REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SMITHKLINE BEECHAM RESEARCH LIMITED
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5808

Promulgated:
MAR 08 2001

DECISION

This case involves a claim for refund in the amount of *seventeen million three hundred fifteen thousand eight hundred thirty six pesos* (P17,315,836.00) allegedly representing unutilized creditable income taxes withheld at source for calendar years 1996 and 1997.

The facts of the case are as follows:

Petitioner is the Philippine branch of a resident foreign corporation duly organized and existing under the laws of England, with office address at No. 74 E. de los Santos Avenue, Mandaluyong City (Admitted fact, par. 1, Joint Stipulation of Facts and Issues, CTA records, page 104).

On April 15, 1997, Petitioner filed with the Respondent its 1996 annual income tax return reflecting a net loss of P209,819,721.00 and unutilized excess tax credits of P20,189,394.00, the latter amount representing the sum of the prior year's (1995) excess tax credits of P11,244,504.00 and creditable taxes withheld during 1996 of P8,944,890.00 (Exh. A).

Subsequently, on September 15, 1997, Petitioner amended its 1996 annual income tax return, showing the same amount of net loss of P209,819,721.00 but indicating as excess tax credits only the creditable taxes withheld in 1996 of P8,944,890.00 which Petitioner opted to carry-over to the succeeding year 1997(Exh. B).

However, in its 1997 annual income tax return filed on April 15, 1998 (Exh. V) Petitioner failed to apply the 1996 excess tax credits of P8,944,890.00 since it had no income tax liability as it again declared a net loss in the amount of P526,986,374.00. Also, the creditable taxes of P8,370,946.00 withheld from Petitioner's 1997 income were not utilized. Thus, as of December 31, 1997, the excess tax credits which Petitioner indicated as to be refunded in the said return amounted to P17,315,836.00 computed as follows:

Net Loss	P (526,986,374.00)
Tax Due	P - 0 -
Less: Prior year's excess tax credit (1996)	8,944,890.00
Creditable taxes withheld at source in 1997	8,370,946.00
Tax Refundable	P (17,315,836.00)

On April 14, 1999 Petitioner, through its tax consultant, Sycip Gorres Velayo & Co., filed a claim for refund amounting to P17,315,836.00 allegedly representing overpaid income taxes for the years 1996 and 1997 (Exh. WW). Petitioner cited as basis for its claim the following provisions of Section 69 in relation to Section 230 of the Tax Code, prior to its amendment under the Tax Reform Act of 1997:

> **"Sec. 69. Final Adjustment Return.** — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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.
>
> **Sec. 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 excessive 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 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."

Without waiting for an action from the Respondent and in view of the fact that prescription was about to set in, Petitioner filed the instant Petition for Review with this Court on April 15,1999.

In his Answer filed through registered mail on May 21, 1999, Respondent prayed for the dismissal of the instant petition and advanced the following Special and Affirmative Defenses:

> "1.) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 2.) Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action. "

In support of its case, Petitioner submitted documentary evidence consisting of:

Exhibits	Description
A	Annual Corporate Income Tax Return for taxable year 1996
B	Amended Annual Corporate Tax Return for taxable year 1996
V	Annual Corporate Income Tax Return for taxable year 1997
WW	Letter claim for refund filed with the BIR
XX	Annual Corporate Income Tax Return for taxable year 1998
YY-1 to YY-18; ZZ-7 to ZZ-11	Various Certificates of Creditable Tax Withheld at Source issued to Petitioner for taxable year 1996
ZZ-1 to ZZ-6; ZZ-12 to ZZ-27	Various Certificates of Creditable Tax Withheld at Source issued to Petitioner for taxable year 1997

Moreover, Petitioner presented as witness its Senior Accountant, Mr. Voltaire Agustin, who identified the above documents (see TSN, dated August 24 & October 20, 1999; January 19 & April 12, 2000). On the other hand, Respondent waived its right to present evidence and submitted his case based on the pleadings (CTA records, page 224).

On January 23, 2001, this case was considered submitted for decision sans the memorandum of the Respondent.

As jointly stipulated by the parties, the issues to be resolved by this Court are as follows (Joint Stipulation of Facts & Issues, CTA Records, page 105):

1.) Whether or not the amount of P17,315,836.00 in unutilized creditable taxes withheld at source is substantiated;

2.) Whether or not the income from which the unutilized taxes were withheld was declared as part of Petitioner's taxable income;

3.) Whether or not Petitioner suffered net losses in taxable years 1996 and 1997; and

4.) Whether or not the unutilized tax credits from taxable years 1996 and 1997 were applied to any income tax liability for the succeeding taxable years.

At this point, it is best to cite the three basic requirements for the refund of excess unutilized creditable withholding tax as provided under Revenue Regulations No. 12-94, and under prevailing jurisprudence on the matter, as these are intertwined with the issues stipulated by the parties, thus:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 (now Section 229) 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; and

3.) That the income upon which the taxes were withheld were included in the return of the recipient *[Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957].*

After a careful review of the pertinent laws and documentary evidence in this case, We rule in favor of Petitioner.

As to the two-year prescriptive period within which to file a claim for refund as provided under Section 230 (now Section 229) of the Tax Code, Petitioner complied with this by filing its administrative and judicial claims for refund on April 14, 1999 (Exh. WW) and April 15, 1999, respectively.

The reckoning of the two-year period within which to file a claim for refund of excess quarterly income tax payments or creditable withholding taxes is from the date of filing of the final adjustment return [*ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992)*]. Hence, inasmuch as Petitioner filed its 1996 (original) and 1997 annual income tax returns on April 15, 1997 and April 15, 1998, (Exhs. A & V). respectively, both the administrative and judicial claims filed by Petitioner on April 14, 1999 and April 15, 1999, respectively, were therefore filed within the two-year period prescribed by law.

We now go to the second requirement, which is likewise, the first stipulated issue at hand. Records show that not all of the claimed creditable withholding taxes of P17,315,836.00 for the years 1996 and 1997 were duly substantiated by Certificates of Creditable Tax Withheld at Source.

The certificates submitted by Petitioner showed only an aggregate amount of P17,128,728.04 creditable taxes for the years 1996 and 1997, broken down as follows:

Exh.	Period Covered	Withholding Agent	Income Payment	Tax Withheld
YY-1	Dec. '96	Dept of Educ Culture & Sports	P	P 96,925.08
YY-2	June '96	International School of Manila	124,589.00	1,245.89
YY-3	Dec. '96	International School of Manila	155,492.01	1,413.56
YY-4	Jan 1 – 31 '96	Mercury Drug Corporation	352,321.00	3,523.21
YY-5	Feb 1- 29 '96	Mercury Drug Corporation	606,751.00	6,067.51
YY-6	Mar 1 – 31 '96	Mercury Drug Corporation	261,558.00	2,615.58
YY-7	Apr 1 – 30 '96	Mercury Drug Corporation	304,436.00	3,044.36
YY-8	May 1 – 31 '96	Mercury Drug Corporation	409,745.00	4,097.45
YY-9	Aug 1 - 31 '96	Nat'l Center for Mental Health	113,283.18	3,398.50
YY-10	Sept 1 – 30 '96	Nat'l Center for Mental Health	46,907.57	1,407.23
YY-11	Nov. 7 '96	Pfizer, Inc.	909,090.91	9,090.91
YY-12	1996	Pilipinas Shell Petroleum Corp	4,946.40	49.46

YY-13	Apr – Jun '96	Resins, Inc.	48,510.00	485.10
YY-14	July '96	Resins, Inc.	22,638.00	226.38
YY-15	Oct – Dec '96	Toyota Autoparts Phils., Inc.	109,091.00	1,090.91
YY-16	Jul - Sept '96	Toyota Motor Phils., Inc.		560.00
YY-17	Jan - Dec. '96	Zuellig Pharma Corporation	886,069,474.00	8,860,694.74
YY-18	Jun 1– 30 '96	Mercury Drug Corporation	703,824.00	7,038.24
ZZ-7	Jul 1 - 31 '96	Mercury Drug Corporation	290,532.00	2,905.32
ZZ-8	Aug 1 – 31 '96	Mercury Drug Corporation	339,675.00	3,396.75
ZZ-9	Sept 1 – 30 '96	Mercury Drug Corporation	357,786.00	3,577.86
ZZ-10	Oct 1 – 31 '96	Mercury Drug Corporation	736,973.00	7,369.73
ZZ-11	Dec 1 – 31 '96	Mercury Drug Corporation	339,874.00	3,398.74
		Total for 1996	P 892,307,497.07	P 9,023,622.51
ZZ-1	Jul – Sept. '97	Zuellig Pharma Corporation	P 772,188,953.00	P 7,721,889.53
ZZ-2	Dec 1 – 31 '97	Barangay Bel-Air	18,986.93	569.61
ZZ-3	1997	Cainta Realty Corporation	18,947.34	947.34
ZZ-4	Apr – Jun '97	Caltex (Philippines), Inc.	10,560.00	105.60
ZZ-5	1997	Department of Health	1,350,497.00	40,514.91
ZZ-5	1997	Department of Health		121,544.73
ZZ-6	June '97	International School of Manila	111,657.74	1,015.06
ZZ-12	Jan 1 - 31 '97	Mercury Drug Corporation	189,024.00	1,890.24
ZZ-13	Mar 1 - 31 '97	Mercury Drug Corporation	753,262.00	7,532.62
ZZ-14	Feb 1 - 28 '97	Mercury Drug Corporation	363,000.00	3,630.00
ZZ-15	Apr 1 - 30 '97	Mercury Drug Corporation	667,682.00	6,676.82
ZZ-16	May 1 - 31 '97	Mercury Drug Corporation	618,746.00	6,187.46
ZZ-17	Jun 1 - 30 '97	Mercury Drug Corporation	278,573.00	2,785.73
ZZ-18	Jul 1 - 31 '97	Mercury Drug Corporation	841,192.00	8,411.92
ZZ-19	Aug 1 - 31 '97	Mercury Drug Corporation	975,713.00	9,757.13
ZZ-20	Sept 1 - 30 '97	Mercury Drug Corporation	315,040.00	3,150.40
ZZ-21	Oct 1 - 31 '97	Mercury Drug Corporation	661,165.00	6,611.65
ZZ-22	Nov 1 - 30 '97	Mercury Drug Corporation	678,316.00	6,783.16
ZZ-23	Dec 1 - 31 '97	Mercury Drug Corporation	995,044.00	9,950.44
ZZ-24	3rd qtr 1997	Pilipinas Shell Petroleum Corp	5,688.00	56.88
ZZ-25	Jul – Sept '97	Sanofi Winthrop, Inc.	159,371.11	1,593.71
ZZ-26	Oct 1 – 31 '97	Barangay Bel-Air	299,095.28	27,190.48
ZZ-27	Jun – Dec '97	Dept of Educ Culture & Sports		116,310.11
		Total for 1997	P 730,150,016.40	P 8,105,105.53
		Grand Total –1996 and 1997	P1,672,457,513.47	P 17,128,728.04

Of the above total creditable withholding taxes of P17,128,728.04, the amount of P340,155.26 detailed below pertains to creditable value-added taxes withheld by government agencies on their money payments to herein Petitioner:

Exh.	Period Covered	Withholding Agent	Income Payment	Tax Withheld
YY-1	Dec. '96	Dept of Educ Culture & Sports		P 96,925.08

YY-9	Aug. 1 - 31 '96	Nat'l Center for Mental Health	P 113,283.18	3,398.50
YY-10	Sept. 1 - 30 '96	Nat'l Center for Mental Health	46,907.57	1,407.23
ZZ-2	Dec. 1 - 31 '97	Barangay Bel-Air	18,986.93	569.61
ZZ-5	1997	Department of Health		121,544.73
ZZ-27	June to Dec. '97	Dept of Educ Culture & Sports		116,310.11
			P 179,177.68	P 340,155.26

These creditable value-added taxes withheld should be excluded from Petitioner's claim since the same are deductible from Petitioner's output VAT liability and not from its income tax liability as provided under Section 110(c) [now Section 114(C)] of the Tax Code, thus:

> "c) **Withholding of Creditable Value-Added** Tax. — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of its purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Sections 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every release or installment payment which <u>shall be creditable against the value-added tax liability of the seller or contractor</u>: *Provided, however*, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent."(Underlining supplied)

Therefore, only the creditable income taxes of P16,788,572.78 (P17,128,728.04 less P340,155.26) were properly supported by Certificates of Creditable Tax Withheld at Source.

With respect to the third requirement, which is likewise, the second issue stipulated by the parties, Petitioner proved that it declared in its 1996 (amended) and 1997 annual income tax returns (Schedule 1, Section C of Exhibits B & V) the income from which the substantiated creditable income taxes of P16,788,572.78 were withheld.

As can be gathered from the certificates, the creditable income taxes of P16,788,572.78 were withheld from Petitioner's gross income from sale of goods to various clients in 1996 and 1997 in the respective amounts of P892,147,306.32 and P780,131,029.47, or in the sum of P1,672,278,335.79 (Exhs. YY-2 to YY 8, YY-11 to YY-18, ZZ-7 to ZZ-11; ZZ-1, ZZ-3, ZZ-4, ZZ-6, ZZ-12 to ZZ-26). On the other hand, in its 1996(amended) and 1997 annual income tax returns, Petitioner declared gross income from sale of goods in the amounts of P953,808,391.00 and P1,148,878,602.00, respectively (Schedule 1, Section C of Exhs. B & V) or in the sum of P2,102,686,993.00. Since the gross income amounts (from sale of goods) declared by Petitioner in its 1996 and 1997 annual returns are greater than those reflected in the certificates, it may then be safe to assume that Petitioner declared all of the income from which the creditable income taxes of P16,788,572.78 were withheld.

As to the third issue of whether or not Petitioner suffered net losses in taxable years 1996 and 1997, We answer in the affirmative.

Petitioner 's 1996(amended) and 1997 annual income tax returns sufficiently establish that it incurred net losses of P209,819,721.00 and P526,986,374.00 in 1996 and 1997, respectively. Inasmuch as Petitioner prepared the said returns under penalties of perjury, the figures appearing therein are presumed to be true and correct (*Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR SP. No. 33589, October 14, 1994*). Moreover, Respondent presented no evidence to refute the same. Thus, this Court has no other recourse but to accept each of these returns as authentic on its face. In the case of *Citibank, N.A. vs. Court of Appeals and*

Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997, the Supreme Court had the occasion to rule that:

> "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. <u>However, detailed proof of the truthfulness of each and every item in the income tax return is not required.</u> 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. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. <u>The grant of a refund is founded on the assumption that the tax return is valid: that is, the facts stated therein are true and correct. In fact even without Petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."</u> (Underlining supplied)

Going into the last issue, Petitioner proved that the claimed unutilized excess tax credits for 1996 and 1997 were not applied or carried-over to the succeeding year 1998 since no amount was indicated as "Prior Year's Excess Credit" in its 1998 annual income tax return (Exh. XX).

In sum, this Court is convinced that Petitioner has complied with all the requirements for the refund of excess creditable income taxes withheld but only insofar as its claim for refund of P16,788,572.78.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** the amount of **SIXTEEN MILLION SEVEN HUNDERED EIGHTY EIGHT THOUSAND FIVE HUNDRED SEVENTY TWO AND 78/100 PESOS (P16,788,572.78)** in favor of

Petitioner representing unutilized creditable income taxes withheld at source for taxable years 1996 and 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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