REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN MOTORS SOUTH SUPER, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5345

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: AUG 28 1998

x - x

DECISION

This is a petition for review seeking for the refund or issuance of a tax credit certificate amounting to ₱7,146,386.32 representing unutilized creditable income tax withheld at source for calendar year ended December 31, 1993.

The facts of the case are simple.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines. It is engaged in the assembly and manufacture of automobiles, including the sale and distribution of automotive spare parts.

On April 15, 1994, petitioner filed its Annual Income Tax Return (ITR) for the calendar year 1993 (Exh. A). Subsequently, an amended return was filed on July 6, 1994 (Exh. B), reflecting a net loss of ₱19,200,399.00. For the same year, however, there were already several

187

income tax payments made by petitioner which were withheld at source by various withholding agents totalling ₱7,146,386.32, broken down as follows:

Withholding Agent	Amount of Income	Withholding Tax	Exh.
Columbian Autocar Corporation	₱95,522,569.60	₱4,776,128.48	C
Asian Carmakers Corporation	11,916,478.20	590,823.92	D
Columbian Motors Corporation	33,547,066.40	1,677,353.32	E
Sta. Rosa Motor Works Inc.	2,041,612.00	102,080.60	F
		₱7,146,386.32	

Since petitioner failed to apply the aforesaid amount to any tax liability for that year, it intended to do so on the next taxable year.

For calendar year 1994, petitioner again suffered a loss of ₱44,434,556.00 (Exh. H), thus, the ₱7,146,386.32 creditable taxes withheld during the year 1993 remained unutilized.

On March 29, 1996, a letter-claim for the refund of the ₱7,146,386.32 was filed with the Bureau of Internal Revenue. Petitioner anchored its claim on Section 69 of the National Internal Revenue Code in relation to Section 230 of the same Code, to state:

> **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 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

188

(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.

SEC. 230. ***Recovery of tax erroneously or 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 a 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.

As said claim was not acted upon immediately, the instant petition for review was filed on April 3, 1996.

The sole issue for determination is whether or not petitioner has complied with all the requirements for a valid claim for refund so as to be entitled to the relief sought.

Petitioner, to support its case, submitted the following documents:

Exh.	Description	Purpose
A	Photocopy of BIR Form No. 1702 or the Tentative Corporation Annual Income Tax Return of Columbian Motors South Super, Inc. for calendar year (CY) 1993 filed on April 15, 1994	To prove that petitioner filed with the BIR its Tentative Corporation Annual Income Tax Return for CY 1993
B	Photocopy of BIR Form No. 1702 or the Final Corporation Annual Income Tax Return of Columbian Motors South Super, Inc. for CY 1993 filed on July 6, 1994.	To prove that petitioner filed with the BIR its Final Corporation Annual Income Tax Return for CY 1993
C to F	Photocopies of Various Certificates of Creditable Income Tax Withheld at Source for the year 1993	To prove the fact of withholding
G	Photocopy of BIR Form No. 1702 or the Tentative Corporation Annual Income Tax Return of Columbian Motors South Super, Inc. for CY 1994 filed on April 17, 1995	To prove that petitioner filed with the BIR its Tentative Annual Corporate Income Tax for CY 1994
H	Photocopy of BIR Form No. 1702 or the Final Corporation Annual Income Tax Return for CY 1994 filed on July 28, 1995	To prove that petitioner filed its Final Annual Corporate Income Tax for CY 1994.
I	Administrative Claim for Refund of Creditable Tax Withheld in the amount of ₱7,146,386.32 dated and filed by the petitioner with the BIR on March 28, 1996	To prove that petitioner filed with BIR on March 28, 1996 a request for refund on the creditable tax w/held in the amount of ₱7,146,386.32

Jm

J	Photocopy of BIR Form No. 1702 or the Tentative Corporation Annual Income Tax Return of Columbian Motors South Super, Inc. for CY 1995 filed on April 15, 1996	To prove that petitioner filed with the BIR its Tentative Annual Corporate Income Tax for CY 1995
K	Photocopy of BIR Form No. 1702 or the Final Corporation Annual Income Tax Return for CY 1995 filed on October 7, 1996	To prove that petitioner filed its Final Annual Corporate Income Tax for CY 1995.

Respondent, on her part, did not introduce any controverting evidence and even intimated that petitioner's request is in order except that the xerox copies of the documents presented by petitioner have not yet been authenticated, thus:

Q. Mr. Witness, after this report, dated June 18, 1997, do you have any other report aside from this?

A. It should be the final report, Sir.

Q. So this memorandum, dated June 18, 1997 is your final action on this report, Mr. Witness?

A. Yes, Sir.

Q. Now, the petitioner is claiming tax refund in the amount of ₱7,146,386.32. In your report, will you please tell us, did you grant the claim or not, Mr. Witness?

A. After considering the documents presented to me and I evaluated, I find the request to be in order that is amount in the total of ₱7,146,386.32 as requested in the letter of the petitioner, Sir.

191

Q. Why do you find that it is in order? What are your basis, Mr. Witness?

A. Because these are basically supported by the previous BIR Form as I have stated which are the Monthly and in the Annual Return and there is another Annual Return including the payment or Monthly Remittance Returns made by the payors in favor of the petitioner we also included in that return, including the name of the bank. However, if this (sic) records are required to be authenticated I would recommend so, for this purpose. As of now, these xerox copies presented in favor of the petitioner are not yet authenticated, Sir.

(TSN, Witness: Jose de Vera, Revenue Officer, RD No. 52, Hearing of July 17, 1997, pp. 24-25)

After examining the evidence submitted by the parties, We rule in favor of petitioner.

To be entitled to a refund, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. That 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.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on March 29, 1996 as well as its Petition for Review filed with this Court on April 3, 1996, are both within the two year period from the date of payment of the tax.

Second, the income tax return of petitioner for 1993 (Exh. B) likewise revealed that the income upon which the taxes were withheld were included in said return.

And third, the fact of withholding was also established by petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source (Exhs. C to F).

Moreover, since in this case petitioner is seeking for the refund of the amount of P7,146,.86.32 which it previously declared in its ITR to be applied as tax credit to the succeeding taxable year but failed to do so, the 1994 and 1995 Income Tax Returns were also submitted by petitioner to prove that the amount sought to be refunded was never utilized.

And, finally, respondent's testimony finding petitioner's request to be in order as it was adequately supported by the necessary documents further bolstered petitioner's claim for refund.

WHEREFORE, in view of all the foregoing, this Court finds this petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in favor of petitioner the sum of P7,146,386.32, representing

193

unutilized creditable income tax withheld at source for the taxable year 1993.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

194