REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. JACINTO GROUP, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5086

Promulgated:
JAN 16 1997

x - x

DECISION

Petitioner in this case is a registered corporation with business address at F. Jacinto House, No. 116 Rada Street, Legaspi Village, Makati, Metro Manila.

On July 29, 1993, it filed a written claim for refund with the Appellate Division of respondent's office, in the amount of P965,628.00 representing excess of income tax payments for the year ended December 31, 1991.

No action has been taken on the claim for refund in the administrative level. So, to forestall the running of the two-year prescriptive period, petitioner filed with this Court a petition for review on April 11, 1994.

In its petition, it was alleged that petitioner carried over from 1990 a tax credit in the amount of

P1,702,645.00. This amount was reflected in the 1991 quarterly returns filed by petitioner, details of which are reproduced hereunder:

FIRST QUARTER OF 1991

Gross Income this quarter		P10,310,246.49
Less: Deductions		9,405,857.18
Net Taxable Income		P 904,389.31
Tax Due Thereon		P 316,536.25
Creditable Tax	P1,702,645.00	
TOTAL PAYMENTS TO DATE		P 1,702,645.00
AMOUNT STILL DUE/Refundable		P 1,386,108.75

SECOND QUARTER OF 1991

Gross Income this quarter		P 5,796,973.63
Add: Gross Income for 1st quarter		10,310,246.49
		P16,107,220.12
Less: Deductions:		
1st quarter	P 9,405,857.18	
2nd quarter	7,663,698.06	P17,069,555.24
Net Taxable Income		(P 962,335.12)
Tax Due Thereon		- o -
Creditable Tax	P 1,702,645.00	
TOTAL PAYMENTS TO DATE		P 1,702,645.00
AMOUNT STILL DUE/Refundable		P 1,702,645.00

THIRD QUARTER OF 1991

Gross Income this quarter		P 5,807,342.43
Add: Gross income for previous quarters:		
1st quarter	P10,310,246.49	
2nd quarter	5,796,973.63	16,107,220.12
Gross income 1st, 2nd & 3rd quarters		P21,914,562.55
Less: Deductions:		
1st quarter	P 9,405,857.18	
2nd quarter	7,663,698.06	
3rd quarter	5,263,447.57	22,333,002.81

Net taxable income		(P 418,440.26)
Income tax due		- o -
Creditable tax	P 1,702,645.00	
TOTAL PAYMENTS TO DATE		P 1,702,645.00
AMOUNT STILL DUE/Refundable		P 1,702,645.00

On April 13, 1992, petitioner filed its final adjustment return for the year 1991, wherein it declared the following details, to wit:

Service fees:	P30,124,370.00	
Less: Deductions	28,823,057.00	
Net income	1,301,313.00	
Add: Misc. income	431,182.00	
Taxable income	P 1,732,495.00	
Tax due:	P 606,373.00	
Less: Prior Year's Excess Credit:	(1,702,645.00)	[1990]
Add: Creditable tax Withheld	(1,506,223.00)	[1991]
Total Payments/Credits	(3,208,868.00)	
Refundable amount	(P 2,602,495.00)	

The refundable amount of P2,602,495.00 included the unutilized excess tax payments amounting to P1,096,272.00 which was carried over from 1990. This latter amount was the subject matter of CTA Case No. 4971, decided in favor of petitioner on April 5, 1995.

After deducting from P2,602,495.00 the amount of P1,096,272.00, there remained the balance of P1,506,223.00 representing taxes withheld at source from income payments made in 1991 to petitioner by its various clients, namely:

a)	Mindanao Steel Corp.	-	P684,303.90
b)	Beatriz Marketing and Trading Corporation	-	303,184.60
c)	Jacinto Iron and Steel Sheets Corporation	-	45,901.00
d)	Camara Steel Industries, Inc.	-	472,826.99
e)	Australia Cylinder Corporation	-	6.25

The amount of P1,506,223.00 was used by petitioner to pay-off its quarterly income tax liabilities for the four quarters of 1992. Thus:

FIRST QUARTER OF 1992

Gross Income this quarter		P 7,088,266.44
Less: Deductions		5,847,059.25
Net Taxable Income		P 1,241,207.19
Tax Due Thereon		P 434,422.52
Creditable Tax	P1,506,223.00	
TOTAL PAYMENTS TO DATE		P 1,506,223.00
AMOUNT STILL DUE/Refundable		P 1,071,800.48

SECOND QUARTER OF 1992

Gross Income this quarter		P 7,157,886.18
Add: Gross Income for 1st quarter		7,088,266.44
		P14,246,152.62
Less: Deductions:		
1st quarter	P 5,847,059.25	
2nd quarter	6,325,524.80	P12,172,564.05
Net Taxable Income		P 2,073,588.57
Tax Due Thereon		725,756.00
Creditable Tax	P 1,506,223.48	
TOTAL PAYMENTS TO DATE		P 725,756.00
AMOUNT STILL DUE/Refundable		P 780,467.00

THIRD QUARTER OF 1992

Gross Income this quarter	P 7,681,679.34
Add: Gross income for previous quarters:	

1st quarter	P 7,088,266.44	
2nd quarter	7,157,886.18	14,246,152.62
Gross income 1st, 2nd & 3rd quarters		P21,927,831.96
Less: Deductions:		
1st quarter	P 5,847,059.25	
2nd quarter	6,325,524.80	
3rd quarter	7,110,521.46	19,283,085.51
Net taxable income		P 2,644,746.45
Income tax due		925,661.26
Creditable tax	P 1,506,223.00	
TOTAL PAYMENTS TO DATE		P 925,661.26
AMOUNT STILL DUE/Refundable		P 580,561.74

Then on April 12, 1993, petitioner filed its final adjustment return for taxable year 1992, wherein it was shown how the carried-over tax from 1991 was utilized, to wit:

Gross Income	P28,808,409.00
Less: Deductions	27,263,853.00
Net Income	1,544,556.00
Tax Due	540,594.60
Less: Prior Year's Excess Credit	(1,506,223.00)
Refundable Amount	(P 965,628.00)

Considering that Section 69 of the Tax Code limits the crediting of excess tax paid by corporations exclusively to its tax liabilities for the next quarters of the succeeding year, petitioner deemed it proper to claim formally refund of the above-mentioned amount of P965,628.00.

The sole issue confronting the Court in this case is whether or not petitioner is entitled to the refund of the amount of P965,628.00 as excess of income tax payments for the year ending December 31, 1991.

The facts and issue of the instant case are on all fours with the facts and issue involved in F. **Jacinto Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4971**, which was decided by this Court on April 5, 1995, granting to petitioner the refund of the amount of P1,096,272.00 as excess income tax payment for 1990. Hence, it is but fitting and just that the said decision be adopted and/or applied to the case at bar.

In said decision, it was emphasized that:

> "In claims for refund, there are three basic requirements that has to be met before a claim can be granted.
>
> First, that the claim for refund was filed within two-years as prescribed under Sec. 230 of the National Internal Revenue Code.
>
> Second, that the income upon which the taxes were withheld were included in the return of the recipient.
>
> Third, 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. (Sec. 10, Rev. Reg. 6-85; see **Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, Nov. 11, 1991**; and **Citytrust Finance Corporation [Formerly Investors Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.**)

Petitioner filed its final adjustment return for the year 1991 on April 13, 1992. Two years from April 13, 1992 is April 13, 1994. Petitioner filed its claim for refund with the BIR on July 29, 1993, and its petition for review with this Court on April 11, 1994. Clearly, therefore, the claim for refund was filed both in the administrative and judicial levels within two years as prescribed by Section 230 of the Tax Code.

The second requirement was likewise complied with, when petitioner included in its 1991 return the amount of P30,124,370.00 which represents its service income paid by the following payors/withholding agents, to wit:

Name of Withholding Agent	Amount of Income Payment
Mindanao Steel Corp.	P13,686,077.45
Beatriz Marketing and Trading Corp.	6,063,612.00
Jacinto Iron and Steel Sheets Corp.	918,108.00
Camara Steel Industries, Inc.	9,456,572.81
TOTAL	P30,124,370.26

The third requirement was also satisfied when petitioner presented as its exhibits "F" to "I", inclusive (pp. 98-101, CTA records), the Certificate of

Income Tax Withheld at Source (BIR Form 1743.1) issued by above-mentioned withholding agents.

On account of petitioner's compliance with the three requirements aforementioned, the Court grants, without exception, the claim for refund of petitioner in the amount of P965,628.00 as its excess income tax payments for 1991.

It is obviously contradictory and improper for respondent's examiner to state in the last paragraph of his report of investigation (p. 2 of Exh. "2", Resp.; p. 229, CTA rec.) the following:

> "However, the undersigned is not yet in a position to recommend the refund of the above excess creditable tax pending receipt of certification from the Revenue Accounting Division of the BIR that the creditable tax sought to be refunded has been remitted to the BIR."

For, in the earlier part of the same report, said examiner declared that subject taxpayer, through the documents it submitted, was able to prove that the total tax withheld and remitted to the BIR in 1991 is P1,506,216.49.

It is therefore not fair for respondent to make petitioner wait for the issuance of such certification before it can be granted its tax refund. It must be noted, first and foremost, that respondent has in her possession all the records to verify the actual remittance of withheld taxes. This being the case, respondent's examiner should have personally verified such remittance with the Revenue and Accounting Division before he signed and submitted his memorandum report. His failure to do so, as borne by the records of the case, should not prejudice the subject taxpayer by making it wait for a certification which would not come as there was no request made, much less, necessity for its issuance.

PREMISES CONSIDERED, the Court finds the instant petition for refund meritorious.

WHEREFORE, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of P965,628.00 as its excess of income tax payments for the year ended December 31, 1991.

No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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