REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PNZ MARKETING, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5780

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 10 2001

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DECISION

This is a Petition for Review seeking the refund or tax credit of alleged overpaid internal revenue taxes for taxable years 1996 and 1997 in the amount of P2,161,726.00.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines with office address at No. 415 Arayat Street, Mandaluyong City.

The case at hand arose from alleged overpaid income taxes for two taxable years ended December 31, 1996 and December 31, 1997.

The antecedent facts are as follows:

On September 3, 1997, Petitioner filed its 1996 Annual Income Tax Return reflecting an income tax due of P788,579.00 (Exhibit "E"). It likewise reflected total tax credits/payments in the amount of P4,060,917.00 which consisted of the 1996 first quarter income tax payment of P2,672,027.00 and creditable income taxes withheld in

1996 of P1,388,890.00. For the calendar year ended December 31, 1996, Petitioner had an overpaid income tax in the amount of P3,272,338.00 computed as follows:

Gross Income		P13,350,495.00
Less: Deductions		11,097,413.00
Taxable Income		P 2,253,082.00
Tax Due		P 788,579.00
Less: Quarterly Payments	P2,672,027.00	
Creditable Taxes W/held	1,388,890.00	4,060,917.00
		(P3,272,338.00)

On April 15, 1998, Petitioner filed a tentative Annual Corporate Income Tax Return for calendar year ended December 31, 1997 (Exhibit "H"). Subsequently, on May 5, 1998, Petitioner filed its Amended Annual Corporate Income Tax Return for calendar year ended December 31, 1997 showing a tax due of P1,172,579.00 against the total tax credits/payments of P3,334,305.00. The amount of P3,334,305.00 represents prior year's (1996) excess tax credits/payments of P3,272,338.00 and creditable income taxes withheld in 1997 in the amount of P61,967.00 (Exhibit "I").

On September 23, 1998, Petitioner filed a formal claim for refund or issuance of a tax credit certificate in the amount of P2,161,726.00 representing alleged overpaid income taxes for the taxable years 1996 and 1997 (Exhibit "L").

As there was no action on the part of Respondent, the instant Petition was filed with this Court on April 13, 1999 pursuant to Section 230 (now Section 229) of the Tax Code.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

"5. That the herein Petitioner is not entitled to the refund of the amount prayed for in the instant Petition for Review;

6. That as Respondent is still in the process of investigating Petitioner's claim for refund, the herein Petition for Review is premature as Petitioner has not exhausted the administrative

remedies required by law and jurisprudence on action of this nature as no decision has as yet been rendered by the Respondent."

In order to support its claim for refund, Petitioner submitted the following documents as evidence:

Exhibit	Description
A	Quarterly Corporate Income Tax Return for 1st Quarter of 1996
B	Quarterly Corporate Income Tax Return for 2nd Quarter of 1996
C	Quarterly Corporate Income Tax Return for 3rd Quarter of 1996
E	Annual Corporate Income Tax Return for taxable year ending December 31, 1996
H	Tentative Annual Corporate Income Tax Return for taxable year ending December 31, 1997
I	Amended Annual Corporate Income Tax Return for taxable year ending December 31, 1997
L	Letter Claim for Refund
M	Annual Corporate Income Tax for taxable year ending December 31, 1998
N	Schedule of Sales for taxable year 1996 with attached invoices (Nos. 729 to 744)
O	Schedule of Creditable Withholding Tax for taxable year 1996 with attached invoices (Nos. 720 and 724 to 738)
F, G, J, K	Various Certificates of Creditable Tax Withheld at Source for taxable year 1996 and 1997

Respondent failed to submit his Memorandum and opted not to present controverting evidence in order to substantiate his defenses.

The sole issue for the consideration of this Court is whether or not the Petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P2,161,726.00 arising from unutilized income tax credits for taxable years ended December 31, 1996 and 1997.

We resolve to grant the Petition.

The following basic requirements provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence on the matter must be complied with by the Petitioner in order that its claim for refund of excess creditable withholding taxes may be granted:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;

2. That the fact of withholding is established by a copy of a 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 [**Revenue Regulations No. 12-94) (amending Revenue Regulations No. 6-85)**; *Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957*].

The evidence presented to this Court disclosed that Petitioner has complied with requirement No. 1. Petitioner has filed its administrative claim for refund with the Bureau of Internal Revenue on September 23, 1998 and its judicial claim for refund with this Court on April 13, 1999. Thus, both filing dates are well within the two-year prescriptive period for filing the administrative and judicial claims for refund counted from the date of the filing of its 1996 and 1997 Corporation Annual Income Tax Returns on September 3, 1997 and April 15, 1998, respectively.

To prove the fact of withholding of creditable withholding taxes for the years 1996 and 1997 as reflected in its income tax returns for the same years, Petitioner presented the following Certificates of Creditable Tax Withheld at Source:

	Exh	Withholding Agent	Income Payment	Tax Withheld
For 1996				
	G	Kawsek, Inc.	P 135,661,059.95	P 1,356,610.59
For 1997				
	J	Int'l Marketing Corp.	P 707,528.48	P 35,376.42
	K	PNZ Packers, Inc.	531,818.19	26,590.89
			P 1,239,346.67	P 61,967.31
		Total for 1996 & 1997		P 1,418,577.90

It is noted, however, that the total creditable withholding taxes as reflected in the certificates is lesser than that reported in Petitioner's 1996 and 1997 income tax returns, details of which are shown as follows:

	Total Creditable Withholding Taxes (For Taxable Years 1996 & 1997)
As per Certificates of Creditable Tax Withheld at Source	P 1,418,577.90
As per Income Tax Return	1,450,857.00
	P 32,279.10

As perused from the records of this case, the gross income of P123,11[illegible] declared by Petitioner in its 1996 income tax return (Schedule 1, Section C of Ex[illegible]) is lesser by P12,546,245.95 when compared with the gross income of P135,661,059.95 as reflected in the certificate issued by Kawsek, Inc. (Exhibit G).

An examination of the documents submitted shows that out of the amount of P1,356,610.59 claimed as creditable withholding taxes, the amount of P596,697.35 represents withholding tax on Petitioner's sales to Kawsek, Inc. for the taxable year 1995 amounting to P59,669,734.85 which were paid by Kawsek, Inc. only in 1996.

It is concluded that the claimed amount of P1,356,610.59 represents withholding taxes on Petitioner's income partly earned in taxable year 1995 amounting to P59,669,734.85 and partly earned in taxable year 1996 amounting to P75,991,325.13 (Exhibits N and O).

The amount of creditable taxes withheld of P596,697.35 relating to the income earned in the taxable year 1995 of P59,669,734.85 should be deducted from the total creditable taxes withheld amounting to P1,356,610.59. Therefore, the resulting net creditable taxes withheld corresponding to the 1996 income of P75,991,325.13 should only be P759,913.24.

The income earned by Petitioner for taxable year 1996 in the amount of P75,991,325.13 was sufficiently proven to have been declared in its 1996 income tax return as part of its gross income of P123,114,814.00 for the same year. However, such income pertaining to taxable year 1995 in the amount of P59,669,734.85, from which creditable withholding taxes amounting to P596,697.38 relate, was not proven to have been declared in Petitioner's 1995 final adjustment return.

Petitioner's alleged 1996 first quarter income tax payment of P2,672,027.00 which is included in its 1996 total tax credit/payment of P4,060,817.00, was actually paid in the amount of P2,672,026.72 (Exhibit A).

For the taxable year 1997, Petitioner reported in its 1997 amended income tax return (Exhibit I) an amount of P1,459,235.00 as rental income which is more than the rental income of P1,239,346.67 from which creditable taxes of P61,967.31 were withheld (Exhibits J & K). Thus, the creditable taxes withheld was proven to have been declared by Petitioner in its 1997 income tax return.

As can be gleaned from Petitioner's 1998 income tax return, the claimed excess tax credits/payments for taxable years 1996 and 1997 were no longer carried-over to the succeeding year, 1998 (Exhibit "M").

Petitioner has sufficiently substantiated its claim for refund of overpaid income tax for taxable years 1996 and 1997 but only to the extent of P1,532,749.27 computed as follows:

For taxable year 1996

Gross Income		P 13,350,495.00
Less: Deductions		11,097,413.00
Taxable Income		P 2,253,082.00
Tax Due (Exh. E)		P 788,579.00
Less: Tax Credits/Payments		
1.) Prior year's excess credit		
2.) 1996 1st qtr income tax payment (Exh. A)	P2,672,026.72	
3.) Creditable income taxes withheld in 1996 by Kawsek, Inc. on Petitioner's 1996 income of P75,991,325.13 (Exhs. G & O)	759,913.24	3,431,939.96
Tax Refundable		P 2,643,360.[illegible]

For taxable year 1997

Gross Income		P 7,729,656.00
Less: Deductions		4,379,431.00
Taxable Income		P 3,350,225.00
Tax Due (Exh. I)		P 1,172,579.00
Less: Tax Credits/Payments		

1.) Prior year's (1996) excess credit	P2,643,360.96	
2.) Creditable income taxes withheld in 1997 (Exhs. J & K)	61,967.31	2,705,328.27
Tax Refundable		P (1,532,749.27)

WHEREFORE, in view of all the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to Petitioner the amount of P1,532,749.27 representing overpaid/excess income taxes for taxable years 1996 and 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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