LIB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE APPLIANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5041

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 11 1996

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DECISION

This is a judicial claim for the refund of alleged overpaid income tax in the amount of P9,334,250.00 for the fiscal year covering the period August 1, 1990 to July 31, 1991.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws. It is engaged in the manufacture and sale of household appliances particularly refrigerators and freezers and is registered with the Board of Investments as a preferred non-pioneer enterprise, primarily for the purpose of availing of the incentives granted to such registered enterprises for the export and sale of a substantial part of their production.

In keeping its books of accounts and filing of its income tax returns, petitioner adopted the fiscal year method beginning August 1, 1990 and ending on July 31, 1991. With this period as reference, petitioner filed its final corporate income tax return on November 11, 1991 showing a net loss of P6,113,175.00 (Exhibit "A").

On August 24, 1992, petitioner filed with respondent's office a claim for refund in the amount of P9,334,250.00, representing alleged overpaid income tax for the period ended July 31, 1991, alleging that it made income tax payments for the first and second quarters of said period which eventually became excess payments as the resulting overall period netted a loss. It also averred that the payments made during the first and second quarters remained unutilized even for the next succeeding taxable year as such period similarly resulted in a net loss. The accumulated overpaid income tax in the amount of P9,334,250.00 including creditable taxes withheld is computed as follows:

Quarterly Payments of Income Tax	
First Quarter	P4,465,838.00
Second Quarter	4,817,299.00
Creditable Tax Withheld	
First Quarter	49,680.00
Second Quarter	1,433.00
TOTAL CLAIM FOR REFUND	P9,334,250.00

This claim for refund remained unacted upon until such time that petitioner decided to transform this administrative claim to a judicial one by filing a petition for review with this Court on November 10, 1993, before the lapse of the two-year period prescribed by law to claim for a refund of taxes.

In answer to the allegations found in the petition, respondent asserted the following Special and Affirmative Defenses, thus:

> 7. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
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> 8. Well-settled is the rule that mere allegations or indications of net operating loss in the Corporate Annual Income Tax Return (in the amount of P6,113,175.00 for fiscal year ending July 31, 1991) do not <u>ipso facto</u> merit a tax refund or credit in the sum of P9,334,250.00 and the absence of evidence supporting the same must necessarily work against the granting of such claim;
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> 9. Any amount claimed to have been withheld must be shown to have been paid to the government. In this case, no showing has been made;
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> 10. The total amount of P9,334,250.00 claimed by the petitioner as overpaid income tax for the fiscal year 1991 was not properly documented;
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> 11. Taxes paid and collected are presumed to have been made in accordance with law and regulations; hence, not refundable.
>
> 12. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for tax credit;

> 13. 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 as amended;
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> 14. Well-settled is the rule that claims for refund are construed strictly against claimants, since it partakes of the nature of an exemption from taxation (Resins, Inc. vs. Auditor General, 25 SCRA 754 [19681]).

The issue before Us is whether or not petitioner is entitled to the refund of P9,334,250.00 representing overpaid income tax for the fiscal year ended July 31, 1991.

The instant case does not present any jarring legal controversy but puts forward a dispute based on facts contained in petitioner's income tax returns. Petitioner offers the simple argument that as a result of the net loss it suffered during the fiscal period ended July 31, 1991, the prior payments it made during the first and second quarters should be refunded because such amount remained unapplied even for the succeeding taxable year as it likewise suffered a net loss. To fortify this argument, petitioner offered as evidence, its annual income tax return for the period ended July 31, 1991 (Exhibit "A") which showed the following figures:

Gross Income	P337,209,923.00
Less: Deductions	343,323,098.00
TOTAL Net Income	P 6,113,175.00

The annual income tax return for the succeeding fiscal period ended July 31, 1992 was likewise offered showing a net loss of P57,806,594.00 (Exhibit "M"), preventing the application of the excess payments made during the previous year to the next taxable year.

The quarterly payments made by the petitioner was evidenced by Central Bank Confirmation Receipts and BIR payment orders (Exhibits "C", "D", "F", and "G"). An additional amount of P51,113.00 was also included in the total amount being claimed as they correspond to the creditable taxes withheld by its various payors during the first and second quarters of the period involved.

Respondent did not present any substantial opposition to the claim for refund save that of asserting that the entries made by petitioner in the income tax returns for the concerned periods have not yet been subjected to audit/investigation by its revenue enforcement officers, thus the veracity of such figures remain in question, and that the alleged quarterly payments have not yet undergone verification by its officers.

We find the aforesaid arguments of respondent unsatisfactory because such defense will eventually backfire and reveal her officials' lack of diligence in pursuing an investigation on the said claim. Records show that as early as August 24, 1992, petitioner has called the attention of the BIR by filing a claim for refund. This claim was not acted upon by respondent so on November 10, 1993, more than a year after the filing of the claim for refund, petitioner decided to elevate its case to this Court via a petition for review. In fine, respondent and her revenue enforcement officers were given ample time to conduct an investigation from the time the claim for refund was filed in their office but this they failed to do. Furthermore, during the hearings of this case, until such time that this case was submitted for decision, respondent did not present any evidence to controvert petitioner's claim or to show to this Court any document to refute the entries found in the income tax returns offered by the petitioner. Moreover, respondent did not submit any memorandum to amplify the arguments found in her answer. What we have before Us are the facts as presented by the petitioner by means of the evidence submitted to prove its claim.

To explain some of the entries made particularly in the financial statement which showed a net income of P68,656,859.00 contrary to that which is reflected on the income tax return for the same period declaring a net loss, petitioner alleges that a part of the net income particularly P50,436,987.00 is non-taxable as it pertains to the tax credit granted to it by virtue of the export sales it made. As a non-pioneer preferred enterprise registered with the Board of Investments (exhibit "W"), petitioner alleges that it is entitled to tax credits on its export sales, and that for the fiscal period ended July 31, 1991 it had accumulated a tax credit in the amount of P50,436,987.00 as evidenced by the schedule of tax credit on Export sales (Exhibit "D") which was certified true and correct by the Audit Manager of SGV, Mr. Jerome Constantino (Exhibit "N"). This evidence was accompanied by photocopies of Export Commercial Invoices corresponding to the export sales made during the said period (Exhibit "O-1" to "O-138").

In addition to the amount of tax credit of P50,436,987.00 which petitioner claims not to be a part of the net income, is the sum of P33,000,839.00 which corresponds to the interest expense which was capitalized, hence deductible for income tax purposes. To substantiate the said amount, petitioner pointed out an entry found in the final corporate income tax return which declared that the amount of P33,000,839.00 actually pertains to the interest expense on notes payable capitalized as part of the construction in progress (Exhibit "A-3-b"). Petitioner also presented the Schedule of Interest Expense Capitalized for the fiscal year 1990 to 1991 (Exhibit "P"), as well as photocopies of Bank Debit Memoranda of Loan Payments to prove that it paid interest in the total amount of P33,000,839.00 (Exhibit "P-1" to "P-164").

Respondent, in the face of this barrage of evidence offered by the petitioner did not pose any serious objections but merely reiterated the lame position that no investigation has been conducted by her office to verify the accuracy of the entries found in the documents submitted by petitioner.

In the light of the hearings conducted and the records of the case, this court is inclined to grant petitioner's claim for refund but with some modification.

The legal basis for the grant of the refund in the instant case is found in Section 69 of the Tax Code which provides for the following, thus:

> Sec. 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

> 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. (As amended by BP Blg. 41 and PD 1705) (see Sec. 24, EO 37)

Petitioner has satisfactorily shown that quarterly payments were made during the first and second quarters of the fiscal year ended July 31, 1991 (see Exhibits "C", "D", "F", "G"). The final adjustment return however, for the same period revealed a net loss making such payments refundable (see Exhibit "A"). The next succeeding taxable year also ended in a net loss for the petitioner, thus preventing the excess taxes to be applied or utilized pursuant to the aforecited Section 69 of the Tax Code. In the absence of any detailed results of audit/investigation made by the officials of the respondent refuting that which was presented by the petitioner, this Court declares said petitioner to be entitled to the excess payments made covered by CB Confirmation Receipts and BIR Payment Orders (Exhibits "C", "D", "F" and "G").

This Court however excludes the amount of P51,113.00 in the total amount to be refunded becuase this amount corresponds to the creditable taxes withheld under the expanded withholding system for the same period.

Well-settled is the rule that for a valid refund of creditable taxes withheld in excess of the amount of the tax due, certain basic requirements have to be met.

Section 10 of Revenue Regulations No.6-85 provides the following, thus:

> Section 10. Claims for tax credit or refund.-Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income <u>and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No.1743.1) showing the amount paid and the amount of tax withheld therefrom.</u> (Underscoring supplied)

In the case entitled Citytrust Finance Corporation vs. Commissioner of Internal Revenue. CTA Case No. 4134 dated November 11, 1991, this Court came up with the three requirements based on the aforementioned Revenue Regulation in correlation with pertinent provisions of the Tax Code thus:

> An analysis of the provisions of law involved will show that the grant of tax refund when the creditable withholding tax is in excess of the amount of the tax due, depends on three factors: 1) that the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax as required under Section 295 of the Tax

> shown on the return of the recipient that the income payment received was declared as part of the gross income, and 3) the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Petitioner in the instant case failed to submit copies of the statement duly issued by the withholding agents showing the amount paid and the amount of taxes withheld therefrom commonly known as BIR Form No. 1743.1.

This oversight proved fatal to a portion of its claim corresponding to the creditable taxes for the fiscal year ended July 31, 1991.

WHEREFORE, in view of the foregoing, respondent is hereby ordered to refund or grant a tax credit to petitioner in the reduced amount of P9,283,137.00 representing excess income tax payments for the fiscal period ended July 31, 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

I hereby certify that this 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