REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ANSCOR INSURANCE BROKERS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5481

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 21 1999

x - x

DECISION

This is a Petition for Review seeking for the refund or issuance of a tax credit certificate in the amount of P4,174,451.00 representing overpaid income tax for 1994 and 1995.

The facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws and is primarily engaged in insurance brokerage. Its income is derived mainly from commissions subject to the 5% expanded withholding tax under Revenue Regulations No. 6-85, which, in turn, is allowed as tax credit against its income tax liability in the taxable quarter or year in which the income was earned or received.

On April 15, 1994, Petitioner filed with the Bureau of Internal Revenue (BIR) its corporate annual income tax return for the calendar year ended December 31, 1993, reflecting a refundable income tax of P368,755.00, computed as follows:

Gross Income		P53,490,354		
Less: Deductions		41,278,201		
Net Income		P12,212,153		
Tax Due		P 4,274,254		
Less: A. Quarterly payments:				
First Quarter	P 338,251			
Second Quarter	2,017,701			
Third Quarter	236,557	(2,592,509)		
B. Creditable Taxes Withheld At source			(2,050,500)	(4,643,009)
Tax Refundable				P (368,755)

This amount was carried over to the succeeding taxable year, however, since Petitioner's income tax liability for 1994 was only P719,482.00, and after applying its prior year's excess tax credit of P368,755.00, there remained a tax due of only P350,727.00, thus resulting again in overpayment of P1,688,273.00, as the total taxes withheld at source for the year totalled P2,039,000.00.

Petitioner again carried over and applied its excess income tax credit for 1994 against its income tax liability for the succeeding taxable year. But since Petitioner's creditable taxes withheld at source for 1995 far exceeded its income tax payable even after deducting the prior year's excess credit, there resulted an overpayment of P4,174,451.00, computed as follows:

Gross Income	P45,608,608
Less: Deductions	44,761,684
Net Income	P 846,924
Tax Rate	35%
Income Tax Due Thereon	P 296,423

Less:	
Prior year's (1994) excess credit	(₱1,688,273)
Less:	
Creditable Taxes Withheld at Source in 1995	(₱2,782,601)
Total Overpaid Income Tax as of December 31, 1995	[₱4,174,451]

On February 21, 1997, Petitioner filed with the BIR a claim for the refund of the aforesaid amount, citing Section 204 (3) in relation to Sec. 230 of the Tax Code, which provides:

> "*Authority of the Commissioner to compromise, abate, and refund/credit taxes.*-The Commissioner may-
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> x x x x x x x x x
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> *(3) Credit or refund taxes erroneously or illegally received*, penalties without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes shall be allowed unless the taxpayer has filed in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty."

On the other hand, Section 230 of the Tax Code states:

> "*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.*

There being no action on the part of herein Respondent, the instant petition was filed on April 2, 1997.

Respondent, in her Answer, raised the following Special and Affirmative Defenses:

> 4. Assuming arguendo that the alleged refundable income taxes were paid by petitioner, the same were collected pursuant to law and pertinent BIR implementing rules and regulations; hence, the burden of proof lies upon the petitioner to establish that the taxes sought to be refunded or collected were erroneously and/or illegally collected by respondent.
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> 5. Petitioner's allegation that it excessively paid its annual corporate income taxes during the years under review does not <u>ipso facto</u> warrant refund/credit. Petitioner must prove that the exclusions claimed by it fom its income taxes are allowable exclusions claimed by it from its income taxes are allowable exclusions under the Tax Code and its implementing rules and regulations (sic). Moreover, the same must be supported by evidence.
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> 6. Claims for tax refund or tax credit are construed <u>in strictissimi juris</u> against the taxpayer as they partake of the nature of an exemption from tax; hence, it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure on the part of petitioner to prove the same is fatal to its claim for tax refund or tax credit.
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> 7. Lastly, petitioner must prove that it has complied with the provisions of Section 230 of the Tax as amended (sic).

Upon manifestation of respondent's counsel, she submitted her case for decision on the basis of the pleadings and available record.

The sole issue brought before Us is whether or not petitioner is entitled to the refund sought on the basis of the evidence presented.

Petitioner, in support of its claim, submitted the following documents:

Exhs.	Description	Purpose
A	Certificate of Filing of Amended Articles of Incorporation, S.E.C. Reg. No. 44693, issued to Petitioner by the Securities and Exchange Commission on July 14, 1981	To prove that petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines
B	Amended Articles of Incorporation of Petitioner	To prove that petitioner is principally engaged in the insurance brokerage business
C, E & G	Corporate Annual Income Tax Returns and Audited Financial Statements for Calendar years 1994, 1995 and 1996, respectively	To prove that petitioner duly filed with the BIR its Income Tax Returns and audited financial statements for the said years
D-1 to D-45 F-1 to F-45	Certificates of Creditable Income Tax Withheld at Source	To prove that for the years 1994 and 1995, petitioner had total creditable tax withheld in the amounts of P2,039,000.00-(1994) & P2,782,600.56 (1995)

H	Letter-claim for refund addressed to BIR dated February 20, 1997	To prove that petitioner filed with the BIR an administrative claim for refund of its excess withholding tax credits for the years 1994 and 1995 within the two year period prescribed by law

After examining the evidence presented, 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;
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> 2. That the fact of withholding is established by a copy of statement (BI Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
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> 3. That the income upon which the taxes were withheld were included in the return of the recipient.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on February 21, 1997 (Exh. H) as well as its Petition for Review filed with this Court on April 2, 1997, are both within the two-year period, that is, from April 12, 1995 and April 13, 1996, the dates when Petitioner's 1994 and 1995 Income Tax Returns were respectively filed.

Petitioner has likewise complied with the second requirement by its submission of the various certificates of creditable income tax withheld at source (Exhs. D-1 to D-45, F-1 to F-45).

As regards to the third requirement, however, the Court arrived at different summations for the years involved.

For 1994, while the income reflected in Petitioner's income tax return may have included the sum total of the income reported in the certificates of creditable taxes withheld at source, the following adjustments were made so that the total taxes withheld for the year was reduced to P2,022,811.74, computed as follows:

Creditable Taxes Withheld at Source (1994) as appears in ITR and summary	P2,039,000.63
Less: No Certificates of Creditable Tax Withheld at Source	(45,052.55)
No Certificate of Creditable Tax Withheld at Source	(1,187.28)
Trans-East Asia Ins. Co. No Certificate of Creditable Tax Withheld at Source	(427.41)
Add: Exh. D-29 Not in summary	30,478.34
Adjusted total	P2,022,811.74

For 1995, Petitioner's certificates of creditable taxes withheld at source revealed a total income of ₱54,733,682.90, which is ₱9,643,018.90 more than the income stated in schedule 2 of the annual income tax return submitted by Petitioner. Thus, We infer that Petitioner did not include in its return all the income upon which the taxes were withheld.

In view of the foregoing, We are constrained to grant a refund only for such amount as Petitioner has substantially proven, detailed as follows:

For Taxable Year 1994

Gross income	₱ 47,274,262.00
Less: Deductions	45,218,600.00
Net Income	₱ 2,055,662.00
Tax rate	35%
Income Tax Due	₱ 719,482.00
Less:	
Prior year's (1993) excess credit	(368,755)
Balance	₱ 350,727.00
Less: Creditable Taxes Withheld at Source	2,022,811.74
Overpaid income tax for 1994	1,672,084.74

For Taxable Year 1995

Gross income	₱45,608,608.00
Less: Deductions	44,761,684.00
Net Income	₱ 846,924.00
Tax rate	35%
Income Tax Due	₱ 296,423.00

Less:	
Prior year's (1994) excess credit	1,672,084.74
Balance	(P1,375,661.74)
Less: Creditable Taxes Withheld at Source for 1995 (45091664 x 5%)	(2,254,583.00)
Total Overpaid Refundable Amount	P3,630,244.74

WHEREFORE, Respondent is hereby **ORDERED** to **REFUND** or in the alternative, **ISSUE** a **TAX CREDIT CERTIFICATE,** to Petitioner in the reduced amount of P3,630,244.74 representing overpaid income tax for the calendar years ended December 31, 1994 and 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 this decision was reached after due consutation with 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