REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**MACONDRAY & COMPANY, INC.,**
Petitioner,

- versus - **C.T.A. CASE 5614**

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
JUN 11 1999

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# DECISION

This case involves a judicial claim for refund in the amount of ₱2,166,983.47, representing overpaid income taxes resulting from the excess payments of creditable withholding taxes at source for the calendar years ended December 31, 1995 and December 31, 1996.

The facts of the case are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located at the Macondray Centre, 2263 Pasong Tamo Extension, Makati City. During the year 1995, petitioner was a trading company, engaged in the sale of goods and services, and a sub-lessor of real property. In the year 1996, it became a holding company as a result of business restructuring (TSN, July 9, 1998, pp. 12-13).

On April 15, 1996, petitioner filed its Corporation Annual Income Tax Return for calendar year 1995 declaring a net operating loss in the amount of ₱1,336,216.00, a nil income tax liability but with a refundable income tax payment in the sum of ₱1,937,445.00 resulting from various creditable withholding taxes at source. Petitioner opted to apply this overpayment as an automatic tax credit to the succeeding taxable year (Exhs. A, A-1 to A-5, inclusive).

On April 14, 1997, petitioner filed its 1996 Corporation Annual Income Tax Return reporting again a net operating loss in the amount of ₱129,026,687.00, a nil income tax liability and an increased refundable income taxes in the sum of ₱2,166,983.47 representing the prior year's excess credit of ₱1,937,445.00 and the 1996 creditable withholding taxes in the sum of ₱229,538.47 (Exhs. C, C-1 to C-5, inclusive). Petitioner again opted to apply the sum of ₱2,166,983.47 as tax credit to the succeeding taxable year but later changed its course and chose instead to have the sum refunded by amending its 1996 final adjustment return (Exhs. D, D-1 to D-5, inclusive).

Believing that it is entitled to a refund pursuant to Section 69 in relation with Sections 204 and 230 of the Tax Code, petitioner filed on March 27, 1998, a letter claim for tax credit with the Bureau of Internal Revenue in the total amount of ₱2,166,983.47, representing unutilized creditable income taxes for the years 1995 and 1996 (Exhs. F and F-1).

The inaction of the respondent on the aforementioned letter compelled petitioner to file the instant petition for review on April 13, 1998, in order to toll the running of the two-year prescriptive period.

Respondent, in his Answer, merely advanced as special and affirmative defenses that Petitioner has not shown proof of actual payment and remittance of the alleged excess creditable withholding taxes; it is incumbent upon the petitioner to prove that it is indeed entitled thereto; claims for refund are construed strictly against the claimant; and petitioner is not legally entitled thereto.

In order to support its claim for refund, petitioner presented the following documentary evidences which were properly identified by petitioner's witnesses:

1. The annual income tax returns for the years 1995 and 1996 together with the attachments of reports of independent public accountants (Exhs. A, A-1 to A-5, C, and C-1 to C-5);

2. The various Certificates of Creditable Income Tax Withheld at Source for the years 1995 and 1996 (Exhs. B-1 to B-31 and E-1 to E-11); and

3. The letter claim for tax credit with the Bureau of Internal Revenue (Exhs F and F-1); and

4. The amended Corporation Annual Income Tax Returns for the years 1996 and 1997 (Exhs. D, D-1 to D-5 and G).

This case was submitted for decision sans the evidence and memorandum of the respondent.

The Court is now confronted with the following issues:

1. Whether or not petitioner is legally entitled to the refund sought; and

2. Whether or not petitioner has fully substantiated with proper evidence, its claim for refund.

Anent the first issue, petitioner cites as legal basis Section 69 of the Tax Code, as amended.

For easy reference, Section 69 of the Tax Code, as amended, is hereby quoted as follows:

> **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 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</u>, 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. (Emphasis supplied).

It is evident from the Corporation Annual Income Tax Returns of petitioner for the years 1995 and 1996 that there are excess income tax payments in the sum of P2,166,983.47 which remain unapplied because of petitioner's net operating losses during the years. It is also apparent that the excess income tax payment in 1996 was not applied as an automatic tax credit to the succeeding taxable year 1997 (Exh. G).

We would like to emphasize that the Court placed great probative weight on petitioner's income tax returns because they were examined by independent CPAs pursuant to Section 232 of the Tax Code. In fact these auditors expressed an unqualified opinion on the financial position of petitioner for the calendar years 1995, 1996 and 1997. Moreover, respondent failed to introduce a single document that will disprove the reliability of petitioner's returns **(Citibank, N.A., vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997; see also Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, dated December 20, 1993).** Hence, petitioner appears to be legally entitled to the refund sought. However, petitioner must still prove its entitlement to the claim for refund by substantial evidence which is the second issue at bar.

Section 230 of the Tax Code, as amended, provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code, as amended, is hereby quoted as follows:

> **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, <u>no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax</u> 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid (Underlining supplied).

Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following three requisites:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;
>
> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. 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. **(Sec. 10, Rev. Regs. 6-85; Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993)**.

The records establish that petitioner's claim for refund was timely filed within the two-year period from the date of payment of the tax. The letter request for refund was filed with the respondent on March 27, 1998, while the instant case was instituted on April 13, 1998. The two-year prescriptive period commences to run on April 15, 1996, for creditable withholding taxes paid for calendar year 1995 and April 14, 1997, for creditable withholding taxes paid for calendar year 1996. The dates of filing of the final adjustment returns for the years 1995 and 1996 are considered the reckoning period of the "two years from the date of payment of the tax" (**Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992**). The income payments upon which the creditable withholding taxes in question were withheld were included as part of the gross income reflected under Section C of petitioner's income tax returns. (Exhs. A-4 and C-4; see also TSN, July 29,1998, pp. 6 to 10). However, We deemed it fit to grant only the amount of P2,150,679.68 as excess income tax payment for the years 1995 and 1996 as this amount is duly supported by Certificates of Creditable Income Tax Withheld at Source, to wit:

For 1995:

| Withholding Agent | Exh. | Amount of Income Payment | Amount of Tax Withheld |
|---|---|---|---|
| Petron Corporation | B-1 | ₱ 1,712,340.00 | ₱ 17,123.40 |
| Petron Corporation | B-2 | 39,387.00 | 393.87 |
| Kraft Foods Phils. Inc. | B-3 | 32,178.00 | 321.78 |
| Kraft Foods Phils. Inc | B-4 | 5,253.10 | 525.31 |
| Goodyear Phils. Inc. | B-5 | 4,997.00 | 49.97 |
| Goodyear Phils. Inc. | B-6 | 1,164.00 | 11.64 |
| Goodyear Phils. Inc. | B-7 | 6,625.00 | 66.25 |
| Goodyear Phils. Inc. | B-8 | 4,997.00 | 49.97 |

| | | | |
|---|---|---|---|
| Goodyear Phils. Inc. | B-9 | 7,000.00 | 70.00 |
| Evenflo (Phils) Inc. | B-10 | 2,673.82 | 133.69 |
| Evenflo (Phils) Inc. | B-11 | 3,162.95 | 158.15 |
| MSF Tire and Rubber, Inc. | B-12 | 33,844.44 | 338.44 |
| Ramcar Incorporated | B-13 | 53,407.00 | 534.07 |
| C.C. Unson Co., Inc. | B-14 | 13,294.85 | 132.95 |
| Lapanday Holdings Corp. | B-15 | 100,000.00 | 1,000.00 |
| Int'l Container Terminal Services | B-16 | 234,692.00 | 2,346.92 |
| Pepsi Cola Products Phils., Inc. | B-17 | 2,810,961.00 | 28,109.61 |
| Pepsi Cola Products Phils., Inc. | B-18 | 154,020,107.00 | 1,540,201.07 |
| Macondray Packaging Corp. | B-19 | 3,212,100.00 | 160,605.00 |
| Macondray Packaging Corp. | B-20 | 635,000.00 | 6,350.00 |
| Macondray Packaging Corp. | B-21 | 635,000.00 | 6,350.00 |
| Telemondial Holdings, Inc. | B-22 | 304,158.40 | 5,223.40 |
| Telemondial Holdings, Inc. | B-23 | 304,158.40 | 5,223.40 |
| Del Monte Phils. Inc. | B-24 | 22,981.15 | 229.81 |
| Macondray Insurance | B-25 | 196,000.00 | 1,960.00 |
| Kraft Foods Phils. Inc. | B-26 | 142,901.00 | 1,429.01 |
| Kraft Foods Phils. Inc. | B-27 | 34,101.00 | 341.01 |
| CFC Corporation | B-28 | 424,686.41 | 4,246.87 |
| Consolidated Industrial Gases | B-29 | 30,747.31 | 482.44 |
| Packaging Products Corp. | B-30 | 2,735,209.00 | 136,760.45 |
| Procter & Gamble Phils. | B-31 | 37,275.00 | 372.75 |
| Sub-Total | | **₱167,800,401.83** | ₱1,921,141.21 |

For 1996:

| Withholding Agent | Exh. | Amount of Income Payment | Amount of Tax Withheld |
|---|---|---|---|
| C. C. Unson Co., Inc. | E-1 | ₱ 5,672.73 | ₱ 56.73 |
| Telemondial Holdings, Inc. | E -2 | 55,226.60 | 2,761.33 |
| Macondray Industries, Inc. | E-3 | 1,669,539.09 | 56,668.16 |
| MCI Duty Free Distributors, Inc. | E-4 | 241,618.69 | 10,639.09 |
| Sucro Commercial Trading Corp. | E-5 | 794,094.84 | 30,047.18 |
| Macondray Plastics, Inc. | E-6 | 1,040,000.00 | 52,000.00 |
| Macondray Insurance Brokers | E-7 | 518,864.40 | 16,933.34 |
| Macondray Packaging Corp. | E-8 | 640,546.99 | 25,677.35 |
| Macondray Carriers & Brkg. | E-9 | 377,115.00 | 3,771.15 |
| Macondray Carriers & Brkg. | E-10 | 404,000.00 | 16,160.00 |
| Macondray Carriers & Brkg. | E- 11 | 296,482.80 | 14,824.14 |
| Sub-Total | | **₱ 6,043,161.14** | ₱ 229,538.47 |
| | | | |
| TOTAL | | | **₱2,150,679.68** |

With regard to respondent's objection that petitioner has not shown proof of actual payment and remittance of the alleged excess creditable withholding taxes, this Court in the case of **Citytrust Banking Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No.**

**4099**, has declared in a Resolution, dated December 3, 1991, that this is not a requirement in claiming for excess creditable withholding taxes, to quote:

> (T)he fact of remittances of withholding taxes by producing the confirmation receipt is not required by law and regulation as the withholding agent is not within the control of the payee taxpayer but tax agent of the respondent Commissioner of Internal Revenue. The taxes deducted and withheld are considered special fund in trust for the government until paid to the collecting officer. In law the withholding agent merely holds the amount withheld in trust for the government (Underlining supplied).

**WHEREFORE**, in view of the foregoing, the petition for review is hereby partially granted. Respondent is **ORDERED** to **REFUND** in favor of petitioner the lesser amount of ₱2,150,679.68, representing overpaid income taxes for the calendar years 1995 and 1996.

**SO ORDERED.**

AMANCIO Q. SAGA
Associate Judge

**WE CONCUR:**

(On leave)
**ERNESTO D. ACOSTA**
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

## CERTIFICATION

I hereby certify that the above decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

**RAMON O. DE VEYRA**
Associate Judge