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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ISUZU PHILIPPINES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5812

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 28 2001 [signature]

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DECISION

This case involves a judicial claim for tax refund or the issuance of a tax credit certificate in the amount of FOUR MILLION SIX HUNDRED TWENTY THREE THOUSAND SIX HUNDRED EIGHTY FIVE PESOS (P4,623,685.00) representing the alleged unutilized excess creditable withholding taxes on income payments for calendar year 1996.

Petitioner, Isuzu Philippines Corporation, is a domestic corporation organized and existing under the laws of the Philippines. It is engaged in the business of assembling, manufacturing, designing and sale of all kinds of motor vehicles, parts, accessories, tools and equipment.

On April 15, 1997, Petitioner filed its 1996 annual income tax return reflecting a net loss of P37,163,069.00 and unutilized creditable withholding taxes for the same year in the amount of P4,623,685.00, broken down as follows:

Tax withheld for the 3rd quarter	P2,507,076.00
Tax withheld for the 4th quarter	2,116,609.00
Total	P4,623,685.00

Petitioner opted to carry-over the said unutilized creditable withholding taxes to the succeeding year, 1997. (Exhibit B)

However, its annual income tax return for the year 1997, filed on April 29, 1998, reflected a net loss in the amount of P177,006,053.00. Consequently, Petitioner failed to apply the excess creditable withholding taxes of P4,623,685.00 for the reason that it had no income tax liability to apply to.

For the year 1997, Petitioner again failed to utilize its 1st quarter income tax payment of P29,155,375.03 and creditable income taxes in the amount of P16,773,204.00. As of December 31, 1997, the unutilized excess tax credits/payments which Petitioner indicated to be applied to the succeeding calendar year 1998, amounted to P50,552,264.00, computed as follows:

Net Loss		(P177,006,053.00)
Tax Due		
Less: Tax Credits/Payments		
1. Prior year's excess credit (1996)	P 4,623,685.00	
2. 1997 1st qtr. income tax payment	29,155,375.00	
3. Creditable income taxes w/held in 1997	16,773,204.00	50,552,264.00
Excess Tax Credits/Payments		(P 50,552,264.00)

On April 15, 1999, Petitioner through its external auditor, SGV and Co., filed an administrative claim for refund or issuance of a tax credit certificate relative to the alleged unutilized creditable withholding taxes for the calendar year 1996 in the total amount of P4,623,685.00. (Exhibit M)

On the same day, Petitioner filed a Petition for Review with this Court to toll the running of the two-year prescriptive period to claim for the refund of excess income tax payment in accordance with Section 230 (now Section 229) of the Tax Code.

In his Answer dated June 10, 1999, Respondent raised the following Special and Affirmative Defenses, to wit:

> "3. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation by the Respondent's Bureau;
>
> 4. It is incumbent upon Petitioner to show that the total amount of P4,623,685.00 claimed as unutilized excess creditable withholding tax on income payments for calendar year 1996;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. In an action for tax refund, the taxpayer has the burden of establishing its right thereto, and failure to sustain the same renders the claim for refund fatal;
>
> 7. Petitioner must undoubtedly show that it has complied with the provisions of Section 204 in relation to Section 230 (now 229) of the Tax Code; and
>
> 8. The rule is well-established that claims for refund/tax credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of exemption from tax."

In order to support its claim for refund, Petitioner submitted the following pertinent documents as evidence:

1. Quarterly Corporate Income Tax Return for the 3rd quarter of 1996 (Exhibit A)

2. Annual Corporate Income Tax Return for calendar year 1996 (Exhibit B)

3. Quarterly Corporate Income Tax Return for the 1st quarter of calendar year 1997 (Exhibit C)

4. Quarterly Corporate Income Tax Return for the 2nd quarter of calendar year 1997 (Exhibit D)

5. Quarterly Corporate Income Tax Return for the 3rd quarter of calendar year 1997 (Exhibit E)

6. Annual Corporate Income Tax Return for calendar year 1997 (Exhibit F)

7. Letter claim for refund filed with the BIR (Exhibit M)

8. Annual Corporate Income Tax Return for calendar year 1998 (Exhibit N)

9. Various certificates of Creditable Income Tax Withheld at Source for calendar years 1996 and 1997 (Exhibits G, H, I, J, K, L)

In his Memorandum filed on November 17, 2000, Respondent's counsel interposed the following objections to Petitioner's claim for refund, to wit:

> "x x x Petitioner underdeclared in its 1996 income tax return, the income it received per certificate of income taxes withheld at source covering the year 1996.
>
> "x x x it indubitably follows that the total withholding taxes reported in its (Petitioner) 1996 income tax return was lesser than what should have been actually withheld by the agents."

The sole issue brought before this Court, is whether or not Petitioner is entitled to the refund or issuance of a tax credit of the amount of P4,623,685.00 representing unutilized creditable withholding taxes for the taxable year 1996.

We resolve to deny the Petition.

In order that a refund of excess creditable wit! holding taxes may be granted, Petitioner must comply with the following basic requirements as provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence on the matter:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 230 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 Investment Corporation vs. CA, 204 SCRA 957*].

A careful perusal of the evidence disclosed that Petitioner has filed its claim for refund, both administrative and judicial, within the two-year prescriptive period as provided for under Section 230 (now 229) of the Tax Code. Hence, the first requirement has been met.

Petitioner's 1996 Annual Income Tax Return (ITR) sufficiently proved that it incurred a net loss of P37,163,029.00 for calendar year 1996. Since Petitioner's 1996 ITR was prepared under penalties of perjury, the amounts appearing therein are presumed to be true and correct. (*Paseo Realty and Development Corporation vs. CIR, CTA Case No. 4693, July 29, 1993, affirmed by the Court of Appeals in CA-GR SP No. 33589, October 14, 1994*)

In its 1996 ITR, Petitioner proved that it declared a substantial portion of the total gross income from which the claimed creditable taxes of P4,623,685.00 were withheld.

As can be gleaned from the Certificates of Creditable Tax Withheld at Source, the claimed creditable taxes of P4,623,685.00 were withheld from Petitioner's gross income from sale of goods of P461,670,346.00 and from gross service income of P139,636.36 totalling to P461,809,982.36. The details of which are as follows:

Exh.	Withholding Agent	Income Payment	Tax Withheld
	Sale of Goods		
G	GENCARS, INC.	P 217,617,724.00	P 2,176,177.24
J	IND'L & TRANSPORT EQUIPT, INC	244,052,622.00	2,440,526.22
	sub-total	P 461,670,346.00	P 4,616,703.46
	Services		
H	SPIRIT ELECTRO SYSTEMS, INC.	P 36,363.64	P 1,818.18

I	SPIRIT ELECTRO SYSTEMS, INC.	103,272.72	5,163.64
	sub-total	P 139,636.36	P 6,981.82
	Total	P 461,809,982.36	P 4,623,685.28

The aforementioned details show that requirement No. 2 was also complied with by the Petitioner.

While it is true that Petitioner declared in its 1996 Annual Income Tax Return the income corresponding to the claimed creditable taxes withheld of P4,616,703.46, it nevertheless failed to show that it declared the income related to the claimed creditable taxes withheld from sale of services in the amount of P6,981.82.

Notwithstanding herein Petitioner's substantial compliance with the basic requirements enunciated in Revenue Regulations No. 12-94 and the prevailing jurisprudence, this Court cannot grant the claimed refund.

This Court adheres to the well-established principle in taxation that tax refunds are in the nature of an exemption and therefore must be construed in *strictissimi juris* against the taxpayer. As such, the taxpayer must indubitably prove his right to claim for a refund.

Petitioner's 1996, 1997 and 1998 Annual Income Tax Returns disclosed that the claimed 1996 unutilized creditable withholding taxes of P4,623,685.00 were carried-over to 1997 and 1998 taxable years. It is worth noting that Petitioner has indicated again its intention of applying the said 1996 unutilized creditable withholding taxes up to the succeeding year 1999. Since Petitioner failed to present its 1999 Annual Income Tax Return, this Court cannot determine with certainty whether or not the aforesaid tax credits were actually utilized or applied against its 1999 income tax liability. Thus, the nonpresentation of its 1999 Annual Income Tax Return is fatal to its claim for refund. (*Filinvest Development Corporation vs. CIR, et. al., CA-GR SP No. 56800, dated August 18, 2000*)

Petitioner cannot at the same time claim for refund and continuously apply the 1996 excess tax credits to its succeeding years' income tax liabilities. The two tax remedies of refund and tax credit are alternative and the choice of one precludes the other. (*Philippine Bank of Communications vs. CIR, G.R. No. 112024, dated January 28, 1999*)

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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