGE ACOSTA

Alright. Counsel, can you explain further?

ATTY. INCHOCO

Your Honors, we will take that up till the next scheduled hearing, Your Honors. Together with the necessary documentary evidences that we are supposed to present. (T.S.N., pp. 31 to 34, October 22, 1993)

Nonetheless, the counsel for petitioner failed to shed light on the matter. The 1992 annual income tax return was never presented.

Time and again, We already have denied several claims for refund of taxpayers for failure to present succeeding year's income tax return wherein the overpaid income tax sought to be refunded was opted to be carried over in the succeeding taxable year (**AF Holdings and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993; Philippine Bank of Communications v. Commissioner of Internal Revenue, CTA Case No. 4309; May 20, 1993; BPI Data Systems Corporation (formerly Filipinas Management and Leasing Service, Inc.) v. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4694, December 24, 1993; Anscor Hagedorn Securities, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; Pasig Land Corporation v. Commissioner of Internal Revenue, CTA Case No. 4773, May 30, 1995; and Rondel Management, Inc. v. The Commissioner of Internal Revenue, CTA Case No. 4787, January 3, 1996; Citytrust Investment Philippines, Inc.**

v. The Commissioner of Internal Revenue, CTA Case No. 4958, April 25, 1996).

WHEREFORE, in view of the foregoing, the petition for review is hereby DISMISSED for lack of merit. Accordingly, petitioner's claim for refund or tax credit is DENIED.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On leave)
MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the member 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