REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

A. SORIANO CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4574

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 29 1996

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DECISION

This is a judicial action for the refund of the sum of P5,784,801.00, representing overpaid income tax for the calendar year ended December 31, 1989.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of managing its affiliates and subsidiaries, and in investing its funds for profit in shares of other corporations.

On April 6, 1990, petitioner filed its 1989 Annual Income Tax Return reflecting a net loss from operations in the amount of P5,839,197.00, a nil income tax liability but with an overpayment in the amount of P5,784,801.00, arising from quarterly income tax payments and creditable withholding tax at source, computed as follows: (Exh. "F")

Income:			
Management fees (Schedule 2)		P161,904,196.00	
Rentals/Leases (Schedule 4)		6,042,944.00	
Interest (Schedule 5)		557,905.00	
Miscellaneous income (Schedule 6)		178,050.00	
Sales or exchanges of property other than capital assets (Schedule 8)		33,121.00	P168,716,216.00
Less: Deductions (Schedule 1)			174,555,413.00
Net loss			P 5,839,197.00
Tax Due			-
Less:			
a. Prior years excess credit		P 0.00	
b. Quarterly payments made this year:			

Qtr.	CR/ROR No.	Date	Amount		
1st	B16809082	5.30.89	P2,886,630.00		
2nd	B17929744	8.29.89	639,995.00	3,526,625.00	

c. Creditable tax withheld (Various)	2,258,176.00	5,784,801.00
Amount Refundable		P 5,784,801.00

Petitioner opted this overpaid income tax be carried over as tax credit to the succeeding taxable year 1990 pursuant to Section 69 of the Tax Code, as amended.

Petitioner suffered net loss from operations during the year 1990 in the amount of P84,827,684.00 (Exh. "II"). Thus, petitioner's application of its 1989 overpayment against anticipated income tax liability in 1990 became nugatory.

On May 25, 1990, petitioner filed a letter claim for refund with the Bureau of Internal Revenue in the amount of P5,384,801.00, representing alleged overpaid income tax for the year 1989 (Exh. "T").

The inaction of respondent on its letter compelled petitioner to file the instant petition for review on January 31, 1991 pursuant to Section 230 of the National Internal Revenue Code, as amended. Petitioner by way of this petition is claiming for the refund of P5,784,801.00 instead of P5,384,801.00, the amount claimed in the administrative level (Exh. "T").

Upon these facts, respondent advanced as special and affirmative defenses that "[t]he petition states no cause of action as it dos not allege the date when the tax sought to be refunded was allegedly paid (**Manufacturer's Bank and Trust Co., as Trustee for Gem Trust Plans v. The Commissioner of Internal Revenue, CTA Case No. 1659, November 19, 1965**). The tax in question was collected in accordance with law. In an action for refund the burden of proof is upon the taxpayer to establish its right to the refund. Petitioner's claim for refund is still under investigation. The allegation regarding the net loss does not *ipso facto* merit the refund. Claims for refund of taxes are construed strictly against the claimant, the same being in the nature of an exemption from taxation." (pp. 2-3, Answer; pp. 16-17, CTA rec.)

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of

P5,784,801.00, representing allegedly overpaid income tax for the year 1989.

In support of its claim for refund, petitioner presented various documentary exhibits which consists, among others, of:

a. The 1989 Annual Income Tax Return together with the attachments of the Auditors' Report and Financial Statements (Exhs. "F" to "F-14", inclusive);

b. The 1990 Annual Income Tax Return (Exhs. "II to "II-4", inclusive);

c. The letter-claim of refund with the Bureau of Internal Revenue (Exh. "T");

d. The Quarterly Income Tax Returns for fiscal year 1989 together with the proof of income tax payments (Exhs. "A" to "E-2", inclusive);

e. The various Certificates of Creditable Withholding Tax at Source [BIR Form 1743.1] (Exhs. "G" to "S", inclusive); and

f. The Certification issued by the Accounting Revenue Division of the respondent's bureau attesting the remittance of the quarterly income tax payments (Exh. "HH").

The legal basis of petitioner in claiming for the refund of its overpaid income tax is Section 69 of the Tax Code, as amended, which reads 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 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) <u>Be refunded the excess amount paid, as the case may be.</u>
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, <u>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</u>. (Underscoring supplied)

Based from the above proviso, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Since petitioner did not utilized the 1989 overpaid income tax in the succeeding year 1990, due to the losses incurred for that year, the amount of P5,784,801.00 appears on its face to be refundable. However, petitioner must prove its entitlement for refund by substantial evidence.

Section 230 of the Tax Code 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 is hereby quoted as follows:

"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 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." (Underscoring supplied)

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

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. Reg. 6-85; see 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).

A perusal of the evidence submitted by petitioner reveals that petitioner's claim for refund was timely filed within two years from the date of payment of the tax. Its claim for refund with the Bureau of Internal Revenue was filed on May 25, 1990 (Exh. "T") and its Petition for Review with this Court was filed on January 31, 1991. The two-year period commences on April 15, 1990, the time required by law for the petitioner to file its final income tax return **(Commissioner of Internal Revenue v. TMX Sales, Inc. et. al., G.R. No. 837736, January 15, 1992).**

The quarterly income tax payments for the year 1989, comprising of P2,886,629.99 and P639,994.64 for the first and second quarters, respectively, were duly proven to have been paid and remitted to the Bureau as certified by the Revenue Accounting Division (Exh. "HH").

In addition, the creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source (BIR Form 1743.1) in accordance with the requirements of Rev. Regs. No. 6-85, as amended, itemized as follows:

Exhs.	Withholding Agents	Tax W/held
G, U, & U-1	Atlas Fertilizer Corp.	P 724,282.45
H & V-1	Phelps Dodge Phils. Inc.	864,962.03
I & W-1	Paper Industries Corp. of the Philippines	56,250.00

J & X-2	ANSCOR Insurance Brokers, Inc.	57,780.00
K & Y-1	ANSCOR Travel Corp.	5,724.40
L & Z-1	National Steel Corp.	72,050.00
M	Paper Industries Corp. of the Philippines	25,830.00
N & AA	Roco Bunag Kapunan & Migallos Law Offices	16,257.00
O & BB	Siguion Reyna, Montecillo & Ongsiako	62,700.00
P & DD-2	Soriamont Steamship Agencies Inc.	75.00
Q & CC	United Coconut Planters Bank	19,133.40
R, CC, CC-1 to CC-26	United Coconut Planters Life Assurance Corp.	24.97
S, EE-1, EE-4 & EE-5	Nin Bay Mining Company	55.00
TOTAL		P1,905,124.25

It was further established that the income upon which these creditable withholding taxes were paid were included in petitioner's return (Exhs. "F-12", "F-13", and "F-14").

The averment of respondent that "the petition states no cause of action for failure of petitioner to state the date of the tax sought to be refunded was allegedly paid" has no leg to stand on. This Court has ruled, time and again, that "petitioner is not required to show the date of payment of the tax withheld at source. The rule is that a corporate taxpayer pays on a quarterly basis. The final payment is considered the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayers either made profit or suffered a loss in its operations. (Sun Insurance Office Ltd. v. Acting CIR, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. CIR, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989; and Paseo Realty & Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993; all cited in Jardine Davies, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 3829, 4013 and 4124, January 20, 1994).

Clearly, from the evidence presented by the petitioner (Exhs. "HH", "G" to "S", inclusive) petitioner has proven that it overpaid its income tax for 1989 in the amount of P5,431,788.88, computed as follows:

1st Quarter Income Tax Payment	P2,886,669.99
2nd Quarter Income Tax Payment	639,994.64
Creditable Withholding Tax at Source	1,905,124.25
T O T A L	P5,431,788.88

However, since the Court's jurisdiction is exclusively appellate in nature, we find it fit to grant only the amount of P5,384,801.00 as originally claimed with the Bureau of Internal Revenue and not the amount of P5,784,801.00 as prayed for in the petition for review nor the amount of

P5,431,788.88 which was duly supported by BIR Form No. 1743.1 or the Certificates of Creditable Income Tax Withheld at Source and the Central Bank Confirmation Receipts and BIR Payment Orders with respect to the quarterly payments made for 1989.

WHEREFORE, finding the petition for review meritorious, respondent is hereby ordered to **REFUND** in favor of petitioner the sum of **P5,384,801.00,** representing overpaid income tax for the year 1989.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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