REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

JARDINE DAVIES TRANSPORT SERVICES, INC.,
Petitioner,

C.T.A. CASE NO. 6433

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 20 2005

x -x

DECISION

BAUTISTA, L., J.:

The instant petition seeks the refund of alleged overpaid income tax as of December 31, 1999 in the aggregate amount of Two Million Eight Hundred Forty-Nine Thousand Two Hundred Eighty-Nine Pesos (P2,849,289.00).

The facts as revealed by the records of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws with principal office at 11/F G. A. Antonino Building, T.M. Kalaw, Ermita, Manila (*par. 1, Joint Stipulation of Facts*).

On April 14, 1999, petitioner duly filed its corporate annual income tax return for its tax year ended December 31, 1998 (*par. 3, Joint Stipulation of Facts*) with the Revenue

District Office (RDO) No. 52 authorized agent bank, UCPB, Sucat, Parañaque, reflecting therein a net loss of P13,568,872.00, a minimum corporate income tax (MCIT) due of P483,730.00 and an overpayment of P1,498,729.00 which petitioner indicated as "To be carried as tax credit next year" (*Exhibit A*).

On April 17, 2000, petitioner filed its tentative corporate annual income tax return for its tax year ended December 31, 1999 (*par. 4 Joint Stipulation of Facts*) with RDO No. 52, Parañaque, reporting a net loss of P42,443,259.00 and a nil tax liability. Petitioner did not declare its prior year's excess credits or any amount of creditable taxes withheld during the year (*Exhibit B*).

On October 9, 2000, petitioner filed its amended corporate annual income tax return for its tax year ended December 31, 1999 (*par. 5 Joint Stipulation of Facts*) with RDO No. 52 authorized agent bank, Philippine Commercial International Bank, Bicutan Branch, showing a net loss of P38,252,256.00 and MCIT due of P46,572.00 which was duly paid on the same date (*Exhibit C*).

On May 3, 2001, petitioner again filed an amended income tax return for taxable year ended December 31, 1999 but this time with RDO No. 33, Ermita, Malate. The newly amended return reflected that petitioner opted to refund its reported income tax overpayment of P2,849,289.00 *(Exhibit D)*, computed as follows:

Prior year's excess credit (1998)	P 1,498,729.00
Creditable Taxes Withheld during 1999	1,303,988.00
Minimum Corporate Income Tax Paid in 1999	46,572.00
	P 2,849,289.00

On August 30, 2001, petitioner filed with RDO No. 33 a claim for refund covering the aforementioned amount (*Exhibit 1*).

Unable to obtain immediate relief, on April 10, 2002, petitioner elevated the case to this Court through a Petition for Review.

In his Answer filed on May 8, 2002, respondent forwarded the following Special and Affirmative Defenses:

4. The BIR Revenue District Office No. 33, Revenue Region No. 6 has no jurisdiction over the claim for refund. Petitioner filed the administrative claim for refund with the wrong revenue district office. The filing of the claim for refund, as indicated in the petition for review as Annex "E", was made with the Revenue District No. 33-Manila. The claim for refund should have been filed with the Revenue District Office No. 53- Parañaque since, it is the revenue office where the petitioner filed its 1999 annual corporate return, their principal place of business being at Km 17 West Service Road, South Superhighway, Cervantes, Parañaque City. The filing of the original and the first, amended 1999 corporate annual returns were made with RDO-52 Parañaque City, PCIB-Bicutan, while the last amended return, with RDO 33-Manila. Despite the issuance by RDO 33 of the Transfer Confirmation Notice (attached to the Petition for Review) dated May 2, 2001 which only confirms the petitioner's intent to transfer registration, the herein petitioner has not yet officially transferred from RDO-52 Parañaque City to RDO 33. Petitioner failed to present the Certificate of Registration with RDO 33-,RR6-Manila. Attached hereto is the 1st Indorsement dated April 29, 2002 of the Revenue District Office of RDO 33, attesting among others, that the latter Office has no jurisdiction over the claim for refund, to wit:

> "xxx with the information that this tax case, falls under the jurisdiction of RDO 52, Parañaque City"
>
> Verification from ITS shows that said taxpayer is still an active registrant in Parañaque City revenue district. Furthermore, scrutiny of the tax returns filed, as attached to the docket (petition for review) bears business address in Parañaque City and the same were received in RDO 52, Parañaque City.

5. Petitioner has filed the petition for review with the Court of Tax Appeals prematurely. The petitioner has yet to file an administrative claim for refund with the BIR within the 2-year prescriptive period under Sec. 204 (C), 1997 Tax Code, from payment of taxes or from the filing of the returns as the case may be. As borne out in Annex "E" of the petition for review, the filing of the claim for refund with the Revenue District No. 33 of Manila is erroneous. The claim for refund should have been filed with the Revenue District Office No. 53 Parañaque City and not with RDO 33. Erroneous filing of the claim for refund is tantamount to non-filing at all.

6. The Court of Tax Appeals has no jurisdiction over the case. The petition for review lacks cause of action. In Gibbs vs. Collector, 107 Phil. 230 and 15 SCRA 318, the High Court ruled that the cause of action is the continuing inaction of the Commissioner on administrative claim for refund to wit:

> "xxx In a situation, therefore, where the Commissioner of Internal Revenue delays in responding to a written claim fore refund, it devolves upon the taxpayer not to await the Commissioner's reply but, within a reasonable time prior to the expiration of the two-year period, to file his petition for review with the Court of Tax Appeals and to consider the

continuing inaction of the Commissioner as tantamount to a denial so as to permit him to have a cause of action."

There is no cause of action because the petitioner has failed to file an administrative claim for refund. The filing of the claim for refund with the Revenue District No. 33 Manila is erroneous. The claim for refund should have been filed with the Revenue District Office No. 53-Parañaque. In the absence of claim for refund with RDO-52-Parañaque City, the BIR cannot act on the same. Neither should the BIR be made liable for inaction on petitioner's claim for refund.

7. As of this date, considering the failure of the petitioner to file proper administrative claim for refund, its right to claim has already prescribed considering the lapse of the 2-year prescriptive period from the date of the alleged payment of taxes sought to be refunded. The reckoning date of the 2-year prescriptive period to claim for refund is on April 17, 2000, the date of the filing of the original 1999 corporate annual return up to April 17, 2002, the last day of the prescriptive period, since, petitioner made no substantial amendment thereto;

8. Assuming but not admitting that petitioner filed validly an application for tax credit/refund of minimum corporate income taxes and excess creditable withholding taxes for the taxable year 1999, taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

9. Petitioner must show that it has complied with the provisions of Section 27 (E)(1) of the 1997 Tax Code on Minimum Corporate Income Tax. Petitioner must prove that it is subject to MCIT, that it is not entitled to the relief from the imposition of the MCIT, that the excess MCIT are not claimed against itself or against any other losses. Petitioner must show that the period when it becomes subject to the MCIT and prove, furthermore, the accuracy of the amount of gross income subject to the MCIT, and the amount excess MCIT carried over and credited against the normal tax within the (3) immediately succeeding years from payment thereof;

10. Petitioner must also show that it has complied with the provisions of Section 51 (c) and (d) of the Tax Code, as amended, as enunciated in City Trust Finance Corporation V. C.T.A., to wit:

    a) That the claim is filed with the Commissioner of Internal Revenue within the 2-year period from the date of payment;
    b) It must be shown on the return of the recipient that the income payment received was declared as part of the gross income;
    c) The fact of the withholding is established by a copy of the statement duly issued by the payor to payee showing the amount of tax withheld therefrom.

11. Petitioner must show that it has complied with the provisions of Section 204(c) and 229 of the Tax Code;

12. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue.)

On June 21, 2002, a Motion to Dismiss was filed by respondent on the ground that this Court has no jurisdiction over the matter of this case since the Petition for Review was prematurely filed. Respondent averred that petitioner erroneously filed its administrative claim for refund with the wrong Revenue District Office.

In a Resolution promulgated on July 25, 2002, this Court resolved to give due course to the Petition for Review in the absence of any legal basis that confers exclusive jurisdiction to the specific Revenue District Office within which to apply the claim for refund.

A Motion for Reconsideration was filed by the respondent on August 15, 2002 which the Court denied on September 18, 2002 for lack of merit. After due trial, the case was submitted for decision on May 10, 2005.

The jointly stipulated issues to be resolved by this Court are:

1. Whether or not petitioner incurred a net loss during the years ended December 31, 1998 and December 31, 1999;

2. Whether or not petitioner has, as of December 31, 1999 creditable taxes totaling P2,849,289.00;

3. Whether or not petitioner carried forward and credited the refundable amount shown in its 1999 income tax return of P2,849,289.00 against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year; and

4. Whether or not petitioner's claim for refund is substantiated with the documentary and testimonial evidence submitted.

Anent the first issue of whether or not petitioner incurred net losses for the years ended December 31, 1998 and December 31, 1999, We answer in the affirmative. Petitioner's income tax returns for taxable years 1998 and 1999 (*Exhibits A & D*) sufficiently proved that it had indeed suffered net losses during the said years. As can be seen in the returns for both taxable years, petitioner's deductions exceeded its gross income resulting to net losses amounting to P13,568,872.00 for 1998 and P38,252,256.00 for 1999 with the corresponding minimum corporate income tax (MCIT) due of P483,730.00 for 1998 and P46,572.00 for 1999. Inasmuch as petitioner's returns for 1998 and 1999 were prepared under the penalties of perjury, the figures appearing therein are presumed to be true and correct in the absence of contrary evidence (***Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR SP. No. 33589, October 14, 1994).*** Similarly, in the case of ***Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997***, the Supreme Court held that:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, <u>detailed proof of the truthfulness of each and every item in the income tax return is not required</u>. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue* [228 SCRA 135 (1993)], the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. <u>The grant of a refund is founded on the assumption that the tax return is valid: that is, the facts stated therein are true and correct.</u> In fact even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."

Considering that the remaining issues are interrelated, the same shall be discussed jointly.

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides:

> Section 76. ***Final Adjustment Return.*** — Every corporation liable to pay tax under Section 27 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 balance of tax still due; or
>
> (B) Carry-over the excess credit; or,
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.

> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable yeas has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit shall be allowed therefor.

Based on Section 76 afore-cited, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried-over/applied to the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

As stated earlier, petitioner's reported income tax overpayment as of December 31, 1999 in the amount of P2,849,289.00 is composed of:

Prior year's excess credit (1998)	P 1,498,729.00
Creditable Taxes Withheld during 1999	1,303,988.00
Minimum Corporate Income Tax Paid in 1999	46,572.00
	P 2,849,289.00

Applying the provisions of Section 76 to the case at bar, petitioner is precluded from claiming a refund of the prior year's excess credits amounting to P1,498,729.00. Petitioner had already chosen and in fact had exercised the option of carry-over insofar as the said excess credits are concerned. Having exercised such option, the same is irrevocable. Petitioner's only recourse is to carry-over/apply the 1998 excess tax credits of P1,498,729.00 to the succeeding taxable years until the same is fully utilized [***MIRANT (PHILIPPINES) OPERATIONS CORPORATION (formerly SOUTHERN ENERGY ASIA-PACIFIC OPERATIONS PHILS.), INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA CASE NO. 6340, MAY 18, 2005***].

We now proceed to the remaining claimed MCIT payment of P46,572.00 and excess creditable withholding taxes for taxable year 1999 of P1,303,988.00.

In its first amended 1999 income tax return filed on October 9, 2000 (*Exhibit C*), petitioner declared an MCIT liability of P46,572.00 which it paid on the same date. In its second amended 1999 income tax return filed on May 3, 2001 (*Exhibit D*), petitioner again reflected the MCIT due of P46,572.00. However, instead of deducting its previous MCIT payment of P46,572.00 against the MCIT liability of P46,572.00 shown in its second amended return, petitioner erroneously added the said amount to its prior year's excess credits of P1,498,729.00 and creditable taxes withheld during 1999 of P1,303,988.00. In other words, petitioner's reported income tax overpayment as of December 31, 1999 in the sum of P2,849,289.00 was overstated by P46,572.00. This amount of P46,572.00 does not actually represent income tax overpayment but a mere result of petitioner's erroneous mathematical computation, thus the same cannot be refunded.

What is left to be determined is whether or not petitioner is entitled to a refund of the amount of P1,303,988.00 representing excess tax credits for 1999.

A closer look at petitioner's second amended 1999 income tax return reveals that petitioner marked the option "To be refunded" (*Exhibit D-3*). Moreover, in its return for the succeeding taxable year 2000, petitioner indicated no amount of prior year's excess credits (*Exhibit E-1*). Considering so, the amount of P1,303,988.00 appears to be a proper subject of a claim for refund under Section 76 of the NIRC of 1997.

However in order that petitioner's claim deserves merit, petitioner must first comply with the following requirements:

(1) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997;

(2) That the fact of withholding is established by a copy of statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

(3) That the income upon which the taxes were withheld were included in the return of the recipient [***Section 2.58, Revenue Regulations No. 2-98, as amended; CITIBANK N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. CA, 204 SCRA 957***]

As shown in the records in this case, the first requisite was met by the petitioner. The reckoning of the two-year prescriptive period for the filing of a claim for refund of excess creditable withholding tax starts from the date of filing of the annual income tax return [***ACCRA Investments Corporation vs. Court of Appeals, supra; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992)***]. Petitioner filed its tentative income tax return for taxable year 1999 on April 17, 2000 (*Exhibit B*). Counting from this date, petitioner's administrative claim filed on August 30, 2001 and the Petition for Review filed on April 10, 2002, were well within the two-year prescriptive period.

Pertaining to the second requisite, petitioner arguably fell short in establishing substantial evidence to support its claimed creditable withholding taxes as it was unable to present the documents necessary to prove the existence thereof. During the trial of the case, petitioner merely presented the report of the Court commissioned auditing firm, Joaquin Cunanan & Co. (*Exhibit G*) and schedule of creditable withholding taxes for 1999 (*Exhibits I*). This Court cannot ascertain the veracity of the said CPA report and schedule of creditable withholding taxes without the corresponding pre-marked photocopies of the original Certificates of Creditable Tax Withheld at Source issued by petitioner's withholding agents for taxable year 1999.

It is necessary to reiterate that the commissioning of an independent CPA by the court is not a mere formality but a task imbued with utmost diligence of an agent of the Court. Thus, during the March 27, 2003 hearing for the commissioning of the independent CPA, Joaquin Cunanan & Co, as represented by its partner, Mr. Victor O. Machacon, the Court clarified its functions, to wit:

> Judge Acosta:
> Did you appraise Mr. Machecon what will be his scope of his examination.
>
> Atty. Dumpit:
> Yes, your Honors, we already appraised.

Judge Acosta:

Mr. Machecon, primarily you have to do is to verify the originals of all these documents which you are suppose *(sic)* to present before this Court because normally our lawyers will investigate the photocopies and we have to verify it by ourselves by requiring the lawyers to present the originals. So, we commission you and you are Officer of the Court and you report to us your findings, right.

Mr. Machecon:

Yes, your Honors.

Judge Acosta:

All right, we will commission you.

Mr. Machecon:

Thank you, your Honors.

MR. VICTOR O. MACHECON IS BEING COMMISSIONED
BY JUDGE BAUTISTA

Judge Bautista:

Mr. Machecon, upon manifestation of herein petitioner, Jardine Davies Transport Services, Inc., your firm Joaquin Cunanan and Company has been retained by said petitioner to conduct a *(sic)* independent social audit and examination of various receipts, invoices and other long accounts which is the subject of the present case this is in accordance with CTA Circular No. 1-95, as amended. As the named Partner In-Charge of this undertaking, representing the auditing firm of Joaquin Cunanan and Company you are hereby appointed as Commissioner of this Court pursuant to Rule 32 of the Rules of Court and sworn to faithfully and honestly perform the task that you will undertake to the best of your knowledge and ability and in accordance with the Generally Accepted Accounting and Auditing Principles Rules and Regulations. Forthwith, it is your duty for and in behalf of the auditing firm you represent, to proceed with all due diligence and dispatch to perform this task and to make a written report and certification setting forth your findings and conclusion in examination and verification of these long accounts. You shall include and form part of your Report, ***Schedule of Summaries, photocopies of the original documents duly pre-marked and such other supporting papers which you are required to certify as faithful reproduction of their originals*** and accordingly it is your duty to take the witness stand and to testify on the result of the said audit engagement. With this undertaking are you willing to accept this commission?

Mr. Machecon:

Yes, I do accept the commission, your Honors.

(Italics supplied, TSN, March 27, 2003, p p. 8-12)

The presentation of the photocopies of the original Certificates of Creditable Tax Withheld at Source for taxable year 1999 is not only a procedural requirement under CTA

Circular No. 1-95, as amended by CTA Circular No. 10-97, but it is specifically mandated under Section 2.58.3(B) of Revenue Regulations No. 2-98, as amended [implementing Section 58(B) of the NIRC of 1997], to wit:

> ***Sec. 2.58.3 Claim for tax credit or refund-***
> xxx
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (*Emphasis supplied*).

Moreover, the aforesaid requirement was affirmed by the Supreme Court in the case of ***Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459***.

It bears stressing that even during the administrative claim for refund of the above case, petitioner was not able to submit the required copies of the certificates of creditable tax withheld. Hence, in a letter (*Exhibit 12*) dated March 17, 2004 addressed to petitioner, Revenue District Officer M. G. Mailig, reiterated the request for compliance, to wit:

> "SUBJECT: Request for Refund of 1999 Creditable Tax Withheld
> Letter Authority No. 00021362
>
> This is to reiterate our request for compliance of the following documents for the processing of your application for refund of the creditable tax withheld at source from your 1999 income, to wit:
>
> 1. original copy of certificates of creditable tax withheld by your suppliers of goods and services
> 2. schedule of creditable tax withheld
>
> Since the previous waiver you have executed previously is limited as to June 30, 2004 while the documents were not yet complied with up to this date, please execute waiver of the defense of prescription under statute of limitations of the National Internal Revenue Code for the extension of the time to complete the investigation.
>
> Your immediate compliance is hereby requested to expedite the processing of the your protest."

Likewise, the failure of the petitioner to comply with the requirements for refund was highlighted in a Memorandum (*Exhibit 15*) for The Chief, Legal Division, Revenue Region No. 6, dated May 5, 2004, submitted by Revenue Officer V.P. Duran, to quote:

"SUBJECT: JARDINE DAVIES TRANSPORT SERVICES, INC., Application for Refund of Excess Creditable Tax for Income For the year 1999 with LA No. 00021362 dated 9/2/2002

In compliance with your memorandum dated April 18, 2004 which was received on May 5, 2004 requesting for the progress report and tax docket be forwarded to your Office, respectfully forwarded herein is the entire docket of the above-mentioned taxpayer.

Subject taxpayer have failed to comply the requirements to support its claim despite of various follow-ups and notices, thus, the undersigned have failed to commence the processing or investigation of the refund."

Considering that petitioner did not submit the required withholding tax certificates, the third requisite has not been complied with.

Indeed, a claim for tax refund is in the nature of tax exemption. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption (***Commissioner of Internal Revenue vs. Procter and Gamble Phil. Mfg. Corp., 204 SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 87***).

WHEREFORE, in view of all the foregoing, the instant claim for refund of petitioner is hereby **DENIED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice