REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INGASCO, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5094

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 06 1998

x - x

DECISION

This appeal involves petitioner's claim for refund of income tax paid for the calendar year ended December 31, 1991 in the amount of One Million Two Hundred Four Thousand One Hundred Twenty One (P1,204,121.00) Pesos. The claim is anchored on income tax exemption granted by the Board of Investments (BOI, for brevity) to petitioner.

Petitioner is a domestic corporation organized and existing under Philippine laws. It is engaged in the manufacture of oxygen, nitrogen and argon gases and is registered with the BOI (Exhibit "C").

For taxable year 1991, petitioner applied with the BOI for income tax holiday for new/expanding domestic producers under paragraph (b), Article 37 of E.O. 226. However, the BOI failed to act immediately on the petitioner's application for tax holiday. Thus, on April 15, 1992, petitioner was constrained to file a tentative Corporate Annual Income Tax Return for the calendar year ended December 31, 1991. The return reflected a taxable income of ₱3,446,598.00 and an income tax due in the amount of ₱1,204,121.00 (Exhibit "G").

Subsequently, the BOI approved the petitioner's application for a tax holiday and granted an income tax exemption in the approximate amount of ₱2,681,925.00.

On August 17, 1992, petitioner filed an amended Income Tax Return for the calendar year ended December 31, 1991 with a refundable amount of ₱1,204,121.00 (Exhibit "H").

On October 22, 1992, the BOI informed the Bureau of Internal Revenue (BIR) that the petitioner is indeed entitled to a tax exemption (Exhibit "K").

Thus, petitioner filed an administrative claim for refund or issuance of a tax credit certificate with the BIR through a letter dated November 29, 1993 which was received by the latter on December 8, 1993 (Exhibit "B").

There having been no action taken by the respondent on this claim for refund, the petitioner filed the instant petition for review on April 15, 1994.

In the Answer filed by respondent, she made a sweeping denial of all material allegations in the petition by merely stating that she had no knowledge or information sufficient to form a belief as to the truth thereof. As "special and affirmative defenses", respondent claimed that:

x x x x

> "6. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 7. Claims for tax refunds are construed strictly against the taxpayer. Taxpayer-petitioner has no cause of action."

The issue brought to the fore is simply whether or not the petitioner is entitled to the refund or tax credit in the amount of P1,204,121.00 representing income tax payment for the calendar year ended December 31, 1991.

We rule in favor of the petitioner.

There is no question that the claim was filed on time. For the calendar year 1991, the reckoning period is April 15, 1992, the date when petitioner filed its tentative Corporate Annual Income Tax Return for the said calendar year (Exhibit "G"), which return showed an income tax due of P1,204,121.00, subject of this claim for refund. Petitioner, therefore, had two years from April 15, 1992 or up to April 15, 1994 within which to file its claim for refund with the BIR and seek judicial relief thereafter. The letter/claim for refund, dated November 29, 1993 (Exhibit "B"), was received by the Bureau of Internal Revenue on December 8, 1993 and this petition was filed on April 15, 1994, both within the aforementioned two-year period prescribed by Sections 204 and 230 of the NIRC, the pertinent provisions of which are quoted hereunder:

> "**Sec. 204.** xxx
>
> (3) xxx No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner claim for credit or refund within two years after the payment of the tax or penalty."
>
> "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 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; 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 of 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

With reference to petitioner's entitlement to refund, petitioner submitted various documents to substantiate its claim, to wit:

a. Original duplicate letter/claim for refund dated November 29, 1993 and stamped "Received" by the BIR on December 3, 1993 (Exhibit "B");

b. Tentative Corporate Annual Income Tax Return for the calendar year ending December 31, 1991 showing the date of filing on April 15, 1992 (Exhibit "G");

c. Amended Corporate Annual Income Tax Return for the calendar year ending December 31, 1991 showing the date of filing on August 17, 1992 (Exhibit "H");

d. Tax Debit Memo No. SN007150 issued on April 14, 1992 by BIR in payment of the amount of P124,933.00 for the income tax due for the calendar year ending December 31, 1991 (Exhibit "I");

e. Tax Debit Memo No. SN007151 issued on April 14, 1992 by BIR in payment of the amount of P1,079,128.00 for the income tax due for the calendar year ending December 31, 1991 (Exhibit "J"); and

f. Corporate Annual Income Tax Return for the calendar year ending December 31, 1992, showing the amount of income tax due for said year as "NIL" (Exhibit "L").

More importantly, the letter of the Chemical Industries Department of the BOI dated October 22, 1992, addressed to the respondent, informing the latter that petitioner is entitled to an income tax exemption as BOI incentive in the amount of P2,681,925.00 for the taxable year 1991 (Exhibit "K"), is uncontroverted.

Finally, it bears stressing that in opposing the instant petition, respondent relied solely on the testimony of her lone witness, Mr. Tomacruz, Attorney II of the Appellate Division of the BIR, who claimed that petitioner's request for refund was not acted upon due to petitioner's failure to submit a clear copy of the return showing payment of the income tax sought to be refunded. It appears, however, that the case was assigned to Mr. Tomacruz only in June 1994 when petitioner's right to judicial recourse would have already prescribed. Hence, we cannot give credence to the opposition of the respondent.

WHEREFORE, judgment is hereby rendered ordering the respondent to refund or issue a tax credit certificate to petitioner in the amount of P1,204,121.00 representing wrongly-paid income tax for the calendar year ended December 31, 1991.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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
Court of Tax Appeals