REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SCIENCE PARK OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5144

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 05 1998

x - x

DECISION

The issue which is presented for our consideration is whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P14,751,435.65, allegedly representing its erroneously withheld creditable withholding taxes for the taxable years of 1991 and 1992.

As represented, petitioner is a domestic corporation and is registered with the Board of Investments (BOI) as a new developer of a science and industrial park, on a preferred non-pioneer status under the Omnibus Investments Code of 1987. It started its commercial operation on January 17, 1991.

In the taxable years of 1991 and 1992, petitioner's income from sales of realty and rental income were allegedly subjected by its payors to withholding taxes in the total amount of P14,751,435.65, broken down as follows:

NAME OF WITHHOLDING AGENTS	1991	1992	TOTAL
El Nuevo Diezmo		P 876,392.00	P 876,392.00
Ionics Circuits	P1,337,344.95		1,337,344.95
Kesco		5,485.50	5,485.50
Millworks Inc.		616,825.00	616,825.00
PLDT		41,250.00	41,250.00
PECCO	29,100.00	29,100.00	58,200.00
P & G Phil.		11,815,461.70	11,815,461.70
U Freight		476.50	476.50
TOTAL	**P1,366,444.95**	**P13,384,990.70**	**P14,751,435.65**

On August 5, 1992, petitioner filed with the respondent a claim for refund of the amount of P1,366,444.95, of its creditable withholding tax for 1991, on the ground that it has been granted and is entitled to an income tax holiday from January 17, 1991 up to January 17, 1995, in accordance with Article 39 (a) (1) of the Omnibus Investments Code of 1987 (Executive Order No. 226), which provides:

> Art. 39. *Incentives to Registered Enterprises* - All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment:
>
> (a) *Income Tax Holiday* -
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. x x x. (Underscoring supplied).

Likewise, on April 4, 1994, petitioner filed with the respondent a claim for refund of the amount of

P13,384,990.70, representing its creditable withholding tax for 1992, on the same ground aforementioned.

Both claims for refund were not acted upon by the respondent, hence, petitioner filed with this Court the instant petition for review on August 30, 1994.

Respondent, on the other hand, raised the following special and affirmative defenses: (1) taxes collected and paid are deemed to have been made in accordance with law and existing BIR implementing regulations. (2) petitioner has not shown that the alleged creditable income tax withheld were actually remitted to the herein respondent, (3) allegations regarding refundability do not *ipso facto* merit the refund claimed, (4) well-settled is the doctrine that legal provisions on tax refund/credit are construed strictly against the taxpayer as they are in the nature of tax exemption, and (5) petitioner has likewise not shown that it has complied with the terms and conditions of the Omnibus Investments Code of 1997, the law granting petitioner its alleged four (4) years income tax holiday.

As earlier adverted to, the sole issue to be resolved by the Court is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P14,751,435.65, allegedly representing its erroneously withheld creditable withholding taxes for the taxable years of 1991 and 1992.

We find nothing obscure or ambiguous in the language of Art. 39 (a) (1) of Executive Order No. 226, *supra*, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision explicitly states that all enterprises registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987 (Executive Order No. 226) are exempt from income taxes (including the creditable withholding tax) for six (6) years, for those with status of a pioneer enterprise, and for four (4) years, for those with status of a non-pioneer enterprise, from the start of commercial operation. The law is clear and specific. It merely calls for its application as worded. Construed plainly, the above-quoted provision of law yields no other conclusion that income of pioneer and non-pioneer enterprises registered with the BOI are exempt from income taxes under the National Internal Revenue Code (NIRC), during the period of six (6) years from commercial operation for pioneer enterprise and four (4) years from commercial operation for non-pioneer enterprise. It is a well-settled rule in this jurisdiction that a statute, free from any constitutional infirmity, must be enforced as written. A taxpayer, falling within the ambit of the aforementioned provision of law, whose income was subjected to creditable withholding tax by its various withholding agents should likewise be entitled to a refund of the same, as the creditable withholding taxes are in the nature of an advance payment by the said taxpayer of its income tax liability at the end of the taxable year.

There is no argument per se that petitioner is entitled to the tax incentives mentioned in Article 39 (a) (1) of Executive Order No. 226, *supra*. However, before the instant claim for tax credit or refund of income tax deducted and withheld on income payments shall be given due course, claimant or petitioner must show compliance with the following requisites:

> (1) that it filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code;
>
> (2) that it was shown on the return that the income payment received was declared as part of the gross income (*Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957*);
>
> (3) the fact of withholding is established by a copy of 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 (*ibid*).

There is no dispute as to the timeliness of the filing of petitioner's claim for refund of its 1992 creditable withholding taxes in the total amount of P13,384,990.70. The records show that: (1) the petitioner's corporate annual income tax return for 1992 was filed on April 15, 1993, (2) the claim for refund in the administrative level was filed on April 5, 1994, and (3) the petition for review was filed on August 30, 1994. However, with regard to the petitioner's claim for refund of its 1991 creditable withholding taxes in the amount of P1,366,444.95, the Court find the same already prescribed. Section 230 of the Tax Code, quoted hereunder, is all too clear that after the expiration of two years from date of payment of tax or penalty the claim for refund of erroneously paid taxes becomes time-barred. The two-year prescriptive period to claim for a refund commences to run only from the time the refund is ascertained, which can only be determined after a final adjustment return is accomplished (**Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., 244 SCRA 446**). In the case at bar, petitioner's corporate annual income tax return for 1991 was filed on April 15, 1992 while the instant petition for review was filed only on August 30, 1994. Thus, it is safe to conclude that with regard to its claim for refund of its 1991 creditable withholding taxes, petitioner failed to comply with the first requisite aforementioned. More than two years have elapsed from the payment of the 1991 creditable withholding taxes before the instant petition for review was filed with this Court.

> SEC. 230. *Recovery of tax erroneously of 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 written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid. x x x. (Underscoring supplied)

To substantiate its claim, petitioner declared in its 1992 income tax return all income payments which were subjected to creditable withholding tax for said period as part of its gross income, and that said 1992 creditable withholding taxes were actually withheld by the various withholding agents named in its exhibit B. likewise, in compliance with the second and third requisites aforementioned, petitioner adduced exhibits C, D, E, E-1 to E-3, E-4, F, G, M, and M-1.

Respondent offered no argument nor made any effort to adduce any controverting evidence on the legality of the petitioner's claim for refund. Instead, respondent submitted its case for decision on the basis of the pleadings and records *sans* memorandum.

Further, careful scrutiny of the evidence presented fail to show that the amounts of P5,485.50 and P41,250.00 were withheld from the petitioners income for 1992 by KESCO and PLDT, respectively. It appears also in the evidence presented that exhibits E-1, E-2 and E-3 are one and the same document, thus, only Exhibit "E-1" may be considered in the petitioner's claim for refund. Therefore, the amount of P19,400.00 (Exhibits "E-2" and "E-3") should be deducted from petitioner's claim corresponding to its 1992 creditable withholding taxes. In summary, this Court, grant the refund claimed by the petitioner, but in the reduced amount of P13,318,855.20, computed as follows:

TOTAL AMOUNT OF CLAIM		P14,751,435.65
LESS.		
1) 1991 claim for refund (due to prescription)	P1,366,444.95	
2) 1992 claim (without supporting evidence)		
a) KESCO	P 5,485.50	
b) PLDT	P 41,250.00	
c) Exhibits E-2 and E-3	P 19,400.00	
		P 1,432,580.45
TOTAL REFUNDABLE AMOUNT		P13,318,855.20

IN VIEW OF ALL THE FOREGOING, respondent is hereby ORDERED to GRANT the REFUND and/or TAX CREDIT to herein petitioner in the amount of ₱13,318,855.20, representing its erroneously paid creditable withholding taxes for the year 1992. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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
Court of Tax Appeals