REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN TRANSMISSION CORPORATION,
Petitioner.

- versus -

C.T.A. CASE NO. 6056

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 16 2001 [signature]

x - x

DECISION

The instant case is a Petition for Review seeking for the refund or issuance of tax credit certificate amounting to EIGHT MILLION EIGHT HUNDRED NINE THOUSAND THREE HUNDRED NINE PESOS (P8,809,309.00) representing unutilized withholding tax credits for the calendar year ended December 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Carmelray Industrial Park, Canlubang, Calamba, Laguna. It is primarily engaged in the business of manufacturing auto parts and engines from which it derives income that are subject to the 1% creditable or expanded withholding tax under BIR Revenue Regulations No. 6-85 as amended by BIR Revenue Regulations No. 12-94.

On April 15, 1998 Petitioner filed its Corporate Annual Income Tax Return for the calendar year ended December 31, 1997 and reported a net loss of P249,746,759.00. It likewise declared an excess or unutilized tax credit of P17,960,332.00, consisting of the following:

Excess income/withholding tax credits carried over from 1996	P 7,514,977.00
Withholding tax credits for 1997	10,445,355.00
	P17,960,332.00

Petitioner's intention to carry-over and apply the said excess income tax credit to the succeeding taxable year of 1998 was indicated in its 1997 Annual Income Tax Return. (Exhibit A).

On April 15, 1999, Petitioner filed its Corporate Annual Income Tax Return for the calendar year ended December 31, 1998. It was, however, amended to show an income tax due of P1,636,046.00 and a net overpayment of P29,018,988.00 on account of the income/withholding tax credits of P30,655,034.00, consisting of the following:

Prior Year's Excess Credits	P17,960,332.00
Tax Credits/Withheld/Payments for the first three quarters	5,213,010.00
Tax Withheld for the fourth quarter	7,481,692.00
Total Tax Credits (Exhibits B and C)	P30,655,034.00

The reported excess tax credits for the year 1997 which was carried-over to its 1998 annual income tax return, included the excess withholding tax credit from the previous year 1996, in the sum of P7,514,977.00 and the amount of P1,636,046.00 representing income tax due for the year 1998. Hence, the amount due for refund is P8,809,309.00 computed as follows:

Excess tax credit for 1997 (and carried over to 1998)	P17,960,332.00
Less: Excess tax credits from 1996	(7,514,977.00)
Income tax due in 1998	(1,636,046.00)
Total Tax Credit for Refund	P 8,809,309.00

On April 3, 2000, Petitioner filed with the BIR a written claim for refund in the amount of P8,809,309.00 and shortly thereafter filed a Petition for Review with this Court on April 10, 2000 without waiting for the action of the Respondent.

In Answer to the Petition for Review, Respondent interposed the following Special and Affirmative Defenses, to wit:

> "4. The alleged claim for refund is subject to administrative investigation/examination by the Respondent.
>
> 5. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected.
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.
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> 7. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code, as amended.
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

In support of its claim, Petitioner submitted the following documents:

1. Corporate Annual Income Tax Return for 1997 (Exhibit A)
2. Various Certificates of Creditable Tax Withheld at Source for the year 1997 (Exhibits A-1 to A-4)
3. Certification issued by Petitioner's Accounting Department Manager (Exhibit A-8)
4. Annual Income Tax Return for 1998 (Exhibit B)
5. Amended Annual Income Tax Return for 1998 (Exhibit C)
6. Annual Income Tax Return for 1999 (Exhibit D)

The issues presented for the consideration of this Court as contained in the Joint Stipulation of Facts and Issues are as follows:

1. Whether or not Petitioner's unutilized income tax credits for CY 1997 in the total amount of P8,809,309.00 are duly substantiated by documentary evidence;
2. Whether or not Petitioner was able to fully utilize its excess tax credits for CY ended December 1997 against its income tax liability for the succeeding CY of 1998;
3. Whether or not the items of income from which the taxes were withheld were actually declared as part of Petitioner's gross income in 1997; and
4. Whether or not Petitioner is entitled to a tax credit/refund in the amount of P8,809,309.00 representing unutilized excess tax credits for CY ended December 31, 1997.

We resolve in favor of the Petitioner.

The following basic requirements as provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence must be complied with before a refund of the excess creditable withholding taxes may be granted:

1. that the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;
2. that the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom;
3. that the income upon which the taxes were withheld were included in the return of the recipient.

> [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; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**].

With respect to requirement number 1, records show that Petitioner filed its administrative and judicial claims for refund of the excess unutilized creditable withholding tax for the calendar year ended December 31, 1997 on April 3, 2000 and April 10, 2000, respectively, counted from the date it filed its Annual Income Tax Return on April 15, 1998. Hence said claims were filed within the two-year prescriptive period.

Petitioner's 1997 Annual Income Tax Return reported a net loss of P249,746,759.00, so, the creditable taxes withheld for the year 1997 which amounted to P17,960,332.00, could not be applied. Petitioner then opted to apply it as a tax credit for the succeeding year 1998.

However, for the taxable year 1998, Petitioner again incurred a net loss but it was liable to pay the minimum corporate income tax (MCIT) of P1,636,046.00. (Exhibit B)

Petitioner applied its 1997 creditable withholding taxes of P10,445,355.00 to the MCIT of P1,636,046.00 resulting to an excess tax credit of P8,809,309.00, computed as follows:

1997 Creditable Withholding Taxes	P10,445,355.00
Less: Minimum Corporate Income Tax (MCIT)	1,636,046.00
	P 8,809,309.00

We proceed to the second requirement.

To prove the creditable taxes withheld, Petitioner submitted the following various certificates of creditable tax withheld at source, to wit:

WITHHOLDING AGENT	EXHIBIT	PERIOD COVERED		INCOME PAYMENT		TAX WITHHELD
MITSUBISHI MOTORS	A-1	JAN-MAR 97	P	112,420,350.00	P	1,124,203.50
MITSUBISHI MOTORS	A-2	APR-JUN 97		41,920,419.00		1,119,204.19
MITSUBISHI MOTORS	A-3	NOT ORIG.		696,452,098.14		6,331,382.72
MITSUBISHI MOTORS	A-4	OCT-DEC 97		187,056,445.00		1,870,564.40
	TOTAL		**P**	**1,037,849,312.14**	**P**	**10,445,354.81**

The foregoing evidence convinces us that requirement number 2 has been sufficiently met.

As to the third issue, the income payment of P1,037,849,312.14 corresponding to the creditable taxes withheld for the year 1997 in the amount of P10,445,354.81 has been proven to be included as part of the income of P3,090,079,904.00 declared in Petitioner's 1997 Annual Income Tax Return (Exhibit A-7). Furthermore, during the hearing dated February 13, 2001, Petitioner's witness Ms. Luz Banaybanay testified that the amount of P10,445,355.00 was reported in the Gross Income of Petitioner's 1997 Income Tax Return, thus:

Q. Ms. Witness, you said that your excess tax credit for 1997 amounted to P10,445,355.00. In your previous testimony, you presented Withholding Tax Certificates to prove the said amount, can you tell this Court again who issued to you those Tax Certificates?

A. It is Mitsubishi Motors Philippines Corporation who issued those Withholding Tax Certificates.

Q. And what was the percentage if that withholding tax which Mitsubishi Motors Philippines Corporation or MMPC withheld?

A. The 1% expanded withholding tax.

Q. Was this amount or income reported in the Gross Income of your Income Tax Return?

A. Yes.

Q. Can you please tell this Court where in this Income Tax Return does it reflect?

A. On page 2 of the Income Tax Return, under Schedule I, showing the Gross Sales during the year of P3,019,079,904.00 (should be P3,090,079,904.00).

ATTY. CAÑETE

Your Honors, I would like to have this amount of P3,019,079,904.00 (should be P3,090,079.904.00) be sub-marked as Exhibit "E-7".

In view thereof, Petitioner has sufficiently established its compliance with the three requirements for the grant of the refund of excess creditable withholding taxes.

WHEREFORE, Respondent Commissioner is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of EIGHT MILLION EIGHT HUNDRED NINE THOUSAND THREE HUNDRED NINE PESOS (P8,809,309.00) representing creditable taxes withheld for the taxable year 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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