REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR HAGEDORN SECURITIES, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 5797**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - x

Promulgated:
MAR 07 2000

DECISION

This is a judicial claim for refund/tax credit in the amount of P11,991.00 allegedly representing overpaid creditable withholding tax for the year 1996.

The facts as stipulated by the parties:

1.01. Petitioner seasonably filed on April 15, 1997 with the Bureau of Internal Revenue (BIR) its Corporate Annual Income Tax Return for the calendar year 1996 reporting a net loss in the amount of Fifty Four Thousand Seven Hundred Fourteen Pesos (P54,714.00);

1.02. Petitioner duly filed with the BIR its Corporate Annual Income Tax Return for Calendar Year 1997 on May 13, 1998 showing a net loss in the amount of Seven Million Three Hundred Sixty Nine Thousand Four Hundred Twenty Six Pesos (P7,369,426.00);

1.03. Petitioner seasonably filed an administrative claim for refund and/or tax credit of overpaid income taxes for calendar year 1996 with the BIR on March 16, 1999;

1.04. Up to the filing of this Joint Stipulation of Facts, Respondent has not yet acted on the said application for refund.

Petitioner is a domestic corporation engaged in the business of stock brokerage (TSN, Aug. 31, 1999, p. 6).

Petitioner avers that a creditable withholding tax of P11,991.00 (Exh. A-2) was withheld from the income derived by it as agency fee. Its witness, however, testified that the said amount was withheld from rental income not from agency fee (TSN, Aug. 31, 1999, p. 29). Said amount was carried over to the succeeding year 1997. The creditable tax withheld for the period was P693,270.00 (Exh. C-2) which comprised of the prior year's excess credit of P11,991.00 and the current year tax payment of P599,484.00 and creditable tax withheld in the amount of P81,795.00.

Petitioner expounds that in view of its net loss position for the years 1996 and 1997, the creditable tax withheld in 1996 even if carried over to 1997 remained unutilized. Thus, a claim was filed with the Bureau of Internal Revenue on March 17, 1999 (Annex D, Petition) not on March 16, 1999 as stipulated. The instant petition was subsequently filed on April 15, 1999.

To further prove its contention, Petitioner submitted its 1998 annual corporate income tax return filed on April 15, 1999 (Exh. D) which showed a net loss amounting to P601,453.00 (Exh. D-1). It also presented a certificate of creditable tax withheld at source issued by Vickers Ballas Sec. (Phils.), Inc. showing an income payment of P239,820.00 and the tax withheld therefrom amounting to P11,991.00 for the period January to December 1996 (Exh. B).

Respondent, by way of Special and Affirmative Defenses, alleges that:

> 7. The claim for refund is subject to investigation by the Bureau of Internal Revenue;
>
> 8. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;

> 9. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended.

Respondent submitted the case for decision based on the pleadings without presenting any evidence (Rec., p. 148).

The parties likewise stipulated that the issues to be resolved in this case are:

> 2.01. Whether or not Petitioner has overpaid income tax for the calendar year ended December 31, 1996 in the amount of P11,991.00; and
>
> 2.01. Whether or not the said overpaid income taxes are substantiated by evidence.

We rule in favor of the Petitioner.

Petitioner cited as its legal basis for the claim, Section 69 (now Section 76) of the Tax Code, as amended, to wit:

> **SEC. 69.** ***Final Adjustment Return***. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net 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 per Petitioner's 1996 income tax return, it was in a net loss position. Accordingly, Petitioner incurred no tax liabilities for the period. Inasmuch as its withholding agent already withheld the amount of P11,991.00 from its income payment to herein Petitioner, the latter opted to carry over to the succeeding year the said amount. However, in 1997 Petitioner again incurred a net loss. Hence, the creditable tax withheld by Petitioner's agent for 1996 in the amount of P11,991.00 remained unutilized. Therefore, refundable. This is further bolstered by the fact that in 1998 Petitioner suffered another net loss. No controverting evidence was presented by the Respondent to refute the averment of net losses for the years 1996, 1997 and 1998. In the case of **Citibank, N.A. versus Court of Appeals and Commissioner of Internal Revenue**, G.R. No. 107434, October 10, 1997, the Supreme Court held that detailed proof of 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 National Internal Revenue Code which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the returns. Furthermore, the Supreme Court in said case also ruled that creditable taxes withheld are mere partial payments of probable taxes subject to adjustment at the end of the year. They are provisional in nature. In other words, if the taxpayer incurred losses, the creditable taxes withheld become refundable.

Thus, it is incontrovertible that Petitioner has overpaid income tax for the year 1996. We now proceed to the aspect of substantiation.

In Our long line of cases and affirmed by Supreme Court in the Citibank case, *supra*, there are three (3) requirements before a claim for refund and/or tax credits of creditable taxes withheld may be granted, *viz*:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the NIRC, as amended;
>
> (2) that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> (3) the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

As can be culled from the records of this case, this claim involves the taxable year 1996. Petitioner filed its 1996 income tax return on April 15, 1997 (Exh. A).

The administrative claim for refund was filed on March 17, 1999 (Annex D, Petition) while the petition for review was filed on April 15, 1999. Verily, the first requirement has been complied with.

Petitioner likewise complied with the second requirement. It declared as gross income for 1996 the amount of P74,091,244.00 (Exh. A-4) from which the income payment of P239,820.00 formed a part of (TSN, Aug. 31, 1999, pp. 14-15).

Lastly, the fact of withholding is proved by a copy of certificate of creditable taxes withheld at source issued by Petitioner's withholding agent (Exh. B).

In sum, Petitioner's overpaid income tax for 1996 has been fully substantiated by evidence. It is therefore entitled to the claim sought.

WHEREFORE, in view of all the foregoing, the instant petition is hereby **GRANTED.** Respondent Commissioner of Internal Revenue is ordered to refund or in the alternative, issue a tax credit certificate in favor of the Petitioner in the amount of P11,991.00 representing overpaid income tax for the taxable year 1996.

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 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