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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOHN HOLLAND CONSTRUCTION (PHILIPPINES), INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5806

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:

JUN 13 2001

x - x

DECISION

This case involves a claim for refund in the amount *of five million six thousand two hundred eighty three & 24/100 pesos* (P5,006,283.24) allegedly representing excess creditable income taxes withheld for the calendar year 1996.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with office address at the 5th Floor, Electra House Building, 115-117 Esteban corner Herrera Streets, Legaspi Village, Makati City.

On April 15, 1997, Petitioner filed its 1996 annual income tax return, reflecting a taxable income of P1,112,656.00 and a corresponding income tax due of P389,430.00 which was offset against the creditable taxes withheld in 1996 of P498,095.00 leaving a refundable amount of P108,665.00 (Sections A & E of Exh. A).

On April 14, 1999, Petitioner filed an amended 1996 annual income tax return, reporting the same amount of income tax due of P389,430.00 but deducting a much higher amount of creditable taxes withheld in 1996 of P6,404,609.00 resulting to an increased refundable amount of P6,015,179.00 (Sections A & E of Exh. B).

On April 15, 1998 and April 14, 1999, Petitioner filed with the BIR two separate claims for refund/tax credit in the amounts of P4,885,507.32 and P120,775.92, (Exhs. E & F), respectively, representing its alleged excess creditable income taxes withheld in 1996.

Since Respondent did not act upon the aforestated claims for refund in the total amount of P5,006,283.24, Petitioner filed the instant Petition before this Court on April 15, 1999 pursuant to Sections 204(3) [now Section 204(C)] and 230 [now 229] of the Tax Code, which are all hereinbelow quoted, thus :

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** —
>
> xxx xxx xxx
>
> "(3) x x x x 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 "
>
> "**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.x"

In his Answer filed through registered mail on May 14, 1999, Respondent advanced the following Special and Affirmative Defenses:

"1.) Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Respondent's Bureau;
2.) The amount of P5,006,283.24 being claimed by Petitioner as alleged excess creditable income taxes withheld at source was not properly documented;
3.) In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit;
4.) It is an elementary rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as they partake the nature of exemption from tax."

Petitioner presented testimonial and documentary evidence to support its claim. Respondent, on the other hand, failed to submit any controverting evidence.

On January 4, 2001, this case was submitted for decision sans the memorandum of the Respondent.

As jointly stipulated by the parties, the issues to be resolved by this Court are:

1.) Whether or not the amount of P5,006,283.24 in unutilized creditable taxes withheld at source for the taxable year 1996 is substantiated;
2.) Whether or not the Petitioner was in a tax loss position for the taxable year 1996; and
3.) Whether or not the income from which the creditable taxes were withheld was declared by the Petitioner as part of its taxable income.

(Joint Stipulation of Issues, CTA records, page 128)

All of the above issues are thus centered on: Whether or not Petitioner is entitled to the refund of the claimed 1996 excess creditable withholding taxes in the amount of P5,006,283.24.

Upon careful examination of the evidence adduced solely by Petitioner, We find the latter to be entitled to a partial refund.

Petitioner anchored its claim for refund on the following provisions of Section 69 [now 76] of the Tax Code, 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.) 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."

The foregoing provisions clearly allow the refund of excess or overpaid income tax not otherwise applied or utilized as tax credit against the taxpayer's income tax liabilities for the taxable quarters of the succeeding year.

Petitioner's 1996 amended annual income tax return shows that the creditable taxes withheld in 1996 of P6,404,609.00 were more than its income tax liability of P389,430.00 resulting to a refundable amount of P6,015,179.00 as of December 31, 1996 (Exh. B). Further, the amount of P6,015,179.00 was not carried forward as "Prior year's excess credits" in Petitioner's 1997 second amended annual income tax return (Exh. U). Therefore, the reported 1996 excess tax credits of P6,015,179.00 appears to be refundable in accordance with the above provisions of law.

Petitioner, in his memorandum (CTA records, page 323), alleged that the total tax credits of P6,404,609.00 reflected in its 1996 income tax return consisted of the prior year's (1995) excess credits of P1,398,326.00 and creditable taxes withheld in 1996 of P5,006,283.00. Thus, according to Petitioner, after applying the prior year's (1995) excess credits of P1,398,326.00 against the 1996 income tax liability of P389,430.00 Petitioner is still left with a balance of prior year's (1995) excess credits of P1,008,896.00 and creditable income taxes withheld in 1996 of P5,006,283.00 or a total of P6,015,179.00 as tax credits as of December 31, 1996. Petitioner further alleged that since the prior year's (1995) excess credits of P1,008,896.00 had already prescribed, it now claims only the amount of P5,006,283.00 representing the 1996 creditable withholding taxes. Accordingly, Petitioner asserted that it is entitled to the entire amount of P5,006,283,00 since no portion thereof was utilized to pay its 1996 income tax liability. However, a perusal of the records of this case would reveal otherwise. As clearly indicated in Section E of Petitioner's 1996 amended income tax return (Exh. B), the amount of P6,404,609.00 pertains to creditable taxes withheld in 1996 and no amount was reflected as "prior year's excess credits". Moreover, the 1995 income tax return shows that Petitioner had no excess tax credits as of December 31, 1995 and even had an income tax payable of P7,082,375.00 after deducting the total tax credits of only P108,316.00 against the income tax due of P7,190,691.00 (Section A of Exh. S). Granting for argument's sake that indeed Petitioner had prior year's (1995) excess tax credits of P1,398,326.00, Petitioner should have substantiated the same by documentary evidence. Since Petitioner failed to do so, it cannot now claim that the 1996 income tax liability of P389,430.00 was applied against the prior year's (1995) excess credits.

We now proceed to the issue of whether or not Petitioner was able to substantiate the claimed amount of P5,006,283.24.

As oft-cited by this Court in a number of similar cases, the 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*].

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 creditable withholding taxes subject of the instant Petition were for taxable year 1996 for which Petitioner filed its original annual income tax return on April 15, 1997 (Exh. A). Counting from this latter date, Petitioner's two separate administrative claims for refund filed on April 15, 1998 (Exh. E) and April 14, 1999 (Exh. F) as well as the Petition for Review 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.

The fact of withholding was also established by Petitioner's presentation of the Certificates of Creditable Tax Withheld at Source issued by various withholding agents for the year 1996 detailed as follows:

Exh	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
G	Jan – Mar '96	Sumitomo Corporation	P 86,702,774.93	P 867,027.86
H	Apr – Jun '96	Sumitomo Corporation	71,473,693.39	714,736.87
I	Jul - Sept '96	Sumitomo Corporation	72,452,793.11	724,528.04
J	Oct – Dec '96	Sumitomo Corporation	15,111,079.87	151,101.41
K	Apr -- Jun '96	Sumitomo Corporation	69,767,100.00	697,671.00
L	Jul -- Sept '96	Sumitomo Corporation	3,811,685.16	38,116.84
M	Oct -- Dec '96	Sumitomo Corporation	3,175,233.65	31,752.24
N	Jan -- Dec '96	Light Rail Transit Authority	31,875,488.57	318,754.88
O	1996	BPI Leasing Corporation	6,294,545.45	62,945.45

P	Oct – Dec '96	John Holland Const. & Eng'g Pty., Ltd	133,000,000.00	1,330,000.00
Q	Jan – Dec '96	Kanematsu Corporation	6,964,863.62	69,648.65
			P 500,629,257.75	P 5,006,283.24

As to the third requirement, except for the amount of P62,945.45, Petitioner proved that the claimed creditable withholding taxes of P5,006,283.24 represent taxes withheld on Petitioner's contract revenues which formed part of its taxable income reflected in its 1995, 1996 and 1998 income tax returns (Exhs. R, B, S & T). As regards the creditable income taxes of P62,945.45 withheld by BPI Leasing Corporation on Petitioner's sale of motor vehicle in 1996 (Exh. O), Petitioner failed to establish that it declared the related income payment of P6,294,545.45 in its 1996 amended income tax return.

In sum, this Court is convinced that Petitioner was able to substantiate only the amount of P4,943,337.79 (P5,006,283.24 less P62,945.45) creditable taxes withheld in 1996. Further, considering that Petitioner had an income tax due of P389,430.00 in 1996, the same shall be deducted from the substantiated creditable withholding taxes of P4,943,337.79, thereby entitling Petitioner to a refundable amount of P4,553,907.79 computed as follows:

Gross Income	P 63,370,086.00
Less: Deductions	2,257,430.00
Taxable Income	P 1,112,656.00
Income Tax Due	P 389,430.00
Less: Creditable Taxes Withheld in 1996	4,943,337.79
Income Tax Refundable	P (4,553,907.79)

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 FIVE HUNDRED FIFTY THREE THOUSAND NINE HUNDRED SEVEN & 79/100 PESOS (P4,553,907.79)** in favor of

Petitioner representing excess creditable income taxes withheld for the calendar year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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