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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PNZ PACKERS, INCORPORATED,
Petitioner,

- versus - **C.T.A. CASE NO. 4835**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

5/18/94

x - x

D E C I S I O N

This case involves a claim for the refund of P298,658.00 allegedly representing overpaid income taxes for the years 1990 and 1991 pursuant to Section 230 of the National Internal Revenue Code.

Petitioner is a corporation duly organized and existing under the laws of the Philippines engaged in the business as a packing contractor. Petitioner is principally engaged in the processing and packing of milk products for PNZ Marketing, Incorporated (PMI), an affiliate.

For the calendar year ending December 31, 1990 petitioner filed its Annual Corporate Income Tax Return on April 13, 1991 showing a net loss of P550,587.00 (Exhs. A and A-3). However, it paid for the first quarter ending March 30, 1990 the income tax amounting to P188,152.00 (Exhs. B, C and E) and the amount of P35,670.00 was withheld by PNZ Marketing, Inc. from petitioner representing 1% of the contractor's fees paid amounting to P3,566,970.00 (Exhs. A-5 and D). Petitioner likewise included as part of its refundable income tax the amount of P44,137.00 representing prior year's (1989) excess credit. Thus, petitioner's 1990 Income Tax Return showed a total refundable amount of P267,959.00 which was applied as tax credit to the succeeding year.

The succeeding year 1991 also proved to be fruitless for it still incurred losses amounting to P152,619.00 (Exh. F). During the year, a 1% tax on contractor's fee was withheld from petitioner in the amount of P74,836.00 (Exh. G). Petitioner filed on April 15, 1992 its 1991 Income Tax Return showing a refundable amount of P342,795.00, inclusive of the prior year's excess tax credit of P267,959.00 and the tax withheld for 1991 in the amount of P74,836.00.

On July 8, 1992, petitioner thru its auditors filed a claim for refund or the issuance of a tax credit certificate in the amount of P298,658.00, representing overpaid income tax for the years 1990 and 1991, itemized as follows:

Year	Amount of Excess Tax Paid
1990	P 223,822.00
1991	74,836.00
	P 298,658.00

Petitioner did not include in its claim the amount of P44,137.00 representing its 1989 excess tax credit considering that the same have prescribed. Thus, only the first quarter payments for 1990 in the amount of P188,152.00 and the creditable tax withheld of P35,670.00 was claimed for 1990, totalling P223,822.00. For 1991, the creditable withholding tax of P74,836.00 was likewise included in the claim for refund and tax credit.

Without waiting for respondent's decision on the matter, petitioner instituted this petition for review on July 30, 1992 pursuant to Section 230 of the National Internal Revenue Code.

The issue is whether or not petitioner is entitled to the refund of P298,658.00 as alleged overpaid income taxes for the years 1990 and 1991.

Respondent alleged that the petition states no cause of action for failure on the part of the petitioner to state in the petition that the tax collected was erroneous and illegal. Tax refund are construed strictly against the taxpayer. The burden is on the petitioner claiming for a refund or tax credit to show that the tax collected has been erroneously or illegally paid. Failure on its part to overcome said burden is fatal to its claim for refund or tax credit.

Petitioner presented and offered in evidence the following documents which were properly identified by its witness:

1. 1990 Corporate Annual Income Tax Return together with its attachments consisting of:

    a. Audited Financial Statements;

b. 1989 Annual Corporate Income Tax Return showing a refundable amount of P44,137.00;

c. First Quarter Income Tax Return ending March 31, 1990 showing the amount of P188,151.99 as tax due and the payment thereof as evidence by BIR Confirmation Receipt No. B19910070 dated May 30, 1990;

d. 1990 Certificate of Creditable Income Tax Withheld At Source (BIR Form No. 1743.1) showing a 1% tax withheld on contractor's fee of P35,669.70; and

e. BIR Certificate dated October 7, 1992 showing that the amount of P188,151.99 was received by the Bureau of Internal Revenue.

2. 1991 Corporate Annual Income Tax Return together with its attachment namely:

a. Audited Financial Statements; and

b. 1991 Certificate of Creditable Income Tax Withheld At Source (BIR Form No. 1743.1) showing the income tax withheld at source in the amount of P74,835.52;

3. Letter claim for refund or issuance of tax credit certificate dated July 2, 1992 filed with the respondent's regional office on July 8, 1992.

Respondent failed to object or comment to the evidence presented by petitioner. Neither did she present any witness or evidence to rebut the same. She also failed to submit to the Court her memorandum discussing the merits of her claim that the petition states no cause of action. Instead she submitted the case for decision based on the pleadings.

After careful examination of the evidence presented by petitioner we find that the burden of proof in claims for refund or tax credit has been overcome by petitioner. The evidence offered by petitioner is sufficient to grant its claim for refund or tax credit. The claim of respondent that the petition states no cause of action is without merit.

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, 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 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, no such suit or proceeding shall be begun after the expiration or 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 a 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.
>
> x x x x x x x x x."

* Should read "tax".

This is a suit for the recovery of overpaid income taxes for the years 1990 and 1991. Thus, it falls within the ambit of Section 230.

This Court reiterates its previous ruling in the case of **Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991,** affirmed by the Court of Appeals in **Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA - G.R. SP No. 26839, July 31, 1992,** pertinent portions of which read as follows:

> "Although the title of Sec. 230 of the Tax Code is 'Recovery of Tax Erroneously or Illegally Collected', the title alone is not controlling. By the tenor of Sec. 230, the two-year limit applies to actions to recover -
>
> 1. any national internal revenue tax erroneously or illegally assessed or collected;
>
> 2. any penalty claimed to have been collected without authority; or
>
> 3. any sum alleged to have been excessive or in any manner wrongfully collected
>
> (See Muller & Phipps v. Commissioner of Internal Revenue, 103 Phils. 145, March 20, 1958). The overpaid income taxes in this case fall under #3 for although they were legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they were nonetheless 'excessive'."

The case at bar involves a claim for refund or tax credit of excessive payment of income taxes for 1990 and 1991 covered by the 1% withholding on contractor's fees and quarterly income tax payments. Furthermore, respondent failed to controvert the evidence presented by petitioner. Petitioner having been able to comply with the provisions of the law and established its right to be refunded or credited with a tax certificate is therefore entitled to the amount prayed for.

WHEREFORE, we find the petition meritorious. Respondent is hereby ordered to refund or issue a tax credit certificate in favor of petitioner PNZ Packers, Incorporated in the amount of P298,658.00 representing overpaid income taxes for the calendar years 1990 and 1991.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, May 18, 1994.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

(on leave)

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