REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

READ RITE PHILIPPINES, INC.
(Formerly SUNWARD TECHNOLOGIES
PHILS., INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 5717

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
OCT 09 2000

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DECISION

The instant petition seeks to refund the amount of P7,919,698.00 allegedly representing overpaid income tax for the fiscal year ending September 29, 1996.

The facts of the case are not disputed.

Petitioner is a corporation duly organized under the laws of the Republic of the Philippines with principal office at Lot 8, Phase 2B, Carmelray Industrial Park, Canlubang, Laguna. It is primarily engaged in the business of exporting and manufacturing magnetic recording heads, tape-heads and other electronic products.

Petitioner is a VAT-registered entity and was issued Certificate of Registration No. 97-560-00158 on February 26, 1997. It is likewise registered with the Board of Investments (BOI) under Executive Order No. 226 (otherwise known as the Omnibus Investments Code) as a pioneer enterprise and was issued BOI Certificate of Registration No. EP 88-245 on March 2, 1988. As such enterprise, Petitioner was entitled to various incentives, one of which is the Income Tax Holiday (ITH) which was initially granted for a period of six (6) years from commercial operations or until March 1, 1994, which was subsequently extended for a total of two years or until March 1, 1996.

For the first three quarters of the fiscal year ended September 29, 1996, Petitioner filed its quarterly income tax returns and paid the following tax due thereon:

Quarter Ended	Amount Paid	Date of Payment/Filing
1st Qtr. – Dec. 31, 1995	----	Feb. 29, 1996
2nd Qtr. – Mar. 31, 1996	P2,969,179.00	May 30, 1996
3rd Qtr. – Jun. 30, 1996	P4,950,519.00	Aug. 29, 1996
TOTAL	P7,919,698.00	

On January 14, 1997, Petitioner filed its Annual Income Tax Return (Exhibit "H") for the fiscal year ended September 29, 1996, reflecting a net loss of P7,516,869.00, arrived at as follows:

Gross Income	P65,053,770.00
Less: Deductions	72,570,639.00
Net Loss	P 7,516,869.00

Petitioner's sales for the aforesaid fiscal year amounted to P779,884,241.00 and the cost of goods sold was P620,429,899.00, resulting in a gross income of P159,454,342.00 for the entire taxable year. However, considering that the gross income received from October 1995 to February 1996 in the amount of P94,400,572.00 is still covered by the Income Tax Holiday, only the income earned from March to September 1996 in the amount of P65,053,770.00 could be subjected to income tax.

On the other hand, the operating expenses for the same fiscal year totalled P143,388,382.00, out of which P70,817,743.00 represents the deductions for the period covered by the Income Tax Holiday and P72,570,639.00 pertains to the taxable period. Because of this, Petitioner ended up at a loss by the end of the taxable period.

On August 14, 1998, Petitioner filed with the Bureau of Internal Revenue, Revenue Region No. 9, RDO No. 56-Calamba, Laguna, a written claim for the refund of the amount of P7,919,698.00, citing as basis therefor, Section 76 (then Section 69) of the National Internal Revenue Code.

As there was no action on the part of Respondent and the two-year prescriptive period was about to lapse, the instant Petition was filed on January 14, 1999.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

> "10. He reiterates and repleads the preceding paragraphs of this Answer as part of his Special and Affirmative Defenses;
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> 11. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by respondent's Bureau;
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> 12. The total amount of P7,919,698.00 claimed by petitioner as overpaid income tax payments for the fiscal year ending September 29, 1996 is not properly documented;
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> 13. Petitioner's allegations that it excessively paid its income tax during the year under review does not ipso facto warrant the refund;
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> 14. Claims for refund are construed in *strictissimi juris* against the taxpayer as it partakes the nature of an exemption from tax and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for refund.
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> 15. It is incumbent upon petitioner to show that it has complied with the provisions of Section 229 of the Tax Code of 1997."

The sole issue We are tasked to resolve have been stipulated by the parties to be as follows:

> "Whether or not Petitioner is entitled to a refund of its overpaid income tax payments in the amount of P7,919,698.00, resulting from excess payments of quarterly income taxes for the fiscal year ended September 29, 1996."

To prove its case, Petitioner presented in evidence documents consisting of:

a. BIR Certificate of Registration with RDO Control No. 97-560-000158 (Exh. A);

b. Application for Cancellation of Registration (BIR Form No. 1557) (Exh. B);

c. Securities and Exchange Commission (SEC) Certificate of Filing of Amended Articles of Incorporation issued to Petitioner (Exh. C);

d. Articles of Incorporation of Read Rite Phils., Inc. (Exh. D);

e. Petitioner's Quarterly Income Tax Returns for the 1st, 2nd and 3rd quarters of 1996 (Exhs. E, F, G);

f. Petitioner's Annual Income Tax Return for the fiscal year ended September 29, 1996 (Exh. H);

g. Letter addressed to the Revenue District Officer of RDO No. 56 of Calamba, Laguna of the Bureau of Internal Revenue dated August 14, 1998 (Exh. I);

h. BOI Certificate of Registration No. EP 88-245 issued to Sunward Technologies (Phils.) Inc. on March 2, 1988 (Exh. J-1) with attachments;

i. Letter addressed to Sunward Technologies Phils., Inc. dated May 20, 1993 signed by Carl John G. Mariano of the BOI (Exh. K);

j. Letter addressed to Sunward Technologies Phils., Inc. dated February 13, 1995 signed by Rosario V. Estacio of the BOI (Exh. L);

k. EPZA Certificate of Registration NO. 94-60 issued to Sunward Technologies (Phils.), Inc. (Exh. M);

l. PEZA Amended Certificate of Registration No. 94-60 issued to Read Rite Phils., Inc. on March 5, 1997 (Exh. N);

m. Petitioner's Quarterly Income Tax Returns for the 1st, 2nd and 3rd quarters of 1997 (Exhs. O, P, Q);

n. Petitioner's Annual Income Tax Return for the fiscal year ended September 1997 (Exh. R);

o. Petitioner's Quarterly Income Tax Returns for the 1st, 2nd and 3rd quarters of 1998 (Exhs. S, T, U); and

p. Petitioner's Annual Income Tax Return for the fiscal year ended September 1998 (Exh. V).

Counsel for the Respondent submitted no controverting evidence and submitted her case for decision based on the pleadings.

After a careful examination of the evidence adduced solely by Petitioner, We rule in its favor.

That Petitioner timely filed its claim for refund, both in the administrative and judicial level, is conceded (No. 8, Joint Stipulation of Facts and Simplification of Issues). Likewise, the returns submitted by Petitioner clearly show that it ended up in a net loss position during the taxable year ending September 29, 1996, and that it actually made quarterly income tax payments which it now seeks to refund.

Section 69 of the then National Internal Revenue Code (now Section 76) provides:

> **SEC. 69**. *Final Adjustment Return.* –Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 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.

Verily from the above provisions, Petitioner may either be refunded the excess amount paid or the refundable amount may be credited against its estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

We find no merit to Respondent's sole argument in his memorandum that Petitioner can no longer refund the excess tax payments since it has already opted for an automatic tax credit of its 1996 excess tax payment. The rule stated under Sec. 76 of the 1997 Tax Reform Act which provides that "once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor," does not apply to the case at bar, this being a case of refund pertaining to taxable year ending September 29, 1996. The provisions of the 1997 Tax Reform Act became effective only on January 1, 1998.

And contrary to Respondent's assertion, Petitioner's 1996 Annual Income Tax Return showed that Petitioner chose to refund its excess tax payments for the said year. However, it carried over the amount to the succeeding year but failed to utilize the same on account of its loss. We find nothing contrary to law when Petitioner, after choosing a refund, changed course and opted to apply its excess tax payments as tax credit but nonetheless sought again a refund after failing to utilize the same in view of the loss sustained in the following year. The 1998 Quarterly and Annual Income Tax Returns of

Petitioner would prove that no excess tax credits were carried over by Petitioner from prior periods.

WHEREFORE, in the light of the foregoing, the Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P7,919,698.00 representing overpaid quarterly income tax payments for the fiscal year ending September 29, 1996.

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