REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WINEBRENNER & INIGO INSURANCE ASSOCIATES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5491

Promulgated:

FEB 29 2000

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DECISION

This is a Petition for Review filed by Petitioner WINEBRENNER & INIGO INSURANCE ASSOCIATES, INC. against Respondent COMMISSIONER OF INTERNAL REVENUE for the latter's failure to act on the former's claim for refund in the amount of ₱1,805,888.00 allegedly representing its unutilized/excess creditable withholding taxes for the calendar years 1994 and 1995.

As represented, Petitioner is a domestic corporation, engaged in the business of insurance brokering, where it buys insurance policies for and in behalf of its clients. Its principal office is located at the 3/F Princess Building, Esteban Street, Makati City.

On April 17, 1995, Petitioner filed with the Union Bank of the Philippines its Corporate Annual Income Tax Return for the calendar year 1994 (Exh. A) declaring a taxable income of ₱934,673.00, a tax due of ₱327,135.00, total tax credit/payments of ₱1,576,987.00 (₱845,014.00 as prior year's excess credit and ₱731,973.00 as the creditable withholding tax of Petitioner for 1994), and a tax refundable amount of ₱1,249,852.00.

Likewise, on April 13, 1996, Petitioner filed with Allied Bank its Corporate Annual Income Tax Return for the calendar year ended December 31, 1995 (Exh. B) declaring therein a taxable income of ₱1,089,497.00, a tax due of ₱381,324.00, total tax credit/payments of ₱2,187,243.00 (₱1,249,852.00 as prior year's excess credit and ₱937,391.00 as creditable withholding tax of Petitioner for 1995), and a tax refundable amount of ₱1,805,919.00.

On March 31, 1997, Petitioner filed with the Respondent's Bureau a claim for refund or issuance of tax credit certificate in the amount of ₱1,805,888.00 allegedly representing its excess unutilized creditable withholding taxes for the calendar years 1994 and 1995 (Exhibit F).

The aforesaid claim was not acted upon by the Respondent, hence, on April 11, 1997, Petitioner filed with this Court the instant Petition for Review.

Petitioner presents the proposition as reason for its judicial action that it is entitled to the refund of the amount of ₱1,805,888.00 as this represents its excess/unutilized creditable withholding taxes for the calendar years 1994 and 1995. It cited Section 69 of the Tax Code, stated hereunder, as the basis of the instant claim for refund:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:

(a) Pay the tax still due; or
(b) Be refunded the excess amount paid, as the case may be.

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.

Petitioner contends that the claim for refund was well within the two (2) year prescriptive period prescribed in Sections 204(3) and 230 of the Tax Code, which provides:

Section 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

x x x x x x x x x

(3) Credit or refund taxes erroneously or illegally received or 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 years after the payment of the tax or penalty.

Section 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; 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 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.

Petitioner further represented that it has complied with the three (3) basic requirements set forth by Section 10 of Revenue Regulations No. 6-85, as well as jurisprudence on this matter, on the refund of excess creditable income tax.

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient (ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957);

3) That 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 (*ibid*).

Respondent on the other hand, in his answer contends that Petitioner is not entitled to the claimed refund on the following grounds: (1) Petitioner did not give enough time for Respondent to act on its claim, as the administrative claim for refund was filed only on March 31, 1997 whereas the instant petition was filed on April 11, 1997, (2) Petitioner has not shown proof that it has incurred losses in the years 1994 and 1995 x x x, (3) the expenses claimed by the Petitioner in its 1994 and 1995 tax returns are not totally allowable, thus, even granting for the sake of argument that the withholding tax payments for both years are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes, (4) the petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid, (5) the best evidence of payment and remittance of taxes withheld are the official receipts, (6) claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes, and (7) it is incumbent upon Petitioner to show compliance with the provision of Section 230, *supra.*

The pivotal issue which is presented for Our consideration is whether or not any excess of the amount of tax so withheld over the actual income tax computed and shown in the final corporate income tax return is refundable to the taxpayer.

We rule in the affirmative.

The Court finds neither ambiguity nor obscurity in the language of Section 69 of the Tax Code, *supra,* as regards the circumstances of the Petitioner in the case at bar. The provision itself clearly indicates that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (1) be refunded to the Corporation, or (2) may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. Thus, there is no doubt that if the taxpayer's tax payments (withholding taxes) made during the taxable year are over its actual income tax due for the same year, the excess must be refunded or credited against the tax liabilities of the taxpayer for the succeeding year's taxable quarters.

It appearing in the case at bar that Petitioner was not able to utilize its actual income tax due for the said years 1994 and 1995 due to the fact that its actual income taxes were lower than that of its creditable taxes withheld by its withholding agents for same years, the amount sought to be refunded appears on its face to be refundable.

After a circumspect study of the instant case, the Court upholds the Petitioner's stance. It is entitled to the refund of its excess creditable withholding taxes for the years 1994 and 1995 but not to its total excess creditable withholding taxes prior to the year 1994 because part of the same has already been barred by prescription. We conclude that part of the 1994 excess taxes can no longer be refunded due to prescription because a large chunk of it still originated from its 1993 excess withholding taxes. The excess creditable withholding taxes of 1993 in the amount of P845,014.00 was partially applied to Petitioner's tax liability of 1994 in the amount of P327,135.00, thus leaving a balance of P517,879.00 which can no longer be credited to its 1995 tax liabilities since it may be credited only to its income tax liabilities for the succeeding taxable year of 1994. Neither can it be claimed as a refundable amount as the two (2) year period for claiming refund has already prescribed. Hence, for the year 1994, the excess creditable withholding taxes that can be refunded to Petitioner or may be carried to the succeeding taxable year 1995 are only those withheld during the year 1994 to the exclusion of excess tax credits prior to 1994.

A perusal of the evidence adduced by Petitioner reveals that its claim for refund of its excess/unutilized creditable withholding taxes for the years 1994 and 1995 were timely filed within two years from the date of payment of the tax. Its final income tax returns for the calendar years 1994 and 1994 were filed on April 17, 1995 and April 13, 1996, respectively (Exhs. A & B), its claim for refund was filed with the Bureau of Internal Revenue on March 31, 1997 (Exh. F) and its Petition for Review was filed with this Court on April 11, 1997. The filing of the administrative claim for refund and the filing of the instant petition fall within the two-year prescriptive period prescribed by Section 230 of the Tax Code, hence, there is no doubt that the same has not yet prescribed. The two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final tax return (**ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957**).

Further, the Court finds that the creditable withholding taxes for the years 1994 and 1995 were duly supported by Certificates of Creditable Withholding Tax at Source in accordance with the requirements of Revenue Regulations No. 6-85 (Exhs. D to E-88, inclusive).

Likewise, it was established by Petitioner that the income upon which these creditable withholding taxes were paid were included in Petitioner's annual income tax returns (Exhs. A-2 & B-2). Thus, the Court agrees with Petitioner that it has complied with the requisites laid down by the Supreme Court in the refund of creditable withholding taxes, to wit: (1) that it has shown on the return of the recipient that the income payment received was declared as part of gross income, (2) the fact of withholding is established by a copy of the statement duly issued by the withholding agent to the payee and (3) that the taxpayer filed its claim for refund within the two-year period prescribed under Section 230 of the Tax Code (**Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**).

It was however noted by the Court that the "Certificates" issued by Philippine American Life Insurance Co. (Exh. E-62) and Philippine First Insurance Co. (Exh. E-68) amounting to ₱322.88 and ₱977.63, respectively, did not indicate the particular year to which the income payment and the withholding of tax were actually made, thus, the Court gives no probative value to said certificates. Each should have been deducted from the claimed excess creditable withholding taxes.

In summary, the excess creditable withholding taxes for the calendar years 1994 and 1995 that can be refunded to Petitioner should only be ₱1,286,739.49, broken down as follows:

1994

Taxable Income	₱934,673.00	
Tax Due	₱ 327,135.00	
Less: Prior Year's Excess Credit	845,014.00	
Prior Year's Excess Credit Barred by Prescription	₱517,879.00	
Creditable Tax Withheld for 1994 to be applied as credit to next year	₱731,973.00	
Less: 1995 Income Tax Liability	381,324.00	
Amount Refundable		₱350,649.00

1995

Total Creditable Tax Withheld for 1995	₱ 937,391.00	
Less: Certificates which did not bare the particular year in which the income payment and withholding tax were actually made (Exhs. E-62 & E-68)	1,300.51	
Amount Refundable		936,090.49
Total excess/unutilized tax credit for the years 1994 & 1995 that can be refunded to Petitioner		₱1,286,739.49

Although, We find it no longer necessary to tackle the other issues raised by Respondent in his Answer, We will nevertheless mention the same for the guidance of all concerned.

For one, the claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. If however, the Collector takes time in deciding the claim and the period of two years is about to end, the suit or proceeding must be started in the Tax Court before the end of the two-year period without awaiting the decision of the Collector (see **Commissioner of Internal Revenue vs. Victorias Milling Co., Inc., 22 SCRA 12**), thus, the contention of Respondent that Petitioner did not give the former enough time to act on the claim is devoid of merit as it was clearly shown in the records that the said two-year period is about to lapse.

Detailed proof of the truthfulness of each and every item of the income tax return is not required. The function is lodged with the Bureau of Internal Revenue to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return (**Citibank, N.A. vs. Court of Appeals, 280 SCRA 459**), thus, the allegations of Respondent that Petitioner has not shown proof of losses in the years 1994 and 1995 and that the expenses claimed by Petitioner are not allowable are also untenable. It is not amiss to mention that in the case of **San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, 228 SCRA 135**, the Supreme Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. 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.

We also find the ratiocination of Respondent that the best evidence of payment and remittance of taxes withheld are the official receipts which is in contravention with existing jurisprudence. As clearly stated by this Court in the case of **Citytrust Finance Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4046,**

February 24, 1993, the presentation of official receipts showing payments of withholding taxes and verification by revenue enforcement officers is not essential to prove withholding of taxes. We hold that the evidence by Petitioner is sufficient to establish the fact of payment of withholding taxes.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of herein Petitioner in the amount of ₱1,286,739.49, without pronouncement as to costs.

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