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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRODUCTIVE MANAGEMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5241

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 19 1997

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DECISION

This case involves a claim for refund or issuance of tax credit certificate for the amount of P92,325.00 allegedly representing unutilized excess creditable income taxes withheld at source on management fees paid to petitioner for the calendar years 1992 and 1993.

The antecedent facts of the case are simple.

Petitioner is a domestic management corporation duly organized and existing under and by virtue of the laws of the Philippines.

On April 15, 1993, petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 1992 (Exh. A), reflecting a refundable amount of P35,325.00 which was computed as follows:

Gross Income	P1,140,000.00
Less: Deductions	1,078,071.00
Net Income	P 61,929.00
Tax Due	P 21,675.00
Less: Creditable Tax Withheld	57,000.00
Tax Refundable	P 35,325.00

Petitioner was not able to fully utilize its creditable withholding tax of P57,000.00 against its P21,675.00 tax due, thus, an unapplied difference of P35,325.00 for the year 1992.

On April 15, 1994, petitioner filed its Annual Corporate Income Tax Return for the calendar year ended December 31, 1993 (Exh. B), reflecting a refundable amount of ₱92,325.00 which was computed as follows:

Gross Income		P1,140,000.00
Less: Deductions		1,244,913.00
Net Loss		(P 104,913.00
Tax Due		NIL
Less: Prior Year's Excess Credit	P35,325.00	
Creditable Tax Withheld	57,000.00	92,325.00
Tax Refundable		₱ 92,325.00

On April 3, 1995, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of the amount of ₱92,325.00, representing unutilized creditable income taxes for taxable years ended December 31, 1992 and December 31, 1993 (Exh. E).

The inaction of the respondent on the aforementioned claim compelled the petitioner to file the instant petition for review on April 12, 1995 in order to toll the running of the two-year prescriptive period mandated by Sections 204 and 230 of the Tax Code, as amended.

Petitioner formally offered in evidence the following documents which were properly identified by its witness:

1. Productive Management Corporation's Annual Income Tax Returns for the years 1992, 1993 and 1994 (Exhs. A, B and D) together with its corresponding auditor's report as an attachment.

2. Various Certificates of Creditable Income Tax Withheld at Source [BIR Forms No. 1743-750 and 1743-1] (Exhs. A-6, A-7, A-8, A-9, B-8 and B-9).

3. Various Statements of Tax Withheld at Source (Exhs. B-6 and B-7).

4. Administrative Claim for Refund (Exh. E).

Respondent failed to present any evidence to substantiate her denials and affirmative defenses raised in the answer. Consequently, this Court in its Resolution, dated March 11, 1996, declared that respondent had waived her right to present her evidence.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund sought.

Section 69 of the National Internal Revenue Code, as amended, provides, thus:

> "Section 69. *Final Adjustment Return* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable 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:
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> (a) Pay the excess tax still due; or
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> (b) <u>Be refunded the excess amount paid</u>, as the case may be.
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the <u>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)

Clearly, under the law, the principle of carrying over excess tax payment is applicable only when there is a resulting income tax liability for the succeeding taxable year. In the case at bar, the refundable amount of P35,325.00 for taxable year 1992 was not utilized despite carry-over because the petitioner incurred no tax liability in 1993 due to a loss.

The case of **Paseo Realty and Development Corporation vs. Commissioner of Internal** Revenue, CTA Case No. 4693, **Resolution dated October** 21, 1993, cited by the respondent in her memorandum is not applicable. Although said case involves a claim for refund of taxes withheld, the amount claimed was presumptively applied to the succeeding year sans any proof to the contrary. And the other case titled **Anscor** Hagedorn Securities vs.

Commissioner of Internal Revenue, CTA Case No. 4786, May 15, 1995, was also erroneously cited by the respondent for the same involves an application of excess creditable tax withheld for more than one year contrary to the provision of the Tax Code limiting the application thereof to the succeeding year only.

The creditable tax withheld shown on the final adjustment return for taxable year 1993 amounting to P57,000.00 and included in the tax refundable amount of P92,325.00 was not actually applied in the succeeding taxable year 1994. This fact is supported by the 1994 Corporate Annual Income Tax Return of petitioner (Exh. D), showing the following computation:

Gross Income	P1,320,000.00
Less: Deductions	1,312,332.00
Net Income	P 7,668.00
Tax Due	P 2,684.00
Less: Tax Credits/Payments (Section E)*	23,750.00
Tax Refundable	P 21,066.00

*Section E: Total Credits/Payments

Less:	a) Prior Year's Excess Credit P -		
	~~b)~~ Quarterly Payments/Credits made this year		
	c) Creditable Tax Withheld	23,750.00	P 23,750.00

Petitioner sufficiently showed that it did not apply the 1993 unutilized creditable tax withheld of P92,325.00 against its income tax liability of P2,684.00 by leaving the portion "prior year's excess credit" in blank.

Moreover, this Court, in a long line of cases of similar nature and issue, has already laid down three (3) basic requirements for the granting of a claim for refund of excess withholding tax payments, to wit:

> 1. That the claim for refund is filed within the two (2) year period prescribed under Sections 204 and 230 of the Tax Code;
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> 2. That the income upon which the taxes were withheld were included in the return of the recipient; and
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> 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. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in CA-G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 31104, April 18, 1994; and Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 32927, February 28, 1994).

Petitioner satisfactorily complied with the first requirement when it filed its administrative claim for refund with the Bureau of Internal Revenue on April 3, 1995. Said claim was filed within the two-year prescriptive period required under Sections 204 and 230 of the Tax Code since the taxes sought to be refunded were considered paid on April 15, 1993 and April 15, 1994, the dates the Corporate Annual Income Tax Returns for 1992 and 1993 were respectively filed (Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4596, January 6, 1995, Entry of Judgment entered on February 10, 1995).

The second requirement was also met by the petitioner when it offered in evidence its Corporate Annual Income Tax Returns for 1992 and 1993 showing as part of their gross income the management fees (Exhs. A-5 and B-5) from which the petitioner withheld the 5% creditable income tax subject of the claim for refund.

And lastly, the third requirement was sufficiently complied with by the petitioner when it presented as evidence the Certificates of Creditable Income Tax Withheld at Source (Exhs. A-6, A-7, A-8, A-9, B-8 and B-9) and Statement of Tax Withheld at Source (Exh. B-7) for the years 1992 and 1993.

However, a cursory examination of the documents presented by the petitioner revealed that for the year 1993, the creditable tax withheld only amounted to ₱46,250.00 and not ₱57,000.00 as declared in its Corporate Annual Income Tax Return. The Statement of Tax Withheld at Source (Exh. B-6), dated April 12, 1994 should be disregarded in the computation for it pertains to a different tax period (1994). The following creditable withholding taxes for 1993 were conclusively withheld:

Exhibit	Period Covered	W/holding Agent	Tax Withheld
B-7	Jan.-Dec. 1993	Unimart, Inc.	P21,000.00
B-8	Jan.-Dec. 1993	Makati Supermarket	19,250.00
B-9	Year 1993	Wholesale Commodity Exchange, Inc.	6,000.00
			P46,250.00

Hence, the petitioner is entitled to a refund of P35,325.00 for 1992 and only P46,250.00 for 1993 or a total refundable amount of P81,575.00 for the periods in question.

This Court is convinced that the petitioner has fully substantiated its claim for refund in the amount of P81,575.00. The burden of proof has been overcome by the petitioner. The respondent's contention that there is insufficiency of evidence to prove the propriety of the deductions claimed by the petitioner which led the ~~corporation~~ to suffer loss in 1993 is unmeritorious. In the case of **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257,** December 20, 1993, **affirmed by the Court of Appeals in** CA-G.R. SP. No. **34102, September 19, 1994,** such argument was already settled, to wit:

> "Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this case for decision nothing was shown during the hearing that the return was erroneous nor was there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified this Court if there is any.
>
> It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of P65,259.00."

In addition, petitioner's declarations in its 1992, 1993 and 1994 Corporate Annual Income Tax Returns are for all intents and purposes, presumed true and correct, having been made in good faith and to the best of petitioner's knowledge and belief. This was given emphasis in the case of Paseo Realty And Development

Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR, SP. No. 33589, October 14, 1994, where this Court has ruled that:

> "It is noteworthy to point at this juncture that the declarations made by the taxpayer in his income tax return are for all intents and purposes made in good faith and are true and correct to the best of his knowledge and belief. In fact the Treasurer and the Director, both representatives of the corporation signed under oath the income tax return of the corporation. Notice to the filer/taxpayer is printed just above the space provided for their signatures, to wit:
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> > "We declare under the penalties of perjury that this return has been made in good faith, verified by us and to the best of our knowledge and belief is true and correct pursuant to the provisions of the national internal revenue code, as amended, and the regulations issued under authority thereof."

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or in the alternative issue a Tax Credit Certificate in favor of the petitioner in the amount of P81,575.00, representing unutilized excess creditable income taxes withheld at source for the taxable years 1992 and 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals9