REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DEL MONTE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5421

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 29 1998

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DECISION

The issue which is presented for our consideration is whether or not petitioner is entitled to the refund/tax credit of the amount ₱68,158,883.00, allegedly representing its overpaid corporate income tax and excess creditable income taxes withheld at source for the fiscal year ending June 30, 1994.

Petitioner is a domestic corporation, which accounting period is on a fiscal year basis, commencing July 1 and culminating June 30.

For the fiscal year ending June 30, 1994, petitioner paid to respondent a total of ₱68,158,883.00 in corporate income taxes and creditable withholding tax, broken down as follows:

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Quarterly income tax payments	Amount	Exh.
1st Quarter (July 1, 1993 to Sept. 30, 1993)	P25,490,602.00	A, A-1, A-2, Q & R
2nd Quarter (Oct. 1, 1993 to Dec. 31, 1993)	42,490,610.00	B, B-1, B-2, Q & S
Creditable Withholding Tax	177,671.00	C, D, E, F, G, H, I, J, K, L, M & T
T O T A L	P68,158,883.00	

On October 17, 1994, petitioner filed its Corporate Annual Income Tax Return (ITR) for the fiscal year ending June 30, 1994 (Exh. N) which shows a total quarterly income tax payment of P67,981,212.00 (Exh. N-19) and a total creditable withholding tax of P177,671.00 (Exh. N-20). The same return also reflected a net operating loss in the sum of P19,793,515.00 (Exh. N-21), thus resulting to a nil income tax liability, and a refundable amount of P68,158,883.00 (Exh. N-22), which represents the total quarterly income tax payments and creditable withholding tax paid by petitioner to respondent, as shown in the computation above, which it sought to be applied as tax credit to the succeeding taxable year as indicated in Number 8, Section C of the said ITR.

However, since petitioner was in a loss position for the succeeding fiscal year ending June 30, 1995 (Exh. O),

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the aforestated overpaid income tax was not utilized for the said taxable year.

In a letter dated November 15, 1995, which was received by the respondent's Bureau - Cagayan de Oro Branch on November 28, 1995, petitioner filed a claim for refund or issuance of a tax credit certificate of the amount of ₱68,158,883.00, representing the total overpaid tax on income for the fiscal year ending June 30, 1994, inasmuch as it had no tax liability for the fiscal year ending June 30, 1995 against which to credit the said amount.

The aforesaid claim was not acted upon by the respondent, hence, on August 29, 1996, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the petition for review that it is entitled to the refund of the amount of ₱68,158,883.00 representing its overpaid corporate income tax and excess creditable withholding tax for the fiscal year ending June 30, 1994. It stressed in its memorandum that the legal basis of the claim is Section 69 of the Tax Code, which states, to wit:

> **Sec. 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the

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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 quarter of the succeeding taxable year.

It pointed out that the instant claim for refund was well within the two (2) year period prescribed in Sections 204 and 230 of the Tax Code, which provides:

Sec. 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - x x x

(3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner claim for credit or refund within two years after the payment of the tax or penalty.

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

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> 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.
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> 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 payment was made, such payment appears clearly to have been erroneously paid.

Respondent on the other hand, by way of special and affirmative defenses, alleges that (1) petitioner's claim for refund/tax credit is still undergoing administrative routinary investigation/examination by respondent's Bureau; (2) petitioner miserably failed to demonstrate that the taxes subject of the case at bar were erroneously or illegally collected; (3) the total amount of ₱68,158,883.00 claimed by the petitioner as overpaid income tax for the fiscal year ended June 30, 1994 was not properly documented; (4) well-settled is the rule that mere allegations or indications of net loss in the Corporate Annual Income Tax Return/s do not *ipso facto* merit a tax refund or credit and the absence of evidence supporting the same must necessarily work against the

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granting of such claim; (5) taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; (6) in an action for tax refund/credit the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for tax credit/refund; (7) it is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code; and (8) well-settled is the rule that claims for refund/credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax and it is incumbent upon the petitioner to show that it is entitled thereto under the law.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of ₱68,158,883.00 allegedly representing its overpaid corporate income tax and excess creditable withholding tax for the fiscal year ending June 30, 1994.

We find nothing ambiguous nor obscure in the language of Section 69 of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself

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furnishes the best means of its own exposition that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.

Since it appears in the case at bar that petitioner was not able to utilize its 1994 overpaid corporate income tax and excess creditable withholding tax for the succeeding fiscal year of 1995, due to losses incurred for that year, the amount of ₱68,158,883.00 appears on its face to be refundable. Petitioner must prove however its entitlement to the refund by substantial evidence.

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within two years from the date of payment of the tax. Its final income tax return for the fiscal year ending June 30, 1994 and its claim for refund was filed with the Bureau of Internal Revenue on October 17, 1994 (Exh. N) and November 28, 1995 (Exh. P), respectively, while its Petition for Review was filed with this Court on August 29, 1996. The two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final

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tax return (**ACCRA Investment Corp. v. Court of Appeals, 204 SCRA 957**).

The quarterly income tax payments for the fiscal year ending June 30, 1994 comprising of ₱25,490,602.00 and ₱42,490,610.00 for the first and second quarters, respectively, were duly proven to have been paid and remitted to the Bureau (Exhs. A & B), as certified by the Revenue Accounting Division (Exh. Q).

In addition, the creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source in accordance with the requirements of Rev. Regs. No. 6-85, (Exhs. C, D, E, F, G, H, I, J, K, L, M and T).

It was further established that the income upon which these creditable withholding taxes were paid were included in petitioner's return (Exh. N). In other words the Court finds that petitioner has complied with the requisites laid down by the Supreme Court in the refund of creditable withholding taxes, thus:

> 1). that it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. CA, 204 SCRA 957);
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> 2). the fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding

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> agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (ibid.);
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> 3). that the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code;

The averment of respondent that "the claim for refund must fail on the ground that petitioner was not able to substantiate its alleged 'net loss' for the fiscal year ending June 30, 1994" has no leg to stand on. This Court has ruled, time and again, that the declarations made by the taxpayer in its tax return are for all intents and purposes presumed to be made in good faith and are true and correct considering that they were made and executed under penalties of perjury (**Paseo Realty and Development Corp. v. Commissioner of Internal Revenue, CTA Case Nos. 4693 and 4439, promulgated on July 29, 1993 and July 5, 1993, respectively** and **Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, July 31, 1992**).

The Supreme Court ruled in the case of **Citibank, N.A.** vs. **Court of Appeals, G.R. No. 107434, October 10, 1997,** that the alleged irregularities in the declared operation losses is a matter which must be proven by competent evidence, thus:

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> "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. 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.</u> 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. 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 date which may be relevant or material in accordance with Section 16 of the present NIRC.
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> xxx xxx xxx
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> In addition, the Tax Code has placed several safety measures to prevent falsification of income tax returns which the Court recognized in Commissioner vs. TMX Sales, Inc.:
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> > "Furthermore, Section 321 (now Section 232) of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (₱25,000.00) be audited and exámined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the

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> corresponding incomes therefrom and other related statements.
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> It is generally recognized that before an account can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.
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> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures." (Underscoring supplied)

In the case at bar, respondent did not object to the existence of the exhibits offered by the petitioner as proof of its claim of excess payments but took exception to the relevancy, materiality and probative value for which the same were offered in evidence. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the authenticity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as

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proofs of excess payments despite the fact that it is well within their competence to do so. Neither did it allege any false declaration in petitioner's income tax return for the said period. Hence, respondent is thereby considered to have vouched the veracity of the petitioner's exhibits.

Clearly, the evidence presented by the petitioner, (Exhs. A to V, inclusive of the submarkings), satisfactorily convinced this Court that it is entitled to the amount claimed for refund, thus, the Court extends the relief sought by the petitioner.

IN THE LIGHT OF ALL THE FOREGOING, respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein petitioner in the amount of ₱68,158,883.00, without pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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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

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