REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

QUAKER OATS ASIA, INC.
PHILIPPINE BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 5608

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 30 1999

x - x

DECISION

Before Us for consideration is a Petition for Review filed by Petitioner seeking for a refund of the sum of P2,873,761.00 allegedly representing excess unutilized tax credits for the calendar years December 31, 1995 and 1996.

Petitioner is a foreign Corporation organized and existing under the laws of the State of Delaware, USA and is authorized to do business in the Philippines (Exhibit A) with office located at 15th Floor, the JMT Corporate Condominium, ADB Avenue, Ortigas Center, Pasig City.

Records of this case show that on April 15, 1996, Petitioner filed its annual income tax return for taxable year 1995 (Exhibit C), declaring a gross income of P42,746,651.00 and a total tax credit of P1,246,748.00 (Exh. C-2) representing the prior years' excess tax credit amounting to P539,224.00 and creditable withholding taxes amounting to P707,524.00. Since Petitioner has incurred a net operating loss of P19,473,316.00 (Exh.

C-4), the tax credit was never utilized. Petitioner then opted to carry over this unutilized tax credit against the succeeding year's tax liability.

On April 15, 1997, Petitioner filed its annual income tax return for taxable year 1996 (Exhibit E), declaring a gross income of P68,296,367.00 and a total tax credit of P3,412,985.00 which represents the sum of prior year's excess tax credit in the amount of P1,246,748.00 (Exh. E-1) and the creditable withholding taxes in the amount of P2,166,237.00 (Exh. E-3). Again, Petitioner has incurred a net operating loss of P86,221,821.00 (Exh. E-2), leaving the tax credits still unutilized.

Thus, on February 24, 1998, Petitioner filed an administrative claim for refund of the excess unutilized creditable withholding taxes with the BIR (Exhibit I) covering the taxable years 1995 and 1996, thus:

YEAR	CWT
1995	P 707,524.00
1996	2,166,237.00
Total amount claimed for refund	P2,873,761.00

The inaction of Respondent in its letter compelled Petitioner to file the instant petition for review on April 8, 1998 in order to preserve its right to judicially claim for the refund of said amount pursuant to Section 230 of the Tax Code.

On May 22, 1998, Respondent filed its answer and raised the following Special and Affirmative Defenses, to wit:

(6) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

(7) Claims for refund are strictly construed against the taxpayer. Petitioner has no cause of action.

Petitioner, on its part submitted the following documentary evidence in order to show proof of the meritorious nature of the claim for refund:

EXHIBITS	**DESCRIPTION**
C, E, H	Petitioner's Corporation Income Tax Income Tax returns for 1995, 1996 and 1997
D to D-2 E to E-7	Various copies of Certificate of Creditable Tax Withheld at Source issued by withholding Agents to petitioner for taxable year 1995 and 1996
I	letter claim for refund with the BIR
J	Auditor's report harmonizing petitioner's sales and its net collection from such sales
K	Summary of Cash Receipts

The issues presented before us for consideration are as follows:

1) Whether or not Petitioner is legally entitled to the claim for refund; and

2) Whether or not Petitioner was able to substantiate its entitlement thereto.

Petitioner cites as legal basis Sections 69 and 230 1995 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.

Section 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.

After a perusal of the evidence submitted by Petitioner, we rule in favor of petitioner's cause.

The 1997 annual income tax return shows that the total amount of excess/unutilized tax credit for taxable year 1996 was not forwarded to the succeeding taxable year of 1997 (Exh. H and H-1). This fact would reveal that the amount subject of this claim was not utilized by Petitioner as automatic tax credit in the year 1997, hence it remained refundable pursuant to the aforequoted section 69 of the 1995 Tax Code.

What is now left for the Court to consider is petitioner's compliance with the following requisites in order to be entitled to the refund sought:

> (1) That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the NIRC, as amended;
>
> (2) That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> (3) That fact of withholding is established by a copy of statement duly issued by the payor (withholding agent) (BIR Form 1743.1) to the payee, showing the amount paid and the amount of tax withheld therefrom (Sec. 10, Rev. Reg. 6-85 see Citytrust Finance Corp. vs. CIR, CTA Case No. 4134, Nov. 11, 1991 affirmed by the Court of Appeals in Citytrust Finance Corp. vs. CTA and CIR; CA-GR SP No. 28239, March 14, 1994)

These aforementioned requirements were affirmed by the Court in the case entitled Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.

A careful examination of all the evidence presented revealed that :

Petitioner was able to comply with the requirements of filing this case within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended. A letter-claim for refund was filed with the Bureau of Internal Revenue on February 24, 1998 and the instant petition for review on April 8, 1998. The annual income tax returns for the taxable years 1995 and 1996 were filed on April 15, 1996 and April 15, 1997, respectively. Clearly the dates of filing of the claim for refund in the administrative as well as the judicial level were well within the two-year prescriptive period as provided by law.

Furthermore, the income payments subject to withholding tax were reported in the gross income portion of Petitioner's annual income tax return as evidenced by Exhibits "C" and "E." Thus, the income reflected in the Certificates of Income Tax Withheld amounting to P72,917,673.00 for the taxable year 1995 and P185,618,421.00 for the taxable year 1996 were included as part of the income declared in petitioner's income tax returns amounting to P115,850,669.00 for 1995 (Exhibit C-3) and P191, 541,297.00 for 1996 (Exhibit E-4)

Lastly, Petitioner presented the various Certificates of Income Tax Withheld at Source for taxable year 1995 (Exhibits D to D-2) and for taxable year 1996 (Exhibits F to F-7) to prove that a percentage of the income has indeed been withheld as creditable income tax. The amount of taxes withheld for 1995 as reflected in the certificates is P729,176.73 and for 1996, the amount of P1,856,184.21, detailed as follows:

QUAKER OATS ASIA INC., PHIL.
SCHEDULE OF INCOME AND TAX WITHHELD

FOR THE YEAR ENDED, DECEMBER 31, 1995

Withholding Agent	Exhibit	Income Payment	Tax Withheld
Alaska Trading Co. Inc.	D	P20,462,535.00	P204,625.35
Alaska Trading Co, Inc.	D-1	2,165,323.00	21,653.23
Jaka Distribution, Inc.	D-2	50,289,815.00	502,898.15
Sub Totals		P72,917,673.00	P729,176.73

FOR THE YEAR ENDED, DECEMBER 31, 1996

Withholding Agent	Exhibit	Income Payment	Tax Withheld
Jaka Distribution, Inc.	F	P36,234,234.00	P362,342.34
Alaska Trading Co. Inc.	F-1	14,591,281.00	145,912.81
Jaka Distribution, Inc.	F-2	26,596,850.00	265,968.50
Alaska Trading Co., Inc	F-3	16,743,054.00	167,430.54
Jaka Distribution, Inc.	F-4	39,583,212.00	395,832.12
Alaska Trading Co., Inc.	F-5	19,305,064.00	193,050.64
Alaska Trading Co., Inc.	F-6	15,473,014.00	154,730.14
Jaka Distribution, Inc.	F-7	17,091,712.00	170,917.12
Sub Totals		P185,618,421.00	P1,856,184.94
TOTALS		P258,536,094.00	P2,585,360.94

Petitioner, however, argued that the creditable withholding taxes amounting to P707,524.00 for 1995 and P2,166,237.00 for 1996 which were reflected in the annual income tax returns were the correct amounts that should be refunded since these were the actual amounts withheld and recorded in its books of accounts.

To establish its point, Petitioner availed of the services of SGV and Co., through the person of Mr. Ruben R. Rubio who was later commissioned by the Court to perform the necessary audit procedures and to submit a report of his findings with respect to Petitioner's creditable withholding tax.

On December 5, 1998, Mr. Rubio submitted his report (Exh. J) containing the results of the audit performed on Petitioner's creditable withholding tax for taxable year 1996 and it was ascertained that only the amount of P2,091,381.26 out of P2,166,237.00 claimed by Petitioner represents the creditable withholding taxes for the taxable year 1996. Petitioner however explained the apparent discrepancy by stating that the difference of P74,855.74 pertains to the 1995 withholding tax not claimed in the 1995 income tax return but was recorded in the 1995 books of accounts.

An examination of the Certificates of Income Tax Withheld for the taxable year 1995 shows that the total amount of P729,176.73 was properly substantiated. It is significant to point out however that only the lesser amount of P707,524.00 is being claimed by the Petitioner during this particular period, hence we are constrained to grant only that which is being prayed for and not the greater amount of P729,176.73.

In conclusion, the total amount of P2,563,708.21 should be granted to Petitioner, detailed as follows.

CY	PER PETITION FOR REVIEW	PER EVIDENCE	ALLOWABLE
1995	P 707,524.00	P 729,176.73	P 707,524.00
1996	2,166,237.00	1,856,184.21	1,856,184.00
TOTALS	**P2,873,761.00**	**P2,585,360.94**	**P2,563,708.21**

WHEREFORE, in view of all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to the Petitioner the reduced amount of P2,563,708.21 representing the overpaid income tax for calendar years ending December 31, 1995 and December 31, 1996.

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