REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AGROTEX COMMODITIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5667

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2000

x - x

DECISION

This is a petition seeking for the refund of the amount of Eight Hundred Fourteen Thousand One Hundred Forty Five Pesos (P814,145.00), representing alleged unutilized creditable income taxes withheld at source for the fiscal year ending May 31, 1996.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with office address at the 14th Floor, Citibank Tower, 8741 Paseo de Roxas, Makati City.

On September 16, 1996, Petitioner filed its Corporation Annual Income Tax Return for the taxable year ending May 31, 1996, reflecting a taxable income of P1,094,306.00 and the tax due thereon amounting to P383,007.00 (Exh. L). Likewise for the same year, Petitioner had total tax credits in the amount of P1,197,152.00, detailed as follows:

Prior Year's Excess Credits	P 432,000.00
Creditable Tax Withheld	765,152.00
Total	P1,197,152.00

Since its tax liability for the fiscal year 1996 amounted only to P383,007.00, Petitioner still had unutilized tax credits in the amount of P814,145.00 which it opted to carry over to the succeeding fiscal year 1997.

Petitioner, however, failed to do so as it ended up in a net loss position in 1997 (Exh. J). Thus, on July 30, 1997, Petitioner filed with the Bureau of Internal Revenue (BIR) RDO 47, a letter-claim for the refund of its unutilized tax credit in the amount of P814,145.00 (Exh. K).

As there was no action on the part of herein Respondent, and the two-year prescriptive period was about to expire, the instant Petition was filed on September 8, 1998, anchored on Sections 69 and 230 of the 1996 Tax Code, to state:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the 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.

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 excessively 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 (2) 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

"5. Petitioner's claim for refund is under verification/investigation by respondent Commissioner of Internal Revenue;

6. In an action for tax refund, petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;

7. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);

8. Taxes are presumed to have been paid and collected in accordance with law."

The issues We are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not the unutilized tax credits for the fiscal year ending May 31, 1996 are duly substantiated with sufficient evidence; and

2. Whether or not the Petitioner was in a tax loss position for the fiscal year ending May 31, 1997.

Petitioner, to support its case, offered the following evidence:

Exhibits	Description
A to I	Various Certificates of Creditable Tax Withheld at Source issued to Petitioner for the fiscal year ending May 31, 1996
J	Annual Corporate Income Tax Return of Petitioner for the fiscal year ending May 31, 1997
K	Letter dated July 30, 1997 addressed to the BIR, RDO No. 47, requesting for the refund of unutilized creditable withholding tax in the amount of P814,145.00
L	Annual Corporate Income Tax Return of Petitioner for the fiscal year ending May 31, 1996
M	Annual Corporate Income Tax Return of Petitioner for the fiscal year ending May 31, 1995
N	Certificate of Creditable Tax Withheld at Source issued to Petitioner for the fiscal year ending May 31, 1995

Respondent's counsel, on her part, was considered to have waived her right to present evidence for her failure to appear for three (3) consecutive times (p. 192, CTA records). She likewise failed to file her memorandum within the period given by the Court.

After a careful scrutiny of the evidence adduced solely by Petitioner, We find the latter to be entitled to a partial refund.

To be entitled to a refund of excess creditable income taxes, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

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

3. That the fact of withholding is established by a copy of a 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.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**].

The aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.**

With reference to the first requirement, it is worthy to note that out of the P814,145.00 claim for refund, P48,993.00 pertains to Petitioner's excess tax credit for the fiscal year ending May 15, 1995, which amount was arrived at after applying its tax liability of P383,007.00 against the prior year's tax credit of P432,000.00. Since the Annual Income Tax Return for the said fiscal year was filed on September 15, 1995, it follows then that when the instant petition for review was filed on September 8, 1998, more than two years had lapsed and Petitioner's claim insofar as the said portion is concerned had already been barred by prescription. The Court, however, finds the rest of the claim as timely filed, both in the administrative and judicial level.

We dwell on the first issue. To prove the fact of withholding, Petitioner submitted Certificates of Creditable Tax Withheld at Source issued by various withholding agents detailed as follows:

Exh.	Period Covered	Withholding Agent/Payor	Income Payment	Income Tax Withheld
1.) Prior year's excess tax credit				
N	June to Dec. 1994	Cargill Philippines, Inc.	P 8,640,000.00	P 432,000.00
2.) Creditable taxes withheld during fiscal year 1996				
A	1995	Vitarich Corporation	P 3,061,940.25	P 30,619.40
B	1996	Vitarich Corporation	13,618,530.50	136,185.30
C	1996	Vitarich Corporation	10,059,980.00	100,599.80
D	1995	Vitarich Corporation	13,157,573.75	131,575.73
E	1995	Vitarich Corporation	6,043,624.00	60,436.24
F	1995	Vitarich Corporation	371,762.00	37,176.20
G	3rd qtr-1995	Swift Foods, Inc.	1,063,636.18	10,636.36
H	Oct 1-Dec.31, 1995	Federal Agricultural Corp	844,730.00	7,679.36
I	Feb. '96 to May '96	Cargill Philippines, Inc.	4,960,000.00	248,000.00
				P 762,908.39
			Total:	P1,194,908.39

The Court, however, noted that while the foregoing certificates disclose that the creditable taxes withheld by Petitioner during the fiscal year 1996 totalled P762,908.39, the Annual Income Tax Return of Petitioner for the said year reflected the higher amount of P765,152.00 (p. 139, CTA Records). We, therefore, proceed from the amount as evidenced by the certificates: P762,908.39.

An examination of the Certificates of Creditable Tax Withheld at Source presented by Petitioner showed that not all could qualify as valid proof of withholding for the period covered. The certificates issued by Vitarich Corporation for the year 1996 (Exhs. B & C) with the corresponding creditable withholding taxes of P136,185.30 and P100,599.80, respectively, or a total of P236,785.10 did not indicate the particular month(s)/quarter(s) of 1996 when the income payments were made and the corresponding creditable taxes actually withheld. In view of this, We are constrained to reduce further the amount claimed by P236,785.10. Since Petitioner's taxable period is on a fiscal year ending May 31, 1996, it cannot be determined with certainty that the amounts of creditable taxes indicated therein referred only to that particular period. Note that although the other certificates issued by Vitarich Corporation marked as Exhibits A, D, E & F only indicated the year 1995, records nonetheless show that the same pertain only to fiscal year ending May 31, 1996 since only the creditable tax of P432,000.00 withheld by Cargill Philippines, Inc. (Exh. N) was claimed by Petitioner in its ITR for fiscal year ending May 31, 1995 (Exh. M).

The income upon which the taxes were withheld were also included in the return of the recipient. Petitioner's annual income tax return for the fiscal year ending May 31, 1995 showed that part of its gross income of P15,146,217.00 (Section A of Exh. M) was the rental income of P8,640,000.00 from which the creditable tax of P432,000.00 was withheld ({Schedule 3 of Section C} Exh. M). Likewise, for fiscal year ending May 31, 1996, Petitioner declared in its annual income tax return as part of its gross income of P16,378,881.00 (Section A of Exh. L) the income payments ({Schedules 1 & 3 of Section C} Exh. L) from which the creditable taxes of P526,123.29 were withheld (Exhs. A, D, E, F G, H & I)

Likewise, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for the fiscal year ending May 31, 1996 which it was not able to apply against its tax liability for the said year and in the succeeding year. Its 1997 Income Tax Return (Exh. J) was likewise submitted by Petitioner to prove that it did not utilize the amount sought to be refunded.

The issue on whether or not Petitioner has to prove its tax loss position for the fiscal year ending May 31, 1997 has already been settled in the case of Citibank, N.A. vs. Court of Appeals, *supra*. In the said case, the Supreme Court ruled:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue 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."

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND**

to Petitioner its unutilized creditable income taxes withheld for the fiscal year ending May 31, 1996 in the reduced amount of P526,123.29, computed as follows:

Amount of Claim		P814,145.00
Less: Overstatement of creditable taxes withheld appearing in return	P 2,243.61	
Prescribed portion	48,993.00	
Certificates not indicating the period covered		
Exhs. B	136,185.30	
C	100,599.80	288,021.71
Refundable amount		P526,123.29

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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