REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS INC.,
Petitioner,

- versus - C.T.A. CASE NO. 3469

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

D E C I S I O N

This refers to petitioner's claim for judicial refund and/or tax credit in the total amount of P4,501,980.00, representing the overpaid corporate income tax for the first, second, and third quarters of 1980. The basis of this overpayment came about when the Fertilizer and Pesticide Authority (referred herein after as FPA for brevity) adopted a new fertilizer cash subsidy scheme wherein Planters Products Inc. was allowed a 5% mark-up on locally produced grades of fertilizer and 2% mark-up on imported grades, wherein petitioner was able to generate income in its fertilizer operations instead of the "no-loss no-gain" scheme *(pp. 5-8, CTA recs.)*.

As borne out by the pleadings and evidences presented, petitioner is a duly registered domestic corporation and is engaged in the business of importing, manufacturing, and selling fertilizer, agricultural chemicals, and industrial products, with principal office at the FPI building, Esteban Street Legaspi Village, Makati, Metro Manila.

The case at bar has been submitted for decision based on the pleadings and the records of the Bureau of Internal Revenue, sans the parties filing their respective memoranda.

Petitioner as such manufacturer, importer and seller of fertilizer products has been receiving subsidy from the FPA in the form of reimbursement of all losses incurred by petitioner in its fertilizer business. In other words, the fertilizer operation of herein petitioner was subsidized by the government on a full cost basis under the "no-loss no-gain" scheme, Pursuant to this cash subsidy scheme the financial statement of petitioner reflected no income tax due and payable to the government. Petitioner under this cash subsidy scheme filed its quarterly income tax returns for the first, second and third quarters of 1980 in the total amount of P4,574,128.00 for its net taxable income on agricultural chemicals and industrial products operations *(petition for review, par. IV pp. 1-2, admitted in par. 3, answer, p. 4, CTA recs.).*

During the last quarter of 1980 the FPA adopted a new fertilizer cash subsidy scheme thereby allowing petitioner a 5% mark-up on locally produced fertilizer grades and 2% mark-up on imported grades, enabling petitioner to generate income in its fertilizer operations *(Annex "A-3", p. 8, CTA recs.).* Under this new subsidy scheme, petitioner file its subsidy claim with FPA on a quarterly basis wherein FPA pays 80% of the claims upon completion of all the necessary papers while the remaining 20% is withheld until after the termination of the books of accounts of petitioner and a favorable endorsement by the Commission on Audit.

Accordingly, petitioner obtained on April 3, 1981 an authority from the FPA in accordance with the new cash subsidy scheme, subsequently petitioner on March, 1981 requested for an authority to defer the recognition of income of 20% of its subsidy claim in the year of receipt effective January 1, 1981 and not in the year the claim for such amount was filed, respondent granted said request in a letter dated April 3, 1981 we quote at length which we consider as authority in support of this decision *(Annex "B", p. 9, CTA recs.)*.

REPUBLIKA NG PILIPINAS
MINISTRI NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS
QUEZON CITY

April 3, 1981

Mr. Rosmo A. Pleyto
Partner, Carlos J. Valdes & Co.
1130 Perez St., Manila

S i r:

This refer to your letter of March 10, 1981 relative to your request that your client, Planters Products Inc., herein after referred to as "PPI", be permitted to change its accounting method in recognizing as income its subsidy from the Fertilizer and Pesticide Authority, herein after referred to as "FPA" in the year of actual receipt and not in the year it files its claim for subsidy.

You represented that presently your client, the "PPI" recognizes for income tax purposes 100% of the "FPA" subsidy upon filing of their request for subsidy although what is immediately given as subsidy corresponds only to 80% of the total subsidy. The remaining 20% of its annual subsidy is withheld by "FPA" pending the completion of the audit conducted by the Commission on Audit. You now request that to effectuate the reality of the transaction as discussed above, your client be permitted to defer the recognition of income of the remaining 20% in the year of the receipt of such subsidy beginning January 1, 1980.

In reply, please be informed that your request is hereby granted. Accordingly your client, "PPI", may declare the subsidy it receives from the "FPA" as part of gross income in the year of actual receipt.

Very truly yours,

TOMAS C. TOLEDO
Deputy Commissioner
TAN T4338-J2227-A-9

On April 15, 1981, on the basis of the Authority granted to petitioner, final adjustment of income tax return was filed reflecting already the deferral of the recognition, as income the remaining 20% of petitioner's subsidy claim *(Annex "C", p. 10, CTA recs.)*. Because of the deferral, petitioners claimed an alleged overpayment in the amount of P4,501,980.00 for the 1980 corporation income tax to wit:

xxx xxx xxx

<u>Income Tax Paid for 1980</u>

1st qtr.	....	P3,204,970.00	
2nd qtr.	....	-	
3rd qtr.	....	1,369,158.00	
4th qtr.	....	-	P4,574,128.00

Income Tax Due/(Credit) after deferral	....	204,911.00
Over/(Under) Payment		
Add: Withholding Taxes	....	P4,369,217.00

Interest on Savings deposit ...	119,500.00
Rental Income	3,250.00
Dividend Income	421.00
Tax Credit Cert. No. 01699 ...	9,592.00
Total Amount Refundable	P4,501,980.00

On January 8, 1982 petitioner filed with respondent's claimed for refund and/or tax credit of the alleged overpayment of the 1980 corporate income tax *(Annex "K", p. 37, CTA recs.)*. It must be stated and emphasized in this connection that only the fertilizer operation of petitioner was being subsidized, concerning its agricultural chemicals included in the financial reports of petitioner as other products are not subsidized.

Taking respondent's failure to make a definite ruling on its claim for refund and/or tax credit filed on January 8, 1982, petitioner filed into this court its petition for review on May 2, 1982.

The sole issue posed on this appeal is whether or not petitioner is entitled to the refund and/or tax credit of the alleged overpayment of corporate income tax on the total sum of P4,501,980.00 representing the first, second, and third quarters of 1980.

Petitioner strictly maintained that on the basis of the authority granted by respondent, *(Annex "B", Exh. "B", p.9, CTA recs.)* it had a resultant overpayment to the government in the amount of P4,501,980.00 for the first, second, and third quarters of 1980. It basically arose from the fact that 20% subsidy retained by the Fertilizer and Pesticide Authority should be declared for taxation purposes in the year as it is received and not to be entered in the books in the year it is earned or the claim for subsidy is filed.

A close scrutiny of the records will show that this claim of petitioner was never contested by respondent, furthermore, the records will show that examiner Conrado A. Agustin prepared a memorandum on November 30, 1985, addressed to the Commissioner of Internal Revenue, recommending that the said amount P4,492,387.00 be refunded to, or a tax credit issued in favor of the herein petitioner. However, the said recommendation was not acted upon by respondent. Salient portion of the said memorandum *(pp. 56-57, BIR recs.)* is hereby quoted below:

> xxx xxx xxx
>
> xxx xxx xxx
>
> It is the practice of the Fertilizer and Pesticide Authority to withhold twenty percent (20%) of the fertilizer subsidy until the Commission on Audit have completed its audit of PPI books of accounts and have tendered its recommendation on the subsidy. Planters

Products Inc. being on the accrual basis of accounting accrued in its book of twenty percent (20%) subsidy retained by FPA. In line with the above-mentioned situation PPI requests our office that it be allowed to declare as income the twenty percent (20%) retention in the year it is received. Our office, on April 3, 1981 granted the request of PPI, hence the request for tax credit dated January 7, 1982.

It should be noted that only the fertilizer business is subsidized by FDA. Agricultural chemicals presented in the financial statements as other products is not subsidized. The financial statement of the company for the year 1980 disclosed a net loss of P15,496,225.00 on the fertilizer business after considering the retention of P35,060,878.00 equivalent to 20% of the subsidy while other products revealed a net income of P13,940,754.00. The net loss of P15,496,225.00 on the fertilizer business and the net income of P13,940,754.00 taken together will reflect a net loss of P1,555,471.00. This factor is definitely the basis of the request for tax credit in the amount of P4,501,980.00.

after considering ... net loss of P15,496,225

This examiner see that the claim for tax credit is the aftermath of a ruling that the (20%) twenty per cent subsidy retained by the Fertilizer and Pesticide Authority should be declared for taxation purposes in the year it is received and not to be accrued in the books in the year it is earned. The application of the subsidy is true not only to the fertilizer business but also to the non-subsidized products. Having in this view, this examiner is left no alternative save to recommend the approval of the tax credit in the amount of P4,492,388.00 presented as follows:

Total Payments:

5.30.80	P3,204,970.00
12.1.80	1,369,158.00
W/Tax - Rental Income	3,250.00
W/Tax-Interest Savings Deposit ...	119,921.00
T O T A L	P4,697,299.00
Less: Income tax due per return .	204,912.00
Refundable	P4,492,387.00

To sustain petitioner's position that it is entitled to a refund and/~~or~~ tax credit of P4,501,980.00 is the very actuation of respondent's counsel which perhaps would indicate that petitioner's action is legally tenable, that even during the pendency of this case, particularly the hearing of December 19, 1986 *(minutes of the hearing, p.81, CTA recs.)* wherein the government counsel has manifested that a favorable recommendation is now pending approval by the Commissioner of Internal Revenue.

We are fully convinced of the position of the petitioner that it should be entitled to refund and/or tax credit for the overpayment of its corporate income tax covering the first, second, and third quarters of 1980. Thus, tax correctly stated by petitioner in paragraph IX of its petition for review, "as a natural consequence of such deferral petitioner had a resultant overpayment to the respondent in the total sum of P4,501,980.00 for its corporate income tax."

xxx xxx xxx

Consequently, since petitioner paid its corporate income tax under the old cash subsidy scheme then being implemented by the FPA, up to the first, second, and third quarters of 1980, instead of under the new cash subsidy scheme which took effect at about the last quarter of 1980, wherein petitioner had obtained the authority allowing it to declare as income the twenty per cent (20%) retention in the year it is received which is from January 1, 1980. The application of the subsidy, however, is applied also to the non-subsidized products.

It should be noted that only the fertilizer business of petitioner is subsidized by FPA. Other products reflected in its financial statements like agricultural products are not subsidized. The financial statements of Planters Products Inc. showed a net loss of P15,496,225.00 on its fertilizer operation after taking into account the amount retained equivalent to twenty per cent (20%) of the subsidy in the sum of P35,000,878.00. However, other products showed a net income of

P13,940,754.00 which taken together will reflect a net loss of P1,555,471.00. This arrangement is the basis of petitioner for tax refund and/or tax credit in the amount of P4,501,980.00 *(par. 4, Examiner's report, pp. 57 BIR recs.)*.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner, Planters Products Inc., the sum of P4,492,387.00 representing its overpaid corporate income tax paid by it for the period from the first, second, and third quarters of 1980. Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, December 15, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals