Republic of the Philippines
COURT OF TAX APPEALS
Question City

RAMIE TEXTILES INC.,
Petitioner,

- versus -

C.T.A.. CASE NO. 5034

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
APR 11 1996

x - x

D E C I S I O N

This case involves a claim for refund in the amount of P8,193,750.00 representing overpaid creditable withholding tax.

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at the 4th floor, Emmanuel House, 115 Aguirre Street, Legaspi Village, Makati, Metro Manila.

As alleged, petitioner suffered continued losses in its operations and on July 13, 1990 it filed a petition for suspension of payment to creditors with the Securities and Exchange Commission.

Under the terms of its Repayment and Restructuring plan, petitioner's business will be closed and its assets will be sold to pay off its creditors.

On February 19, 1991, petitioner sold to San Miguel Corporation several parcels of land including improvements thereon located at Valenzuela, Metro Manila in the total amount of Three Hundred Forty Five Million Pesos (P345,000,000.00) which is payable on installment.

Then on June 1993, San Miguel Corporation made a partial payment in favor of the petitioner the amount of P163,875,000.00 and withheld P8,193,750.00, representing 5% creditable withholding tax, computations of which are as follows:

Installment Payment		5% Creditable Tax Withheld and Paid to the BIR		
Due Date	Amount	Date	PO/CR Refs	Amount
02-19-91	P 86,250,000	10-15-91	PO-11424575/602 CR-21143219/221	P4,312,500
11-19-92	P 51,750,000	12-10-92	Bank Machine Validation (1743 W)	P2,587,500
05-19-93	P 25,875,000	06-10-93	Bank Machine Validation (1743 W)	P1,293,750
TOTALS	P 165,875,000			P8,193,750

Petitioner alleged that it included in its petition and its claim for refund the creditable withholding taxes of P2,587,500.00 and P1,293,750.00 which was paid on December 10, 1992 and June 10, 1993 respectively, likewise it also alleged that the tentative financial statement reflects net loss of P50,620,214.00 for FY ended June 30, 1993.

Petitioner filed a claim for refund with the Bureau of Internal Revenue but up to this date, the same remains unacted upon.

Thus, to toll the running of the two-year prescriptive period, petitioner filed this petition for review.

The issues posed before Us are the following:

> 1. Whether or not petitioner's claim for refund has prescribed.
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> 2. Whether or not petitioner is entitled to the refund in the amount of P8,193,730.00 which represents the 5% creditable income tax withheld at source.

In resolving the issues posed before Us it is material to deal with Section 230 of the National Internal Revenue Code.

Section 230 of the National Internal Revenue Code provides:

> "**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 without authority, <u>or of any sum alleged to have been excessive</u> or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; 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, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> or penalty regardless of any supervening cause that may arise after payment. x x x ." (Emphasis supplied)

As the law requires, the filing of a claim for refund with the Commissioner of Internal Revenue must be made within two years from the date of payment of the tax. Insofar as pertinent Sec. 204(3) of the Tax Code provides:

"Sec. 204. Authority of the Commissioner to make compromises and to refund taxes. - The Commissioner may:

(1) x x x x x x x x x

(2) x x x x x x x x x

> (3) credit or refund taxes erroneously or illegally received, or penalties imposed 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 ben rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty. (Underscoring supplied)

Taking the case of the petitioner, its final income tax return for the year ended June 30, 1991, the same return was filed with the Bureau of Internal Revenue on October 15, 1991.

Now, the two-year prescriptive period starts to run on October 15, 1991, when petitioner filed its final income tax return, therefore it has until October 15, 1993 to file a petition for review.

Obviously when petitioner filed this petition for review on October 8, 1993, the two-year prescriptive period has not yet expired.

Moreover, this Court treads the line of reason held by the High Court in the case of Accra Investments Corporation v. The Hon. Court of Appeals, Et. Al., G.R. No. 96322, December 20, 1991, wherein it held thus:

> "The petitioner corporation's taxable year is on a calendar year basis, hence, with respect to the 1981 taxable year, ACCRAIN had until 15 April 1982 within which to file its final adjustment return. The petitioner corporation duly complied with this requirement. On the basis of the corporate income tax return which ACCRAIN filed on April 15, 1982, it reported a net loss of P2,957,142.00. Consequently, as reflected thereon, the petitioner corporation, after due computation, had no tax liability for the year 1981. Had there been any, payment thereof would have been due at the time the return was filed pursuant to subparagraph (c) of the aforementioned codal provision which reads:
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> 'Sec. 70 (c) - Time payment of the income tax. - The income tax due on the corporate quarterly returns and the final income tax returns computed in accordance with Sections 68 and 69 shall be paid at the time the declaration or return is filed as prescribed by the Commissioner of Internal Revenue.'
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> x x x x x x x x x
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> The term 'return' in the case of domestic corporations like ACCRAIN refers to the final adjustment return as mentioned in Section 69 of the Tax Code of 1986, as amended, which party reads:
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> > '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 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.

Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it receive from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of Commissioner of Internal Revenue v. Asia Australia Express, Ltd. (G.R.No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.

x x x x x x x x x

It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operation. The date of payment; therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 15, 1982."

From the foregoing it is settled that with respect to income tax payments effected through the withholding tax system as in this case, the two-year prescriptive period starts to run from the date the taxpayer's income tax liability falls due, or at the earliest, from the date of the filing of the adjusted final tax return.

On the second issue, petitioner was able to prove that the gain on its sale of real properties on which the 5% creditable withholding tax were withheld was included as part of its gross income. (see Exhibit "H" p. 117, CTA records)

Likewise it gains better ground by establishing the fact of the withholding and the payment to the BIR of the 5% creditable withholding tax at source in the total amount of P8,193,750.00, as evidenced by its Certificates of Creditable Income Tax Withheld at Source. (see Exhibits "D", "E", "F", p. 101, 104, 106)

Lastly, petitioner incurred losses for the years 1991, 1992 and 1993, thus it had no income tax liabilities against which to credit the creditable taxes withheld as supported by its Income Tax Returns and audited financial statements for 1991, 1992 and 1993. (see Exhibits "G", "H", "I", "J", "K")

All told, we find petitioner's claim for refund to be in order.

WHEREFORE, in view of the foregoing premises, respondent is hereby ordered to refund to the petitioner the amount of P8,193,750.00 as overpaid creditable withholding tax.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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