Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

BENGUET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4687

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 12 1994

x ---------- x

D E C I S I O N

This case involves a claim for refund or tax credit of overpaid income taxes for taxable years 1989 and 1990 in the total amount of ₱14,966,985.00.

Petitioner, is a domestic corporation existing under and by virtue of Philippine laws, with principal office at No. 12 ADB Avenue, Mandaluyong, Metro Manila. Petitioner is engaged in the mining business which includes the exploration, development, and operation of mining properties for purposes of commercial production, and the marketing of marketable mine products produced by it.

On April 10, 1990, petitioner filed its Annual Income Tax Return (ITR) for the calendar year ended December 31, 1989 with respondent's Revenue District Office No. 31, Mandaluyong, Metro Manila, showing a taxable income of ₱202,037,838.00

and an income tax of ₱70,713,243.00. However, in its quarterly income tax returns for the first three quarters of the same taxable year, petitioner alleged that it paid as income tax the total amount of ₱81,731,645.00. More so, creditable expanded withholding taxes in the total amount of ₱177,626.00 were withheld by various parties from their income payments to petitioner during the same calendar year 1989. The income taxes paid is computed as follows:

	CR/PO No.	Date	Amount
1st Quarter	B7144583/C4986852	05-30-89	₱ 33,008,851.00
2nd Quarter	B7144648/C5371971	08-29-89	37,866,474.00
3rd Quarter	B7144717/C6277510	11-29-89	10,856,320.00
Creditable Expanded Withholding various			177,626.00
Total Income Tax Paid for 1989			₱ 81,909,271.00

Petitioner alleged that it paid income tax in the total amount of ₱81,909,271.00 for CY 1989 wherein it should only be held liable for ₱70,713,243.00 as income tax liability. Petitioner claimed that there was overpayment in the amount of ₱11,196,028.00.

On April 15, 1991, petitioner filed its Annual Income Tax Return for its calendar year ended December 31, 1990 showing a net loss of ₱68,372,485.00. During the same year, a total of ₱3,770,957.00 representing creditable expanded withholding taxes were withheld by various parties from their income payments to herein petitioner. Petitioner contended that it overpaid its income taxes for the years 1989 and 1990 in the amounts of ₱11,196,028.00 and ₱3,770,957.00, respectively.

On August 23, 1991, petitioner filed a claim for refund or tax credit corresponding to the alleged overpaid income taxes of ₱11,196,028.00 for 1989 and ₱3,770,957.00 for 1990. (Exh. JJ.)

To this date, respondent has not yet acted upon petitioner's claim for refund or tax credit. Hence, this petition was filed on December 20, 1991, as a way of tolling the two (2) year prescriptive period prescribed in Section 230 of the Tax Code.

In answer to the petition, respondent as special and affirmative defenses alleged that:

> 1. The present petition for review is premature as petitioner's claim for refund or tax credit is still pending investigation by respondent;

2. In an action for refund or tax credit, the taxpayer must show that the taxes were paid erroneously or collected illegally. Failure to meet this burden is fatal to the action for refund;

3. Claims for refund are construed strictly against claimants since they are in the nature of an exemption from taxation; and

4. Taxes are presumed to have been paid and collected in accordance with law.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit of the amounts of ₱11,196,028.00 and ₱3,770,957.00, representing overpaid taxes for the years 1989 and 1990, respectively.

Petitioner presented the following documents in support of its claim for tax credit:

Corporate Annual Income Tax Returns:

Exh. "A" - Corporate Annual Income Tax Return for calendar year ended December 31, 1989.

Exh. "V" - Corporate Annual Income Tax Return for calendar year ended December 31, 1990.

Exh. "II" - Corporate Annual Income Tax Return for calendar year ended December 31, 1991.

Quarterly Income Tax Returns and Quarterly Income Tax Payments for 1989:

Exh. "B" - Quarterly Income Tax Return for the First Quarter ending March 31, 1989.

Exh. "C" - Central Bank Confirmation Receipt No. B7144583, dated May 30, 1989, for the amount of ₱33,008,851.00.

Exh. "E" - Quarterly Income Tax Return for the Second Quarter ending June 30, 1989.

Exh. "F" - Central Bank Confirmation Receipt No. B7144648, dated Aug. 29, 1989, for the amount of ₱37,866,474.00

Exh. "J" - Quarter Income Tax Return for the Third Quarter ending September 30, 1989.

Exh. "K" - Central Bank Confirmation Receipt No.B7144717, dated Nov. 29, 1989, for the amount of ₱10,856,320.00.

Certificates of Creditable Taxes Withheld for 1989 and 1990:

Exhs. "N" to "U" - Certificates of Creditable Income Taxes Withheld at Source for the calendar year 1989.

Exhs. "W" to FF" - Certificates of Creditable Income Taxes Withheld at Source for the calendar year 1990.

Exh. "GG" - Confirmation Receipt No. B 18895988, representing payment of tax withheld on sale of real property in 1990.

Income Subject to Creditable Withholding Tax were included in the computation of Gross Income for 1989 and 1990:

Exh. "A-3" - The income received from rentals and leases from various payees in the sum of ₱3,552,523.00 forms part of the gross income for 1989.

Exh. "A-4" - The gross income for 1989 in the total amount of ₱3,918,866,679.00 include among others the income subjected to creditable withholding tax.

Exh. "V-4" - The income received as service fees of ₱168,101.00 subjected to withholding taxes were included in the computation of its gross income for 1990.

Exh. "V-5" - The income received from rentals and leases in the sum of ₱3,956,837.00 subjected to withholding taxes were included in the computation of its gross income for 1990.

Exh. "V-6" - The interest income received in the sum of ₱1,633,115.00 not subjected to final withholding taxes were included in the computation of its gross income for 1990.

Exh. "V-7" - The income received from the sale or exchange of property other than capital assets in the sum of ₱19,329,807.00 subjected to withholding taxes were included in the computation of its gross income for 1990.

Exh. "JJ" - Letter claim for refund dated April 21, 1991, filed with the BIR on Aug. 23, 1991.

As borne out by the records, petitioner filed its 1989 Corporate Income Tax Return on April 10, 1990, showing a refundable amount of ₱11,196,028.00, computed as follows:

Income :		
Sales (Sch. 1)	₱ 3,752,284,278.00	
Gold Trading (Sch. 3)	154,085,948.00	
Rentals/Leases - Various (Sch. 4)	3,552,523.00	
Interest not subject to Final Withholding tax (Sch. 5)	8,225,337.00	
Discounts from purchases (Sch. 7)	712,474.00	
Sale or exchanges of property other than capital assets (Sch.8)	6,119.00	
GROSS INCOME		₱ 3,918,866,679.00
Less: Total Deductions		3,750,611,004.00
Net Income		₱ 168,255,675.00
Add: Excess of Normal Depreciation		33,782,163.00
Taxable Income		₱ 202,037,838.00
Tax due		₱ 70,713,243.00

Less:

a) Prior year's excess credit

b) Quarterly Tax Payments

Qtr.	CR/ROR NO.	Date	Amount
1st	B7144583/C4986851[1]	05/30/89	₱ 33,008,851.00
2nd	B7144648/C5371971[2]	08/29/89	37,866,474.00
3rd	B7144717/C6277510[3]	11/29/89	10,856,320.00
	TOTAL		81,731,645.00

c) Creditable tax withheld	177,626.00[4]	81,909,271.00
TOTAL AMOUNT REFUNDABLE		₱ 11,196,028.00

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[1] Exhs. "C" and "D";
[2] Exhs. "F" and "G";
[3] Exhs. "K" and "L".
[4] Exhs. "N" to "U"; Their corresponding income was declared in the 1989 income tax return marked as Exh. "A-3".

Appurtenant thereto, the amount of ₱11,196,028.00 was automatically carried over to the succeeding taxable year 1990 by petitioner as shown in its 1990 Income Tax Return which was labelled as "prior year's excess credit" (See Exh. "V"). The same income tax return reflected a creditable tax withheld (expanded withholding) in the amount of ₱3,770,957.00 (See Exh. "W" to "GG"). The excess credit in 1989 and the creditable tax withheld for 1990 amounted to a total of ₱14,966,985.00. Unfortunately, in 1990 petitioner suffered a net loss in its operation. Considering that no gain was realized for that year, necessarily no income tax liability could lie.

Petitioner opted to set aside its right to automatically apply the same as tax credit in view of the fact that for the following year 1991 it likewise incurred a loss in its operations.

We find fitting, as basis for petitioner's claim for refund or tax credit, Section 69 of the Tax Code which reads as follows:

> "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."

In view of the evidence presented by the petitioner, this Court believes that petitioner has shown to the satisfaction of the Court, its entitlement to the income tax refund or credit sought for. Verily, it is the respondent who has failed miserably in her quest to overturn petitioner's assertion. Instead of coming up with material evidence in order to tilt the balance in her favor, respondent casually submitted the case based on the pleadings and records of the case. It may likewise be said that respondent maybe considered as not questioning seriously petitioner's entitlement to its claim for refund or tax credit. Petitioner has overwhelming met the quantum of proof required to sustain its claim.

Moreso, the evidence presented were not disputed by respondent. The same evidence sufficiently established petitioner's right to the refund or tax credit sought. (***Commonwealth Management & Services Corporation vs. Commissioner of Internal Revenue***, CTA Case No. 3232, June 26, 1985).

WHEREFORE, premises considered, respondent is hereby ordered to refund or issue tax credit certificate(s) in favor of Benguet Corporation the amount of ₱14,966,985.00, representing overpaid income taxes for taxable years 1989 and 1990.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between 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