REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ATR KIM ENG FINANCIAL CORPORATION
(formerly Philtread Tire and Rubber Corporation and Philtread Holdings Corporation),
Petitioner,

C.T.A. CASE NO. 5598

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 1 2005

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DECISION

CASANOVA, C., J.

This is a case remanded to Us by the Court of Appeals in a decision promulgated on June 4, 2003, which involves a claim for refund or issuance of a tax credit certificate in the amount of Thirty Four Million Six Hundred Sixty Eight Thousand Eight Hundred Ninety Pesos (P34,668,890.00) allegedly representing overpaid income taxes for taxable year 1995.

ATR Kim Eng Financial Corporation, previously known as Philtread Tire and Rubber Corporation and Philtread Holding Corporation ("Petitioner"), is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines.

408

On November 29, 1996, petitioner filed its amended final annual income tax return for the year ended December 31, 1995, declaring an overpayment of income tax in the amount of Thirty Six Million One Hundred Forty Thousand Three Hundred Thirty Pesos (P36,140,330.00), computed as follows:

Gross Income (loss)		**P(109,736,041.00)**
Less: Deductions		**61,570,939.00**
Net Income (loss)		**P(171,306,980.00)**
Tax Rate		**35%**
Income Tax Due		**P NIL**
Less: Tax Credits and Payments:		
Prior year's excess Credit	**P1,471,440.00**	
Creditable Tax Withheld	**34,668,890.00**	**36,140,330.00**
Refundable or overpaid income tax		**P 36,140,330.00**[1]

On February 23, 1998, petitioner filed a claim for refund with the Bureau of Internal Revenue in the amount of Thirty Four Million Six Hundred Sixty Eight Thousand Eight Hundred Ninety Pesos (P34,668,890.00) representing excess creditable income taxes for taxable year 1995.[2]

There being no immediate action by respondent, petitioner filed a Petition for Review on April 1, 1998 before this Court.[3]

After due hearing, this Court, in a decision dated January 18, 2000, partially granted petitioner's claim for refund, the decretal portion of which reads:

> *"WHEREFORE, in view of the foregoing, the petition for review is partially granted. Respondent is hereby ORDERED to REFUND or in the alternative to issue a tax credit certificate in favor of petitioner the sum of P34,549,668.52, representing overpaid income tax for the year 1995."*[4]

This Court ruled that the issue raised in the Petition for Review is limited to petitioner's entitlement of a tax refund for excess income tax payments for taxable year 1995. It has no jurisdiction over assessments for deficiency income, value-added and documentary stamp

[1] Rollo, pp. 1, 2 & Exhibit A
[2] Exhibit J
[3] Rollo, p. 1
[4] Rollo, p. 163

409

taxes which have neither been disputed nor have become due and demandable against petitioner. The said assessments should be tackled in a separate case.

Respondent filed a motion for reconsideration thereof asserting that petitioner cannot claim for a refund since upon their investigation and verification, it has been found out that petitioner had a deficiency income tax for taxable year 1995.[5] In support of his stand, respondent cited the case of Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Appeals[6], where the Supreme Court decreed:

> *"The fact of such deficiency assessment is intimately related to and inextricably intertwined with the right of respondent bank to claim for a tax refund for the same year. To award such refund despite the existence of that deficiency assessment is an absurdity and a polarity in conceptual effects. Herein private respondent cannot be entitled to refund and at the same time be liable for a tax deficiency assessment for the same year.*
>
> *The grant of a refund is founded on the assumption that the tax return is valid, that is, the facts stated therein are true and correct. The deficiency assessment, although not yet final created doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without questionable evidence, cannot be the basis for the grant of the refund."*

In opposition to respondent's motion for reconsideration, petitioner countered that the deficiency income assessment was never raised as an issue in the Petition for Review or in the Answer of the respondent. The latter's reliance in the case of Commissioner of Internal Revenue vs. Court of Appeals, Citytrust Banking Corporation and Court of Appeals is misplaced. Respondent cannot defeat petitioner's claim for refund by invoking its right to impose deficiency income assessment against petitioner. Petitioner's claim for refund and respondent's demand for payment of deficiency income tax cannot be subject of a set-off or legal compensation as the government and taxpayer are not mutually creditors and debtors to each other.[7]

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[5] Rollo, p. 168
[6] 234 SCRA 348
[7] Rollo. pp. 172-178

410

Acting on respondent's motion for reconsideration with opposition from petitioner, this Court issued a resolution dated March 21, 2000, denying said motion for lack of merit.[8]

Unfazed, respondent filed an appeal through a Petition for Review docketed as CA-G.R SP. No. 58229 before the Court of Appeals raising the lone issue of:

> *Whether or not respondent (herein petitioner) is entitled to the refund of the amount P34,549,668.52 representing overpaid income tax for the year 1995 notwithstanding the existence of petitioner's deficiency income tax, value-added tax and documentary stamp tax assessments against respondent covering the same year 1995.*[9]

On June 4, 2003, the Court of Appeals ordered the case to be remanded before this Court, ratiocinating that:

> *[W]e believe and so hold that the grant for tax refund to herein respondent when there is still a pending deficiency assessment that requires evaluation might only prolong the procedure of settlement between the petitioner and the respondent. Worse, it may even cause havoc to the taxing system resulting from the inevitable institution of new proceedings in order to recover the assessed tax deficiencies. Hence, to simply allow respondent PHILTREAD to claim its tax refund despite the findings that it is liable for certain tax deficiencies, the Court of Tax Appeals should have taken more time to find equal opportunities for both the petitioner and the respondent in order to determine at once under one single case each other's claims.*
>
> *Moreover, being in the nature of a tax exemption, tax refund is always construed against the grantee. Thus, the Court of Tax Appeals should not have simply allowed PHILTREAD to recover its tax refund for the reason that to rule upon the deficiency assessments at a raw stage would result to injustice on the part of PHILTREAD and confusion among taxpayers.*
>
> *Further, strict procedural rules are generally frowned in proceedings before the Court of Tax Appeals. The paramount consideration remains the ascertainment of truth. Thusly, the quest for orderly presentation of issues is not absolute and must not bar the court from considering undisputed facts in order to arrive at a just determination of a controversy.*

When the case was returned to Us for further proceedings, respondent manifested that he was adopting the documents he previously offered[10]. Petitioner, however, proffered additional documentary evidence such as Assessment Notice No. 0000-59-95-98-452 dated November 13, 1998 on income tax *(Exhibit L)*, notice of change of address *(Exhibit O)*,

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[8] Rollo, pp. 180-182
[9] Rollo, p. 192
[10] Rollo, p. 340

411

assessment notices for value-added tax and documentary stamp tax *(Exhibits M and N, respectively)*. Thereafter, the case was submitted for decision.

The following are the issues for the consideration of this Court:

1. *WHETHER OR NOT PETITIONER HAS COMPLIED WITH ALL THE REQUIREMENTS FOR AVAILING OF A TAX REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE FOR OVERPAID INCOME TAX; and*

2. *WHETHER OR NOT THE EXISTENCE OF ASSESSMENT NOTICES AGAINST PETITIONER NEGATE ITS ENTITLEMENT TO A TAX REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE FOR OVERPAID INCOME TAX.*

It is imperative to resolve first the second issue on the effect of the existence of the notice of income tax assessment covering taxable year 1995 before this Court can pass upon petitioner's entitlement to a refund or issuance of a tax credit certificate.

Respondent argues that petitioner cannot avail of a tax refund on account of its income tax deficiency for taxable year 1995 as evidenced by Assessment Notice No. 000059-95-98-452 dated November 13, 1998 in the amount of P384,936,221.36.[11]

We do not agree.

Respondent's findings of deficiency income tax against petitioner does not in any way disqualify the latter from claiming for a tax refund. Otherwise put, petitioner's claim of tax refund can proceed independently, despite the existence of deficiency income tax assessment because the remedies for assessment appeals vary from claims for refund. In the case of *Chemo-Technische Manufacturing Inc. vs. The Commissioner of Internal Revenue,*[12] We ruled that:

> *[I]t is of common knowledge that the laws or rules governing claims for refund are separate or distinct from those applicable to assessment appeals. For example, the period of time to appeal a refund case is within two (2) years from the date of payment, while the filing of an assessment appeal requires the observance of thirty (30) days from the date of receipt of denial of protest. Using this example, for illustration, let us take a taxpayer who has an erroneously paid capital gains tax in August 1992. Sometime in August 1994, as assessment was issued against him for deficiency income tax for the same*

[11] Exhibit 4; L
[12] CTA Case No. 4231, Resolution, August 31, 1995

417

taxable year. Supposing, he immediately protested the said assessment but the B.I.R did not immediately act on his protest, will he still wait for the B.I.R.'s decision before he can go to this Court to file his claim for refund? What about if the two year prescriptive period to appeal his refund is nearly to expire, will he still wait indefinitely for the decision on his protest, so he can file both suits simultaneously with this Court? Of course, the answer will be No.

Now, let us reverse the scenario. Supposing, the B.I.R's assessment came first but this time no protest was made by the taxpayer. Hence, the assessment became final and executory and so, the B.I.R. filed a collection case in the regular trial court. During the pendency of the collection suit, taxpayer discovered that he made an erroneous payment of a different kind of tax. To avoid multiplicity of suits, will the B.I.R allow the taxpayer to ventilate his claim for refund in the same collection case? Of course, the B.I.R. will object on the ground of jurisdiction.

In the case at bar, We already found and ruled that:

After taking into consideration all the circumstances encompassing the present appeal and the existing jurisprudence applicable, this Court finds that the issue of whether or not petitioner is liable to pay the assessments for deficiency income, VAT and documentary stamp taxes should be tackled in a separate case. The subject brought to Us for resolution in the petition for review only involves the refund of overpaid income tax for the year 1995. Moreover, the Court has no jurisdiction over the assessments issued against petitioner because the said assessments have neither been disputed nor do we have any information whether or not these have become due and demandable.

Section 229 of the Tax Code, as amended, provides that if the protest is denied in whole or in part, the taxpayer affected may appeal to the Court within thirty days from receipt of the said decision. Furthermore, Section 7 of Republic Act 1125 provides that the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments. In the case of Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, dated December 9, 1997, the Court ruled that:

> *"The argument advanced by the respondent cannot serve as an obstacle to grant the instant claim for refund because petitioner's alleged tax deficiencies for the taxable year 1992 is not the issue presented before us in this petition for review. By bringing up the issue of petitioner's alleged tax deficiencies, respondent seeks to block the grant of the refund by presenting the argument that no refund of taxes is possible because after all the petitioner has an outstanding debt due the government, suggesting the possibility of legal compensation or set-off of taxes.*
>
> *It is already well-settled that <u>internal revenue taxes cannot be the subject of set-off or compensation</u> (Republic vs. Mambulao Lumber Company, 4 SCRA 622). The reason is that the government and taxpayer are not mutually 'creditors and debtors of*

413

> *each other' under Article 1278 of the Civil Code as a 'claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off' (Cordero vs. Gonda, 18 SCRA 331). In the instances where the Supreme Court allowed legal compensation or set-off of taxes, such taxes were already due and demandable, thus compensation under Article 1279 of the Civil Code, took place by operation of law."* (Underscoring supplied)

In the case at bar, the records bear no traces of whether or not the assessments issued against petitioner have become disputed or final. The only manifestation evident in the BIR records is that petitioner will file a protest after it has received the formal demand letter of the assessments from the respondent (Exh. 3, BIR records, pp. 250 to 253). Since the BIR failed to prove that the assessments for income, VAT and documentary stamp taxes have become final and executory, the respondent cannot prohibit the Court in rendering a decision over the claim for refund of petitioner due to the mere existence of assessment notices. The reason that can negate petitioner's entitlement to the claim for refund or issuance of a tax credit certificate of overpaid income tax is petitioner's non-compliance with the following requisites:

> ***1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230 of the National Internal Revenue Code, 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. 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.***[13]

We likewise find it appropriate to reiterate Our resolution of March 21, 2000[14], *viz*:

"[T]his Court cannot assume jurisdiction over assessments which have not been duly protested by the taxpayer. It should be emphasized that the issue raised herein has already been squarely ruled upon in Our questioned decision. Moreover, the BIR records show no traces that the assessment notices together with the demand letters have already been sent to petitioner. The assessment notices on file with the BIR records show no evidence of being received by petitioner nor were there any registry receipt cards, if they were sent through mail. Hence, the Court cannot be compelled by the respondent

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[13] Philtread Rubber & Tire Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5598, January 18, 2000

[14] Rollo, pp. 180-181

414

to take cognizance of the assessments which appear to be undisputed and worse, not yet served.

Although We recognize the fact that the assessments are intimately related to and inextricably intertwined with the petitioner's claim for refund, however, this Court is of the opinion that when a taxpayer receives an assessment, he is accorded the due process of protesting the assessment and eventually appealing the same to this Court. To rule upon the deficiency assessments at this raw stage would result to injustice on the part of petitioner and confusion among the taxpayers."

Petitioner asseverates that it never received the assessment notice for deficiency income tax for the year 1995 *(Exhibit 4; L)* and that it was impossible that said assessment notice be received by it because prior to the issuance of the same, petitioner already transferred to its new office.[15] As early as September 15, 1998, respondent was already informed of petitioner's change of address from its former office at the 3rd Floor, Alegria Building, 2229 Pasong Tamo, Makati City to Suite #-A, Vernida I Building 120 Amorsolo Street, Legaspi Village, Makati City.[16]

We rule in favor of the petitioner.

Section 13 of Rule 13 of the Revised Rules of Court provides:

"Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of the facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee."

In relation thereto, We quote the provision of Section 203 of the 1995 Tax Code as follows:

SEC. 203. Period of limitation upon assessment and collection.-Except as provided in the succeeding section, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That

[15] TSN, August 16, 2004, pp. 8-18
[16] Exhibit O, TSN, August 16, 2004, pp. 18-24.

415

> *in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.*

Considering that petitioner filed its amended 1995 final annual corporate income tax return on November 29, 1996 *(Exhibit A)*, respondent had three years therefrom or until November 29, 1999, to assess petitioner of deficiency income tax for taxable year 1995.

As discussed above, although Assessment Notice No. 000059-95-98-452 was allegedly issued by respondent on November 13, 1998, respondent failed to prove that the same was sent to petitioner. In fact, petitioner was able to prove by testimonial and documentary evidence that it really did not receive personally or by registered mail or ordinary mail, said assessment notice from the respondent. It is noteworthy that respondent failed to adduce any evidence to dispute petitioner's allegations.

In the case of **Obayashi Philippines Corporation vs. CIR**[17], We ruled that the date when the assessment notice was received by the taxpayer is essential in determining if assessment was undertaken within the prescribed period mandated by law. To quote:

> *This case involves deficiency assessments for the taxable year 1995. Petitioner filed its Corporate Annual Income Tax Return on April 15, 1996 for the taxable year ended 1995 (Exhibit B) so respondent had only until April 15, 1999 within which to assess petitioner for deficiency income taxes for the year 1995. The assessment notices (Exhibits A, A-1, & A-2) all dated December 9, 1998 issued by respondent, as revealed by records in this case, came to the knowledge of petitioner only on March 20, 2000 as it never received the said notices allegedly mailed by the respondent to petitioner's former address. Clearly, the right of the respondent to issue a deficiency income tax assessment against the petitioner for the year 1995 had already prescribed.* (Underlining supplied)

An assessment must be sent to and received by the taxpayer and must demand payment of the taxes described therein within the specified period.[18] Failure of the respondent to establish receipt by the petitioner of the subject assessment notice to

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[17] CTA Case No. 6222, July 22, 2004
[18] Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et.al., 309 SCRA 402

416

petitioner's new address renders the assessment notice invalid. It is thus, as if there was no assessment notice issued.[19]

The assessment being void due to prescription, petitioner is not liable for income tax deficiency for the taxable year 1995. The Supreme Court made a similar pronouncement in the case of Estate of the Late Juliana Diez Vda. De Gabriel vs. Commissioner of Internal Revenue, [20] held:

> *Since there was never any valid notice of this assessment, it could not have become final, executory, and incontestable, and, for failure to make the assessment within the five-year period provided in Section 318 of the National Internal Revenue Code of 1977, respondent's claim against petitioner Estate is barred.*

In view of all the foregoing, petitioner is not precluded from claiming for a tax refund for the year 1995.

We now delve on the second issue.

As We already ruled in a number of cases, before a taxpayer may claim for a refund of excess creditable taxes, he must comply with all the requirements set forth by the Supreme Court in the case of Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue,[21] to wit:

> 1. *The claim for refund was filed within the two year prescriptive period under Section 204 (3) in relation to Section 230 of the 1995 Tax Code*[22]*;*
>
> 2. *The income upon which taxes were withheld were included in the return of the recipient; and*[23]
>
> 3. *The fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount tax withheld therefrom.*[24]

Petitioner complied with all the requirements.

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[19] LG Collins Electronics Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6186, June 9, 2004
[20] 421 SCRA 266
[21] 280 SCRA 459
[22] See Section 204 © and Section 229 of the 1997 NIRC
[23] Section 10 of Revenue Regulations No. 6-85
[24] Section 10 of Revenue Regulations No. 6-85

417

The filing of petitioner's claim for refund and the petition for review with respondent and this Court on March 4, 1997 and April 1, 1998, respectively, fall within the two-year prescriptive period reckoned from the filing of the tentative corporation annual income tax return on April 25, 1996.

To prove the fact of withholding, petitioner submitted certificates of creditable withholding tax at source *(Exhibits B to I)*, the details of which are shown below:

Exhibit	Withholding Agent	Nature of Income Payment	Income Payment	Tax Withheld
B	Colombo Merchant Phils., Inc.	Rental of Real Property	P 67,500.00	P 3,375.00
C	Italcar Pilipinas Inc	Income Payments made by top 5000 Corp to local suppliers of Goods	252,618.00	2,526.18
D	Commercial Motors Corp	Income Payments made by top 5000 Corp to local suppliers of Goods	19,509.09	195.10
E	Universal Motors Corp	Payment to Contractors	1,232,000.00	12,320.00
F	Sime Darby Pilipinas, Inc.	Purchase of Goods by Top 5000 Corp	2,547,100.55	25,471.01
H	Man Automotive Concessionaires	Payments by Govt and Top 5000 Corp of Purchases of Goods	578,123.28	5,781.23
I	Sucat Land Corporation	Sale, Exchange or Transfer of Real Property	460,000,000.00	34,500,000.00
T O T A L				**P34,549,668.52**

After a circumspect review of the records, it appears that petitioner's total income which was allegedly subjected to creditable withholding tax came from the rental of real property, sales of goods, income as payments from contractor, and from sale, exchange, or transfer of real property.

Moreover, We find that petitioner declared in its 1995 income tax return *(Exhibit A)* the income derived from sales of goods, and from the sale, exchange or transfer of real property. However, there is no clear showing that petitioner declared the income received from the rental of its real property and payments from contractor in the said return.

Thus, petitioner is entitled to a refund of unutilized creditable tax withheld but in a reduced amount of P34,533,973.52, computed as follows:

Amount Claimed		P 34,668,890.00
Less: Disallowances		
a) Withholding tax on Income which was not declared in petitioner's ITR (Exhibits B & E)	P 15,695.00	

418

b) Amount of claim not supported by creditable withholding tax certificate			
Amount Claimed	P34,668,890.00		
Less: Amount substantiated by CWT Certificates	34,575,139.53	93,750.47	
c) Previous disallowance by the court (Exhibit G)		25,471.01	134,916.48
Amount Refundable			**P34,533,973.52**

WHEREFORE, premises considered, petitioner's claim for refund is hereby granted in the reduced amount of P34,533,973.52. Accordingly, respondent is **ORDERED** to **REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P34,533,973.52 representing overpaid income taxes for the taxable year 1995.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

419