REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

COLUMBIAN MOTORS SOUTH SUPER, INC.,
Petitioner.,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5503

Promulgated:
OCT 05 1999

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DECISION

The issue which is presented for our consideration is whether or not Petitioner is entitled to a refund in the amount of P9,524,004.69 allegedly representing the unutilized creditable income tax withheld at source for taxable year ended 1994.

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

It appears from the records that on April 17, 1995, Petitioner filed with the Bureau of Internal Revenue its Tentative Corporate Annual Income Tax Return for calendar year 1994 (Exhibit A). Thereafter, that is, on July 28, 1995, Petitioner filed an Amended Income Tax Return declaring a net loss in the amount of P44,434,556.00 (Exh. B) but reported a creditable withholding tax in the total amount of P9,548,874.00 (Exh. B-5).

This amount representing the creditable tax withheld arose from income from professional fees and sales of goods to top 5000 corporations which was not utilized since Petitioner incurred a net operating loss for the calendar year 1994.

Said income, which were allegedly subjected by its payors to withholding taxes totaling P9,524,004.69, is broken down as follows:

WITHHOLDING AGENT	AMOUNT OF INCOME	WITHHOLDING TAX
Columbian Auto Car Corp.	P141,532,527.00	P1,415,325.27
Columbian Auto Car Corp.	107,498,235.40	5,374,911.77
Columbian Motors Corp.	41,081,825.80	2,054,091.29
Columbian Motors Corp.	39,343.00	393.43
Asian Carmakers Corp.	11,406,075.80	570,303.80
Sta. Rosa Motor Works, Inc.,	2,179,580.80	108,979.04
	P303,737,587.80	P9,524,004.60
		(Exhibit C to H inclusive)

On April 15, 1996 and October 7, 1996, Petitioner filed its Tentative and Amended Corporate Annual Income Tax Returns for calendar year 1995, respectively, declaring a taxable income of P756,842.00 (Exh. J-3) and the tax due thereon of P264,895.00 (Exhibit J-4). As the Petitioner reported creditable withholding taxes in the total amount of P19,972,283.00 for 1995 and which was partially utilized to the extent of P264,895.00, the amount of tax due for that year, the 1994 creditable withholding tax in the amount of P9,524,004.69 remained and unutilized.

In March 29, 1996, Petitioner filed with the BIR a letter-claim for refund in the amount of P9,524,004.69, reiterating therein that its creditable withholding tax payments made in 1994 in the amount of P9,524,004.69 was not utilized. Respondent failed to act on the administrative claim for refund. Petitioner then resorted to seek redress from this Court by filing a Petition for Review on April 14, 1997, pursuant to Section 230 of the Tax Code, as amended.

Respondent, in opposing the petition, set forth the following Special and Affirmative Defenses:

> 1) Petitioner's herein claim for tax credit/refund is still undergoing administrative investigation/examination by Respondent's Revenue District No. 52, Parañaque, Metro Manila;
>
> 2) Taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations
>
> 3) Claims for tax credit/refund are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax. Hence, it is incumbent upon Petitioner to prove that it is entitled thereto.
>
> 4) It is incumbent upon Petitioner to show that it has complied with the provisions of Sec. 204 in relation to those of Sec. 230 of the Tax Code, as amended.
>
> 5) Mere allegations by Petitioner that it incurred a net operating loss in calendar year 1994 don't ipso facto merit the tax credit/refund of creditable withholding tax paid. It has to substantiate the same by documentary evidence as required under existing BIR regulations on the matter. (Respondent's Answer, CTA rec. p. 80-81)

In order to prove its entitlement to the refund, Petitioner presented the following documentary evidence, to wit:

Exhibit	Description
" A "	Petitioner's Tentative Corporation Annual Income Tax Return for CY 1994

" B "	Petitioner's Final Corporation Annual Income Tax Return for CY 1994
" C, D, E " " F, G, I "	various Certificate of Creditable Income Tax Withheld at source for the year 1994
" J "	Petitioner's Final Corporation Annual Income Tax Return for CY 1995
" K "	Administrative claim for refund filed with the BIR

Petitioner strongly believes that it is entitled to the refund, anchoring its stand on Section 69, in relation to Section 230 of the Tax Code. For easy reference, Sections 69 and 230 are hereby quoted as follows:

> **"Section 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
>
> (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.
>
> **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 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 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.

It is clear from the aforementioned provision that the refundable income tax payment of a given year can only be credited against income tax liabilities for the succeeding taxable year. However, this tax crediting is not mandatory. A careful scrutiny of the wordings of the law would reveal that it confers upon the taxpayer an option to either refund or credit the excess tax paid. Thus, the word "may" as used in Section 69 is generally permissive as it operates to confer discretion among taxpayers (see Agpalo, Statutory Construction, 1995, 3rd Edition).

As shown by the Petitioner's Corporation Annual Income Tax Return for 1994, it opted to carry over the income tax paid to the next taxable year as evidenced by the "X" mark on the box "to be applied as credit to next year" (Exhibit B). But judging from the income tax return it presented for the succeeding taxable year 1995, it appears that no crediting of the prior year's (1994) tax credit ever took place. (See Exh. "J-5", p. 161, CTA Records). This is indicative of the change of intention on the part of the taxpayer. The amount originally intended to be credited for the succeeding year is now being refunded in the instant Petition for Review. Considering that the creditable tax withheld for the prior year was never utilized, as it was not credited to the succeeding year's tax liability, then the amount subject of this petition appears to be refundable.

But before the claim for refund of unutilized creditable withholding tax at source be granted, Petitioner must first comply with the following basic requirements as enunciated by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459,** to wit:

1) that it filed a claim for refund within the 2 year period as prescribed under Sec. 230 of the NIRC;

2) that the income upon which the taxes were withheld was included in the return of the recipient (Revenue Regulation 6-85);

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 (Sec. 10, Rev. Reg. 6-85, as amended by Rev. Reg. 12-94).

In the instant case, the prescriptive period for filing a claim for refund shall commence to run on the date Petitioner filed its final income tax return for the taxable year involved (Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989)

Since the Petitioner filed two returns for calendar year 1994 (tentative and amended), the prescriptive period should be counted from the filing of the tentative or earlier return. When the Petitioner filed its original return on April 17, 1995 (Exh. A-2), it is from this date that the prescriptive period commenced to run. Records show that

Petitioner filed its letter-claim for refund with the Respondent's office on March 29, 1996 (Exh. K) and the Petition for Review with this Court on April 14, 1997. Clearly, the two-year prescriptive period for claiming a refund has not yet lapsed.

Petitioner's Corporation Annual Income Tax Return for the taxable year 1994 clearly shows that the income upon which the creditable withholding tax at source was deducted has been included therein. This is embodied in Section 6, Schedule 1, 2 and 3 of Exhibit A (CTA docket p. 116-117).

The proof of withholding is likewise well-established by the presentation of Certificates of Creditable Income Tax Withheld at Source (Form 1743.1) showing that the amount subject of the claim was in fact withheld by the withholding agents and remitted to the BIR (Exhibit C to G).

However, the alleged tax withheld by Sta. Rosa Motor Works, Inc., in the amount of P108,979.04 which was claimed by Petitioner and included in the claim for refund cannot be considered by this Court since such document was not formally offered in evidence. Well-settled is the rule that "evidence not formally offered although identified during trial are of no value and cannot be considered by the Court" **(Maitland-Smith Cebu, Inc. formerly Maitland-Smith Ltd.-Phil. Branch vs. Commissioner of Internal Revenue, CTA Case No. 5476, September 23, 1998).**

Thus, only the following documents which were formally offered and admitted by this Court in its Resolution, dated September 4, 1998 can be considered, to wit:

Withholding Agent	Exhibit	Amount of Tax Withheld
Columbian Auto Car Corp.	" C "	P1,415,325.27
Columbian Auto Car Corp.	" D "	5,374,911.77
Columbian Motors Corp.	" E "	2,054,091.29
Columbian Motors Corp.	" F "	393.43
Asian Motors Corp.	" G "	570,303.80
Total Amount Refundable		P9,415,025.56

As regards the contention of Respondent that Petitioner has not shown proof of the loss incurred, We find this to be without merit. Suffice it to state, that in the case of **Citytrust Banking Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991,** which was affirmed by the Court of Appeals in **Commissioner of Internal Revenue vs. Citytrust Banking Corporation (CA G.R. Sp No. 26839, July 31, 1992)** this particular issue has already been settled, to wit:

> "Respondent's contention that a mere allegation of loss does not ipso facto merit a refund is unmeritorious. As stated, Respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did Respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence, the income tax return should be given credence and thus, coupled by the fact that Petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by Petitioner in the year. (see also BPI as Liquidator of Paramount Acceptance Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993).

Further, on Respondent's contention that Petitioner's claim for refund is still undergoing administrative investigation, we find this untenable. Thus, as held in the case of **Greenfields Development Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4669 and 4867, January 30,1996,** the pendency of an administrative claim for refund is not a valid ground for this court not to decide the instant petition since it has already acquired jurisdiction over the claim and this court is not bound to wait indefinitely for whatever action Respondent may take.

WHEREFORE, in the light of the foregoing, Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of P9,415,025.56 representing unutilized creditable withholding tax at source for calendar year 1994.

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