REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLTEL INTERNATIONAL RESOURCE MANAGEMENT INC. (PHILIPPINE BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 5811

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 09 2001

x - x

DECISION

This case involves a claim for refund in the amount of *four million five hundred seventy thousand six hundred sixty three pesos* (P4,570,663.00) representing unutilized tax credits/payment for taxable year 1996.

The facts are simple.

Petitioner is a foreign corporation duly organized and existing under the laws of the United States of America, duly registered with the Philippine Securities and Exchange Commission (SEC) and authorized to transact business in the Philippines as a branch office. Petitioner is engaged in the business of rendering consultancy services for various types of software programs and applications, with office address at the 16th Floor, Citibank Tower, Valero Street, Salcedo Village, Makati City, Metro Manila. (Admitted fact, CTA records, page 32)

On April 15, 1997, Petitioner filed its 1996 annual income tax return (Exhibit "A") reflecting thereon a net loss of P1,026,761.00 and a refundable amount of P10,538,837.00, the latter representing the sum of the 1996 second quarterly income tax payment of P4,347,081.00 (Exhibit A-6-1) and creditable taxes withheld during 1996 of P6,191,756.00 (Exhibit A-6-2). Petitioner opted to carry-over the refundable amount of P10,538,837.00 to the succeeding year 1997 (Exhibit A-1).

However, in its 1997 ITR filed on April 15, 1998 (Exhibit B), Petitioner failed to fully utilize its 1996 excess tax credits/payments of P10,538,837.00 as its reported income tax due for 1997 amounted only to P5,968,174.00 (Exhibit B-6). Consequently, Petitioner was still left with a balance of P4,570,663.00 unutilized 1996 excess tax credits/payments as of December 31, 1997 (Exhibit B-3).

On April 15, 1999, Petitioner filed an administrative claim for refund in the amount of P4,570,663.00 corresponding to the alleged unapplied 1996 excess creditable income taxes (Exhibit H). Petitioner cited the following provisions of Section 69 [now 76] in relation to Section 204(3) [now 204(C)] of the Tax Code as legal bases of its claim, thus:

> "**Sec. 69.** ***Final Adjustment Return.*** — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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:
>
> a.) Pay the excess tax still due; or
> b.) <u>Be refunded the excess amount paid, as the case may be</u>.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** —The Commissioner may –
>
> xxx xxx xxx

> "(3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: x x x "

On the same date or on April 15, 1999, Petitioner filed with this Court the instant Petition for Review pursuant to Section 230 [now 229] of the Tax Code which provides, thus:

> "**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; x x x."
>
> "In any case, no such suit or proceeding shall be filed 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: x x x."

In his Answer to the Petition, Respondent admitted the existence as well as the filing of Petitioner's 1996 & 1997 income tax returns and administrative claim for refund but denied the truth and the veracity of the contents thereof. As Special and Affirmative Defenses, Respondent averred that:

1.) Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by the Respondent's Bureau;
2.) Petitioner failed to demonstrate that the tax subject of the case at bar comes within the scope of claims for refund. Well-entrenched in this jurisdiction is the rule that tax recovery or refunds may encompass the following payments: (a) erroneously or illegally received or collected

internal revenue taxes; (b) penalties imposed without authority (Sec. 204(c), Tax Code).

3.) Petitioner must prove that it is indeed entitled to a refund under Section 229 of the 1997 Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence.

4.) Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co., vs. Llamas, 49 Phil. 466)

5.) Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204 and 229 of the Tax Code as amended.

Petitioner, to support its case, presented the following as evidence:

		Exhibit
1.)	1996 Corporation Annual Income Tax Return	A
2.)	1997 Corporation Annual Income Tax Return	B
3.)	1996 2nd Quarterly Income Tax Return	C
4.)	1996 Certificates of Creditable Tax Withheld at Source	D-G
5.)	Letter Claim for Refund	H
6.)	1998 Corporation Annual Income Tax Return	I
7.)	1997 Certificates of Creditable Tax Withheld at Source	J-L
8.)	1996 Summary of Certificates of Creditable Tax Withheld at Source	M
9.)	1997 Summary of Certificates of Creditable Tax Withheld at Source	N
10.)	Testimony of Ms. Geraldine Osea, Petitioner's Accounting Manager (TSN, August 2, 1999 & September 2, 1999)	

Respondent, on his part, submitted as evidence, among others, the Assessment Notice No. LA169520-96-00-594, dated March 17, 2000, (Exhibit 4) finding Petitioner liable for deficiency income taxes for taxable year 1996 in the total amount of P441,885,640.17.

To prove that the said assessment was duly protested and that no final decision has yet been made on its protest, Petitioner submitted through a Supplemental Formal Offer of Evidence, the following:

		Exhibit
1.)	Letter addressed to Petitioner dated June 29, 1999 from the Special Investigation Division, Revenue Region No. 8, informing Petitioner that the company's 1996 internal revenue tax case has been referred to the SID for evaluation	O
2.)	Letter dated April 17, 2000 filed by Petitioner's external auditor on behalf of the company protesting the assessment issued by the BIR against Petitioner for the taxable year 1996	P
3.)	Rubber stamp receipt by Revenue Region No. 8 showing the date of receipt of the protest - April 17, 2000	P-1
4.)	Testimony of Ms. Geraldine Osea, Petitioner's Accounting Manager (TSN, October 5, 2000)	

After the parties have filed their respective memorandum, this case was submitted for decision on April 23, 2001.

The sole issue We are tasked to resolve is: WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF ITS 1996 EXCESS CREDITABLE INCOME TAXES IN THE AMOUNT OF P4,570,663.00.

After considering the attending facts, the evidence submitted by both parties, the jurisprudence and laws applicable in this case, We partially rule in favor of Petitioner.

There's no question as to Petitioner's legal right to claim a refund of excess tax credits/payments as this is clearly provided for under Section 69 [now 76] of the Tax Code.

However, as oft-cited by this Court in a number of similar cases, the granting of a refund of excess creditable withholding taxes is dependent on Petitioner's compliance with the following three basic requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] 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 Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

Further, since Petitioner's claim for refund of P4,570,663.00 arose not only from the reported 1996 creditable taxes withheld of P6,191,756 but also from the 1996 second quarterly income tax payment of P4,347,081.00, Petitioner must show proof of actual payment of the amount of P4,347,081.00.

Also, Petitioner must prove that the claimed amount of P4,570,663.00 representing unutilized 1996 excess tax credit/payment as of December 31, 1997 was not carried over to the succeeding year 1998.

Records show that Petitioner complied with the first requirement. The reckoning of the two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*). The claimed excess tax credits/payments cover taxable year 1996 for which Petitioner filed its annual income tax return on April 15, 1997 (Exhibit A). Counting from this latter date, Petitioner's administrative (Exhibit H) and judicial claims for refund filed on April 15, 1999 fall within the two-year period prescribed under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code.

To prove the fact of withholding of the claimed creditable taxes of P6,191,756.00, Petitioner presented Certificates of Creditable Tax Withheld at Source issued by various withholding agents for the year 1996. However, the amount of creditable taxes withheld shown in the certificates amounted only to P5,742,465.01 detailed as follows:

Exh.	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
D	April to June 1996	Metropolitan Bank & Trust Company	P 19,987,334.60	P 999,366.73
E	Jan. 1 to Dec 31, 1996	Allied Information Services of the Phils., Inc.		991,438.71
F	Apr. 1 to Jun 30, 1996	Pilipino Telephone Corporation	20,426,398.60	1,021,319.93
G	Jan. to Dec. 1996	Systematics Technology Services, Inc.	53,621,962.40	2,730,339.64
			P 94,035,695.60	P5,742,465.01

As to the third requirement, Petitioner proved that it declared in its 1996 income tax return as part of its gross income of P123,481,237.00 (Exhibit A-3) the income payment of P113,864,469.81 (Exhibit M) related to the creditable taxes withheld of P5,742,465.01.

As to the alleged 1996 second quarter income tax payment of P4,347,081.00, Petitioner established that it actually paid the said amount as shown by the machine validation on the lower portion of Petitioner's 1996 second quarterly income tax return (Exhibit C-4).

Finally, Petitioner was able to establish that the claimed 1996 excess creditable income taxes of P4,570,663.00 were not carried over to taxable year 1998. While there was an amount of P8,540,540.00 indicated as "Prior year's excess credits" (Exhibit I-3) in Petitioner's 1998 ITR, nevertheless, the same does not at all pertain to the claimed 1996 excess creditable income taxes. As can be gathered from the 1997 Certificates of Creditable Tax Withheld at Source (Exhibits J, K & L) which were summarized in Exhibit N and from the testimony of Ms. Geraldine Osea, Petitioner's Accounting Manager (see TSN, September 2, 1999), the amount of P8,540,540.00 refers to creditable taxes withheld in 1997.

In sum, this Court finds Petitioner to have sufficiently proven its entitlement to the refund of the 1996 excess tax credits/payments but in a reduced amount of P4,121,372.00 computed as follows:

For Calendar Year 1996

Net Loss		P(1,026,761.00)
Income Tax Due(Exh. A)		P -
Less: Tax Credits/Payment		
1.) 1996 2nd qtr income tax payment (Exh. C-4)	P 4,347,081.00	
2.) 1996 creditable taxes withheld (Exhs. D to G, inclusive)	5,742,465.00	10,089,546.00
Income Tax Refundable (carried over to CY 1997)		P (10,089,546.00)

For Calendar Year 1997

Taxable Income (Exh. B)	P 17,051,925.00
Income Tax Due	P 5,968,174.00
Less: Tax Credits/Payment	
1.) Prior year's (1996) excess credits	10,089,546.00
Income Tax Refundable	P(4,121,372.00)

Contrary to Respondent's allegation, Petitioner's pending income tax deficiency assessment for 1996 does not operate as a bar to its entitlement to a refund as this Court had already ruled in previous cases, thus:

1. *Philtread Tire & Rubber Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5598, dated January 18, 2000;*

2. *Golden Arches Development Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5348, dated March 26, 1999;*

3. *Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, dated December 9, 1997;*

4. *Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5045, dated April 23, 1996.*

The issue relating to the assessment is completely separate from the claim for refund subject of the instant Petition. This Court is not in a position to decide as to whether or not the assessment was proper as it is not the issue in the present case. As correctly pointed out by Petitioner in his memorandum, this Court acquires no jurisdiction over the assessment unless the same is elevated before this Court by way of a Petition for Review. Moreover, *taxes cannot be the subject of a set-off* or compensation. In the case of Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, dated December 9, 1997, this Court ruled that:

> "The argument advanced by 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 taxes.
>
> It is already well-settled that internal revenue taxes cannot be the subject of set-off or compensation (Republic vs. Mambulao Lumber Company, 4 SCRA 622). The reason is that the government and taxpayer are not mutually creditors and debtors of 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 bs. 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."

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND** the amount of **FOUR MILLION ONE HUNDRED TWENTY ONE THOUSAND THREE HUNDRED SEVENTY TWO PESOS (P4,121,372.00)** in favor of Petitioner representing unutilized tax credits/payments for taxable year 1996.

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