Wt

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

YUPANGCO COTTON MILLS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5699

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 2001 [signature]

x - x

DECISION

This is a petition for review filed by the Petitioner, YUPANGCO COTTON MILLS, INC., against Respondent Commissioner of Internal Revenue, for the latter's inaction on Petitioner's claim for refund in the amount of P3,601,289.07 representing Petitioner's alleged overpaid/excess creditable withholding tax for the taxable year ending December 31, 1997.

As represented, Petitioner is a domestic corporation, engaged in the manufacture of yarns, grey cloth and fabrics, with office address at 119 Hoover St. San, Juan, Metro Manila. On April 14, 1998, Petitioner filed with the Far East Bank and Trust Co. its Corporate Annual Income Tax Return (ITR) for the calendar year 1997 (Exh. B). The said ITR was amended on September 25, 1998 (Exh. C) and was further amended on April 27, 1999 (Exh. D). In the said return, Petitioner declared among others a net loss of

P13,349,905.44 and a cumulative overpaid creditable withholding tax of P3,601,289.07 computed as follows:

TAXABLE NET LOSS		(P13,349,905.44)
TAX DUE		----
Less:		
a) Prior Year's Excess Credit	P1,945,732.37	
b) Quarterly Payment	0.00	
c) Creditable Tax Withheld	1,655,556.70	3,601,289.07
EXCESS TAX CREDIT		P 3,601,289.07

The unutilized/excess income tax credit of P3,601,289.07 for 1997 was not carried over to the succeeding taxable year 1998 because the Petitioner decided to apply for a refund pursuant to the provision of Section 204(3) in relation to Section 230 of the Tax Code, as amended. Thus, when the annual income tax return for CY 1998 was filed on April 11, 1999, Petitioner reported in Part II Item 13A – Prior Year's Excess Tax Credit – "0" clearly showing that the subject cumulative excess in CY 1997 withholding taxes were never carried over nor applied in the following year of 1998 (Exhibit "E"). The 1998 annual income tax return showing a taxable net loss of (P27,416,855.56) and total tax credit of P1,368,660.87 that was applied against its income tax due showing an excess payment of P59,148.95 was computed as follows:

TAXABLE NET LOSS	(P27,416,855.56)
TAX DUE (Minimum Corporate Income Tax)	P 1,309,511.92

Less:		
a) Prior Year's Excess Credit	P 0.00	
b) Quarterly Payment	0.00	
c) Creditable Tax Withheld	1,368,660.87	1,368,660.87
EXCESS TAX CREDIT		P 59,148.95

On December 24, 1998, Petitioner filed a letter-claim for refund dated December 10, 1998 with the Respondent in the amount of P3,601,289.07 representing its cumulative overpaid income tax payment for the Calendar Year ended 1997 (Joint Stipulation of Facts, p. 59, docket).

The aforesaid claim was not acted upon by the Respondent, hence, on December 29, 1998, Petitioner filed with this Court the instant Petition for Review.

Petitioner posited that it is entitled to the refund of the aforementioned amount as it is clearly provided under Section 51(f) [now Section 58(D)] and Section 69 (now Section 76) taken in relation to Section 204(3) [now Section 204(c)] of the Tax Code, which states, to wit:

> **Section 51.** ***Returns and Payment of Taxes Withheld at Source.*** –
>
> *(f) Income of Recipient.* - Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 295 (now 204); if the income tax collected at source is less than the tax due on the return, the difference shall be paid in accordance with the provisions of Section 50.
>
> **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 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.

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

Petitioner pointed out that the instant claim for refund was well within the two (2) year period prescribed in Section 230 of the Tax Code, which provides:

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 (2) 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Respondent in his Answer, admitted the corporate existence of the Petitioner, the filing and existence of the Petitioner's Annual Income Tax Returns for CY 1997 filed on April 14, 1998 and the Amended Annual Income Tax Returns for CY 1997 filed on September 25, 1998 as well as the filing of the administrative letter-claim for refund dated December 10, 1998 (Answer, par. 1, 3 and 4). He, however, denied the other allegations in the Petition for being mere conclusions of fact and law. Further, Respondent raised in the usual token of a defense that (1) in order to be entitled to tax refund or tax credit, the claim must be proved by clear and convincing evidence, (2) the claim for refund is still being investigated by Respondent, and (3) such being the case, the instant Petition for Review is premature.

The issue to be resolved by the Court is whether or not Petitioner has indeed overpaid its income taxes in the amount of P3,601,289.07 for the calendar year ending December 31, 1997.

We find nothing ambiguous nor obscure in the language of Section 51(f) of the Tax Code, insofar as the same is brought to bear upon the circumstances of the Petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that any excess of the amount of tax so withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return shall be refunded to the taxpayer. The issue before Us is nothing new. The Court has already laid down the requisites needed for a grant of refund of creditable withholding taxes, to wit:

1.) that it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. CA, 204 SCRA 957);

2.) the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom *(ibid.)*;

3.) that the taxpayer filed its claim for refund, within the two (2) year period prescribed under Section 230 of the Tax Code.

The foregoing requirements were affirmed by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

In establishing its claim for refund, Petitioner during trial presented evidence (Exhs. A to O) to substantiate its claim that (1) it filed its Corporate Annual Income Tax Return for 1997 on April 14, 1998, (2) the income upon which the taxes were withheld were included in the returns of the Petitioner, and (3) the amount claimed to be refunded were in fact withheld and remitted to the Respondent by the withholding agents. Petitioner adduced as evidence the Certificates of Creditable Tax Withheld at Source (BIR Form 2307 and Form No. 1743.750) (Exhs. F-6 to F-21 and G-8 to G-30, inclusive) to show the amount of income tax withheld by various withholding agents during the period covered by the claim for refund.

Likewise, Petitioner presented its ITR for the succeeding year 1998 (Exh. E) to show that it suffered a net loss position for year 1998 and that the excess income tax credit of P3,601,289.07 for 1997 were not carried over to the year 1998. Moreover, Petitioner was able to establish that it filed its administrative claim for refund with Respondent on December 10, 1998 (see Joint Stipulation of Facts, p. 59, docket). On the other hand, Respondent interposes no objection to the admission of the exhibits offered by the Petitioner as proof of its claim of excess payments, neither was it heard to complain about the authenticity of the contents of these documents nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proof of excess payments or excess creditable withholding tax despite the fact that it is well within their competence to do so. Respondent is thereby considered to have vouched the veracity of these exhibits.

With regard to the timeliness of the instant petition, We find merit in the Petitioner's ratiocination that its claim for refund has not yet prescribed. As resolved by the Supreme Court on April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., G.R. No. 85956,** 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 vs. Court of Appeals, *supra*).** Records show that Petitioner filed its Corporate Annual Income Tax Return for the year 1997 on April 14, 1998 (Exh. B). The date of the filing of the instant petition which was on December 29, 1998 is clearly within two (2) years from April 14, 1998, the date when Petitioner filed its final adjustment return for the year 1997.

Thus, in view of the above findings and considering that Respondent failed to dispute or controvert the testimonial and documentary evidence of the Petitioner, the Court has no other recourse but to grant Petitioner's claim for refund in the amount of P3,601,289.07 representing its overpaid/unutilized creditable withholding tax for the year 1997.

IN THE LIGHT OF ALL THE FOREGOING, the Petition for Review is **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** in favor of herein Petitioner the amount of P3,601,289.07 representing the latter's overpaid/unutilized creditable withholding tax for the year 1997. No costs.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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