REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HONDA PHILIPPINES, INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 5904

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2001

x - x

DECISION

Before Us is a Petition for Review seeking the refund of THIRTY SIX MILLION FOUR HUNDRED TWENTY-THREE THOUSAND FIVE HUNDRED SIXTY-SIX PESOS (P36,423,566.00) allegedly representing excess income tax payments and unutilized creditable withholding tax for the calendar year ended December 31, 1997.

The facts are hereinstated as follows:

Petitioner is a domestic corporation duly registered and organized under Philippine laws with principal office located at the 6th and 7th floors, Centro Building, 180 Salcedo Street, Legaspi Village, Makati City. It is licensed to do business in the Philippines and is principally engaged in the manufacture and sale of motorcycles and parts.

On April 15, 1998, Petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 1997. (Exhibit A) Thereafter, on April 30, 1998, Petitioner filed an Amended Income Tax Return declaring a net loss of P76,163,929.00 and reflecting an excess or refundable income tax of P36,423,566.00. It has, likewise, indicated on the same return its option to apply the said refundable income tax as tax credit to the succeeding taxable year, 1998. (Exhibit B)

For the calendar year ended December 31, 1998, Petitioner's Corporate Annual Income Tax Return was filed with the Bureau of Internal Revenue (BIR) on April 15, 1999 reflecting a net loss of P283,728,064.00. Petitioner, thus, paid the minimum corporate income tax due in the amount of P8,305,066.00 (Exhibit C). Furthermore, it appears that the 1997 excess tax credit was neither carried over nor credited in the 1998 Income Tax Return.

On May 26, 1999, Petitioner filed with the BIR an application for the refund of its excess or overpaid income tax for the year ended December 31, 1997 in the amount of P36,423,566.00.

Unable to receive an Answer from the BIR, Petitioner filed on July 6, 1999, the instant Petition for Review with the prayer that Respondent be ordered to refund to Petitioner the sum of P36,423,566.00 representing excess income payments and unutilized creditable withholding tax at source for the calendar year 1997.

In his Answer, Respondent advanced the following Special and Affirmative Defenses, to wit:

> "7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

8. The amount of P36,423,566.00 being claimed by Petitioner as alleged overpayment or excessive payment of income tax for the year ended December 31, 1997 was not properly documented;

9. In an action for refund the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

10. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation."

Moreover, in his Memorandum dated March 30, 2001, Respondent asserted 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 remittance to the Bureau of Internal Revenue and further added that Petitioner did not present sufficient proof that the tax withheld went into the government coffers.

On the other hand, Petitioner submitted the following documents to support its claim for refund, thus;

1. Corporation Annual Income Tax Return for the calendar year ended December 31, 1997, Tentative and Final (Exhibits A and B)
2. Corporation Annual Income Tax Return for the calendar year ended December 31, 1998 (Exhibit C)
3. Quarterly Income Tax Returns for the 1st, 2nd and 3rd Quarters of 1997 (Exhibits D, E and F)
4. Report of Independent CPA dated May 3, 2000 (Exhibit G)

5. Various Certificates of Creditable Tax Withheld at Source (Exhibits H-1 to H-31)

6. Certification issued by BPI Legaspi-Salcedo Branch (Exhibit I)

As jointly stipulated by the parties, the issues for resolution are the following:

"1.) Whether or not Petitioner is entitled to a claim for refund of the excess or overpaid income tax for the Calendar Year ended December 31, 1997 in the amount of P36,423,566.00;

"2.) Whether or not said excess or overpaid income taxes are substantiated by documentary evidence; and

"3) Whether or not said excess or overpaid income taxes for the Calendar Year ended December 31, 1997 was carried forward to the succeeding taxable Calendar Year and applied against its income tax liability."

We rule in favor of Petitioner.

It has been well-settled in previous cases decided by this Court and affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997**, that the following requirements must be complied with before a claim for refund of creditable withholding taxes is sustained, thus:

1. The claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

2. The income upon which the taxes were withheld were included in the return of the recipient; and

3. The fact of withholding is established by a copy of a 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.

As gleaned from the records of this case, the first aforementioned requirement was complied with. Petitioner's claim for refund was filed with the BIR on May 26, 1999 and the subsequent Petition for Review was filed with this Court on July 6, 1999 which are both within the two-year period from the date of filing the return on April 15, 1998.

The second requirement was, likewise, complied with. Records show that Petitioner's 1997 Amended Income Tax Return reported gross sales amounting to P3,357,907,960.00. (Exh. B-3) Such amount declared in the return was more than the gross sales of P42,233,492.18 corresponding to the substantiated creditable taxes withheld of P422,334.92. Thus, Petitioner has included the gross sales pertaining to the creditable taxes withheld at source in the amount of P42,233,492.18 in its 1997 Amended Income Tax Return, as part of its taxable income.

Moreover, the quarterly income taxes paid for the first three quarters of 1997 in the total amount of P35,331,476.00 were proven to have been actually paid as shown by the machine validations on the respective quarterly income tax returns, bank deposit slips, and certification from BPI Legaspi-Salcedo Branch. (Exhs. D, E, F, D-4, E-4, F-5 & I)

To prove compliance with the third requirement, Petitioner submitted various Certificates of Creditable Tax Withheld at Source in order to establish the fact of withholding of the claimed creditable taxes for the year 1997. (Exhs. H-1 to H-31)

The claimed creditable taxes withheld in 1997 amounting to P554,439.00 consisted of the following, as summarized in the Amended Report dated July 7, 2000, submitted by SGV & Co., viz:

Creditable income taxes withheld supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 1743-750) certified "True Copy" by Customers	P 422,334.92
Creditable income taxes withheld supported by Photocopies of the Certificates of Creditable Tax Withheld at Source	87,793.97
Creditable income taxes withheld not supported By Certificates of Creditable Tax Withheld at Source	13,704.96
Creditable income taxes withheld supported by Photocopies of the Certificates of Creditable Tax Withheld at Source now within the year of claim	20,328.89
VAT withheld claimed as creditable income tax	10,276.36
Total	P 554,439.10
Less: Per Refund	554,439.00
Unlocated Difference	**P 0.10**

(Exh. J)

However, out of the claimed creditable taxes withheld amounting to P554,439.00, only the amount of P422,334.92 was properly substantiated with certified true copies of certificates of creditable withholding tax at source.

On the other hand, the Tax Debit Memo (TDM) corresponding to the alleged excess tax credits amounting to P537,651.00 was not proven to be actually issued by the BIR in favor of Petitioner, hence, cannot be given due course.

The argument raised by Respondent in his Memorandum that the Statements and Certificates of Tax Withheld are not conclusive evidence of payment and remittance to the BIR, suffice it to state that they are nevertheless adequate, in order to establish the fact of withholding of the claimed creditable taxes. Under Revenue Regulations No. 12-94, a refund claimant is required to establish the fact of withholding of the creditable taxes claimed. It did not state any requirement for proof as to the remittance thereof. Pursuant to Sections 50(b) and 51 (now Sections 57 (B) and 58) of the Tax Code, the withholding of creditable income taxes and the remittance thereof to the BIR is the responsibility of the payor/withholding agent and not the payee, in this case, the Petitioner. The payor/withholding agent, and not the payee, shall be held liable for failure to withhold and remit the amounts withheld. Therefore, it is no longer necessary for Petitioner to submit a certification from the BIR Revenue Accounting Division on the actual remittance of the claimed creditable taxes withheld.

Having complied with the three requirements previously set forth, Petitioner is entitled to the refund of its 1997 excess tax credits/payments but in the reduced amount of P35,753,811.15, computed as follows:

Gross Income		P 626,337,184.00
Less: Deductions		702,501,113.00
Net Loss		P(76,163,929.00)
Income Tax Due		P -
Less: Tax Credits/Payments		
1.) 1997 quarterly income taxes paid		
1st quarter	P 15,015,955.61	
2nd quarter	15,655,437.43	
3rd quarter	4,660,083.19	35,331,476.23
2.) creditable taxes withheld in 1997		422,334.92
Total Tax Credits/Payments		P 35,753,811.15
Income Tax Refundable		P 35,753,811.15

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** the amount of P35,753,811.15 in favor of Petitioner representing unutilized tax credits for the year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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