REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CCT CONSTRUCTORS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5550

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 08 1999

x - x

DECISION

This case involves a judicial action for the refund of the sum of ₱10,211,372.00 allegedly representing excess or overpaid creditable income taxes for the fiscal year ended March 31, 1995 and the interim period ended December 31, 1995.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is principally engaged in general engineering and construction business (TSN, December 10, 1997, p. 10; Exhs. A and B).

On July 17, 1995, Petitioner filed its annual income tax return for fiscal year ended March 31, 1995 reflecting, among others, an excess or refundable income tax in the amount of ₱479,086.00, computed as follows:

Gross Income	₱ 838,720,946.00
Less: Deductions	812,317,563.00
Net Income	₱ 26,403,383.00
Tax Rate	35%
Tax Due	₱ 9,241,184.00
Less: Tax Credits	9,720,270.00
Refundable Amount	(₱ 479,086.00)

Petitioner opted to carry over this overpaid income tax as tax credit for the succeeding taxable year (Exh. C-2).

On April 15, 1996, Petitioner filed its Corporation Income Tax Return for the interim period ended December 31, 1995 which reflected an excess or refundable income tax in the amount of ₱10,211,372.00, computed as follows:

Gross Income		₱649,098,961.00
Less: Deductions		644,239,570.00
Net Income		4,859,391.00
Tax Rate		35%
Tax Due		1,700,787.00
Less: Tax Credits		
Prior year's tax credit	₱ 479,086.00	
Creditable tax withheld	11,433,073.00	₱ 11,912,159.00
Amount Refundable		(₱ 10,211,372.00)

Petitioner manifested its intention to be refunded of the aforesaid amount by marking the box "to be refunded" in its Corporation Annual Income Tax Return for the interim period ended December 31, 1995 (Exh. D-2).

On June 3, 1997, Petitioner, through its auditors, SGV and Co., filed its claim for refund of the unutilized or unapplied creditable tax withheld in the amount of ₱10,211,372.00 for the fiscal year March 31, 1995 and the interim period ended December 31, 1995 with the BIR (Exh. G).

On September 18, 1997, Petitioner lodged its appeal with this Court in order to beat the running of the two-year prescriptive period to claim for the refund of excess income tax payment in accordance with Section 230 of the National Internal Revenue Code, as amended.

On October 6, 1997, Respondent filed his answer to the instant Petition for Review and raised the following Special and Affirmative Defenses:

> 3) Petitioner's right to claim refund has partially, if not totally, prescribed;
>
> 4) Petitioner's claim for refund is still pending administrative investigation and evaluation;
>
> 5) Taxes paid and collected are presumed to have been in accordance with law and regulations and hence, not refundable;
>
> 6) In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the corresponding action;
>
> 7) Claims for refund are strictly construed against claimants since they partake of the nature of an exemption from taxation.

In order to substantiate its claim for refund, Petitioner for its part, submitted the following pertinent documents as evidence:

Exhibit	Particulars
C	Petitioner's Corporation Annual Income Tax Returns for fiscal year ended March 31, 1995
D	Petitioner's Corporation Annual Income Tax Return for interim period ended December 31, 1995
F	Petitioner's Amended Corporation Annual Income Tax Return for taxable year ended December 31, 1996

G	SGV letter-claim for refund filed with the BIR
C-5-a to C-5-ay; E-1 to E-49	Various Certificates of Creditable Income Tax Withheld at Source for fiscal year ended March 31, 1995 and Interim year ended December 31, 1995

Respondent submitted his own documentary evidence that shows that out of the total amount claimed by the Petitioner, only ₱2,817,847.90 may be granted for having been satisfactorily supported with convincing evidence.

As earlier adverted to, the pivotal issue presented for our consideration is whether or not Petitioner is entitled to the refund of the amount of ₱10,211,372.00 claimed as overpaid income tax payment for fiscal year ended March 31, 1995 and interim year December 31, 1995.

Petitioner anchored its claim on the following pertinent provision of the Tax Code, as well as Memorandum Circular implementing it, to wit:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar year 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 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.

Revenue Memorandum Circular No. 7-85, dated April 1, 1985, implementing Section 69 of the Tax Code provides:

> "x x x the corporation may request for the refund of the overpaid income tax or claim for automatic credit. To insure prompt action on corporate annual income tax refund showing refundable amounts arising from overpaid quarterly income taxes, this office has promulgated RMO No. 32-76, dated June 11, 1976 containing the procedures, the returns are merely pre-audited which consist mainly of checking mathematical accuracy of the figures in the return. After which, the refund or tax credit is granted; and this procedure was adopted to facilitate immediate action on cases like this.

It can be gleaned from the foregoing authorities that the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year. However, this Court notes that Petitioner's intention to carry over the tax credit for fiscal year ended March 31, 1995 to the tax liability of the succeeding year 1996 was not realized. This is because during that year, Petitioner effected a change in accounting period from fiscal year ended March 31 to calendar year ended December 31, 1995. As a consequence thereof, Petitioner carried over and applied the excess income tax payment of fiscal year 1995 against the tax liability of the succeeding interim period ended December 31, 1995 as shown by Exhs. D, D-1 to D-5. Thus, it appears then that Petitioner erred in claiming that the amount of ₱10,211,372.00 represents overpaid income tax for fiscal year 1995 and interim period December 31, 1995 and this is what Petitioner intends to be refunded as evidenced by its income tax return (Exh. D-2).

Having settled the problem of "carry-over" and "tax credit", We now delve on the issue of whether or not Petitioner has complied with the basic requirements before refund of overpaid income tax arising from payments of creditable withholding tax at source can be granted.

This Court has ruled in several cases that the grant of refund when creditable withholding tax is in excess of the amount of the tax due depends on three factors, viz:

1) that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the NIRC.

2) that the income upon which the taxes were withheld were included in the return of the recipient; and

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 (Section 10, Revenue Regulations 6-85; see Citytrust Finance Corporation vs. CIR, CTA Case No. 4134, November 11, 1991 and Citytrust Finance Corporation (formerly Investors Finance Corp.) vs. CIR, CTA Case No. 4046, February 24, 1993).

As disclosed by the records of this case, Petitioner filed its administrative claim for refund with the BIR on June 3, 1997 (Exh. G) and the instant petition for review on September 18, 1997. Petitioner's annual income tax return for the interim period ended December 31, 1995 was filed on April 15, 1996 (Exh. D). Clearly then, the date of filing was well within the two-year prescriptive period counted from the date of filing of the income tax return as required by law **(Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., GR No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc., GR No. 837736, January 15, 1992; ACCRA Investments Corp. vs. Court of Appeals, GR No. 96322, December 20, 1991).**

Petitioner likewise complied with the second requirement where the income upon which the taxes were withheld was included in the return of the recipient. A careful examination of all the Certificates of Creditable Tax Withheld at Source (Exh. E-1 to E-

49) for the interim period ended December 31, 1995 reveals that Petitioner has earned a total income amounting to ₱675,588,689.71 (inclusive of VAT) and ₱62,509,050.00 derived from Petitioner's contract income and sale of real property. Said amount was reflected in Petitioner's income tax return (Exh. D).

And lastly, Petitioner presented various Certificates of Creditable Tax Withheld at Source for the interim period ended December 31, 1995 (Exh. E-1 to E-49) to prove that the taxes were indeed withheld. Although there exists a discrepancy in the findings of SGV and Co, and the respondent BIR as to the amount of unutilized creditable tax, this Court is inclined to adopt the recommendation of the former. Per SGV findings, the total amount of unutilized/unapplied creditable tax should be ₱10,193,750.97 (Exh. H-2) while the Respondent recommended only the amount ₱2,817,847.90 (Exh. 6-b) which is based on the pertinent documents which were verified by them. However, in this Court's own evaluation, We have considered all the certificates which were offered in evidence even if not verified by the Respondent. It need not be emphasized that these certificates could be given weight and credence since the withholding agents affixed their signatures therein under the penalty of perjury. Moreover, these withholding agents are agents of the Respondent and therefore bind the latter as their principal.

Therefore, the amount of ₱10,193,750.97 can be rightfully claimed by Petitioner, computed as follows:

FISCAL YEAR ENDED, MARCH 31, 1995

Taxable Income	₱26,403,383.00
Tax due	9,241,184.00
Less: Adjusted creditable withholding tax (Exh. H-4)	9,702,648.97
Tax Refundable (applied to tax liability of interim period ended December 31, 1995)	₱ 461,464.97

INTERIM PERIOD ENDED, DECEMBER 31, 1995

Taxable Income		₱ 4,859,391.00
Tax due		1,700,787.00
Less: Prior year's excess credit		
(fiscal year 1995)	₱ 461,464.97	
Creditable withholding tax	11,433,073.00	11,894,537.97
Refundable amount		₱10,193,750.97

WHEREFORE, in view all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to the Petitioner the amount of ₱10,193,750.97 representing overpaid/excess income tax for the interim period ended December 31, 1995.

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 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