REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HOPEWELL TILEMAN LTD. – PHILIPPINE BRANCH,
Petitioner,

\- versus -

C.T.A. CASE NO. 5681

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 18 2000

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DECISION

This is a Petition for Review filed by Petitioner Hopewell Tileman Ltd.–Phil. Branch against Respondent Commissioner of Internal Revenue for the failure of the latter to act on the former's claim for refund in the amount of P2,298,684.79, allegedly representing Petitioner's overpaid/excess creditable withholding tax for the fiscal year ended June 30, 1996.

Petitioner is the Philippine Branch of Hopewell Tileman Limited, a corporation duly organized and existing under and by virtue of the laws of Hong Kong. Its office is located at 14/F, G. E. Antonio Bldg., J. Bocobo cor. T.M. Kalaw Sts., Ermita, Manila. It is duly licensed to do business in the Philippines by the Securities and Exchange Commission (SEC) under License Reg. No. AF093-000062 to manage contractors engaged in the design, installation, erection, assembly, testing and commissioning of projects related to power generating stations, industrial plants and related facilities (Exh. A).

On October 15, 1996, Petitioner filed with the Traders Royal Bank-Head Office its Corporate Annual Income Tax Return for the fiscal year ended June 30 1996 (Exh. B) declaring a taxable income of P782,881.00, a tax due of P274,009.00, tax credits/payments of P2,573,329.00 and an excess credit or tax refundable of P2,299,320.00.

Likewise, on October 18, 1997, Petitioner filed with Respondent's Bureau in Lucena City its Corporate Annual Income Tax Return for the fiscal year ended June 30, 1997 (Exh. D). The said return showed that the aforesaid excess credits of P2,299,320.00 was not carried over by the Petitioner to the fiscal year 1997.

On October 5, 1998, Petitioner, in conformity with Section 230 (now 229) of the Tax Code, hereunder stated, filed with the Respondent's Bureau in Lucena City, a claim for refund or issuance of a tax credit certificate of the aforesaid excess unutilized creditable withholding tax for the fiscal year 1996 in the total amount of P2,299,320.00 (Exh. E):

> ***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 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.

The said claim for refund was not acted upon by the Respondent, hence, on October 15, 1998, Petitioner filed with this Court the instant Petition for Review.

Petitioner present the proposition, as reason of the petition, that it is entitled to the refund of the amount of P2,298,684.79 as this represents its correct excess/unutilized creditable withholding taxes for the fiscal year 1996 duly supported by Certificates of Creditable Tax Withheld at Source (Exh. C-1 to C-3) and not the amount of P2,299,320.00 indicated in its Annual Corporate Income Tax Return. It cited Section 69 (now 76) of the Tax Code, quoted below, as the basis of the instant claim for refund:

> ***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 total tax due on the entire taxable income of that year, the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be.

Petitioner further affirm that it has complied with the three (3) basic requirements set forth by Section 10 of Revenue Regulations No. 6-85 (now 12-94) and the jurisprudence on this matter on the refund of excess creditable withholding tax, thus, it concluded that a refund of the same is in order:

> 1. That the claim for refund was filed within two (2) years as prescribed by Section 230 (now 229) of the Tax Code;
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> 2. That the income upon which the taxes were withheld were included in the return of the recipient *(ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957)*; and
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> *3.* That 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 *(ibid).*

Respondent on the other hand, argued that Petitioner is not entitled to refund of the alleged overpaid creditable withholding tax on the ground that the Statements and Certificates of Tax Withheld presented and offered by the Petitioner as proof of withholding are not conclusive evidence of payment and remittances to the Bureau of Internal Revenue and that no sufficient proof that the subject tax withheld went into the government coffers.

Hence, the issues to be resolved or tried are whether or not the excess amount of tax withheld over the actual income tax computed and shown in the final corporate income tax return is refundable to the taxpayer and whether or not Petitioner has adduced sufficient evidence to support its claimed refund.

The Court finds no obscurity in the language of Section 69 (now 76) of the Tax Code, insofar as the same is brought to bear upon the Petitioner in the case at bar. The provision by itself furnishes the best means by its own exposition that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (1) be refunded to the Corporation, or (2) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. Thus, there is no doubt that if the taxpayer's income tax payments (withholding taxes) made during the taxable year exceed its actual income tax liabilities for the same year, the excess must be refunded or credited against the tax liabilities of the taxpayer for the succeeding year's taxable quarters.

As the Petitioner was not able to apply or utilize its total creditable withholding taxes for the fiscal year ended June 30, 1996 to the said year and did not carry over the same to the succeeding fiscal year of 1997, the Court rule in the affirmative on the first issue. The amount sought to be refunded appears on its face to be refundable.

With regard to the second issue, the Court likewise find for the Petitioner. A perusal of the evidence presented by Petitioner reveal that its claim for refund of its excess/ unutilized creditable withholding taxes for the fiscal year ended June 30, 1996 was timely filed within two (2) years from the date of payment of tax. Its final corporate annual income tax return for the fiscal year ended June 30, 1996 was filed on October 15, 1996 (Exh. B), its claim for refund was filed with the Respondent's Bureau on October 5, 1998 (Exh. E), and its Petition for Review was filed with this Court on October 15, 1998. The filing of the administrative claim for refund and the filing of the instant petition both fall within the two-year prescriptive period prescribed by Section 230 (now 229) of the Tax Code, hence, there is no question as to the timeliness in the filing of the instant petition. 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 adjustment final tax return *(ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957).*

Further, the Court finds that Petitioner's creditable withholding taxes for the fiscal year ended June 30, 1996 were duly supported by Certificates of Creditable Withholding

Tax at Source in accordance with the requirements of Revenue Regulations No. 6-85, as amended by Revenue Regs. No. 12-94 (Exhs. C-1, C-2 & C-3).

Likewise, it was established by Petitioner that the income upon which these creditable withholding taxes were paid were included in Petitioner's annual income tax return (Exh. B-4). Thus, the Court agree with Petitioner that it has complied with the requisites laid down by the Supreme Court in the case of Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459 with respect to the refund of creditable withholding taxes, to wit: (1) that it was shown on the return of the recipient that the income payment received was declared as part of gross income (2) the fact of withholding is established by a copy of the statement duly issued by the withholding agent to the payee, and (3) that the taxpayer filed its claim for refund within the two year period prescribed under Section 230 (now 229) of the Tax Code.

The Court cannot accept the Respondent's argument that the claim for refund must fail on the ground that the statements and certificates of tax withheld presented and offered are not the best evidence of payment and remittance of taxes withheld and that no sufficient proof that the alleged tax withheld went to the coffers of the government. This Court in numerous cases brushed aside defenses of this nature. In the case of *Citytrust Finance Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993,* this Court clearly ruled that the presentation of official receipts showing payments of withholding taxes and verification by revenue enforcement officers is not essential to prove withholding of taxes. This ruling was reiterated in the case of **AGP Industrial Corp. vs. Commissioner of Internal Revenue, CTA Case No. 5360, January 20, 1999.** In this case, this Court held that "consequently neither the law nor the rules and regulations require that official receipts of payments be presented before any claim for refund can be made. Hence, Respondent's allegation pertaining thereto is groundless." Therefore, the above issue having been laid to rest by this Court, we hold that the evidence presented by Petitioner in the instant case is sufficient to grant the relief sought for.

IN THE LIGHT OF THE FOREGOING, the instant Petition for Review is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein Petitioner in the amount of P2,298,684.79, representing its excess/unutilized creditable withholding taxes for the fiscal year ended June 30, 1996.

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