REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLIED INFORMATION SERVICES OF THE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5809

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 29 2000

x - x

DECISION

This is a judicial claim for refund in the amount of P2,338,935.00 filed by the Petitioner on April 15, 1999, representing its alleged unutilized income taxes withheld for the taxable year 1996.

The facts are simple.

Petitioner is a domestic corporation primarily engaged in providing electronic data processing services to the telecommunications industry.

In the course of its normal operations, Petitioner allegedly rendered electronic data processing services in 1996 to its clients for which it received income payments which were alleged to have been subsequently subjected to income tax payment of P1,291,129.00 and to withholding taxes amounting to P1,502,412.00 or a total of P2,793,541.00. On the same year, Petitioner is alleged to have incurred a loss or "no income tax due" position. Consequently, Petitioner was not able to utilize its creditable income taxes for taxable year 1996 which it decided to carry over to the succeeding taxable year.

In the taxable year 1997, Petitioner incurred an income tax due of P454,606.00 and it allegedly utilized a portion of its creditable income tax carried over from 1996, to pay said liability, computed as follows:

Income tax due (1997)	P 454,606.00
Less: Creditable income tax withheld (1996)	(2,793,541.00)
Amount Refundable	P2,338,935.00

Premised on the above computation, Petitioner claims to have an unutilized income taxes withheld in the amount of P2,338,935.00 as of taxable year 1997.

Consequently, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on April 15, 1999 (Exhibit "C"). On even date, Petitioner filed with this Court the instant Petition for Review.

In an Answer filed by the Respondent on May 10, 1999, Respondent contradicted Petitioner's assertions and interposed the following Special and Affirmative Defenses, to wit:

"6. The claim for tax refund/credit is subject to administrative routinary investigation/examination by Respondent's Bureau;

7. The alleged creditable/refundable withholding taxes were collected and paid pursuant to law and BIR implementing rules and regulations, hence, not refundable;

8. Claims for tax refund/tax credit are construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Ledesma, GR No. L-13509, 30 January 1979, 31 SCRA 95)** as they partake 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 tax refund/tax credit;

9. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204 and 229 of the Tax Code, as amended, which are quoted as follows:

> "**Sec. 204**. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. - The Commissioner may – x x x
>
> (C) 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 (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."
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> "**Section 229.** ***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 excessively 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."

On July 3, 2000, after the parties have submitted their respective memorandum, this case was deemed submitted for decision.

As stipulated by the parties in their Joint Stipulation of Facts and Issues (pages 38 to 40, CTA records), the issues to be resolved are:

1) Whether or not Petitioner is entitled to the refund or the issuance of a Tax Credit Certificate in the amount of P2,338,935.00.

2) Whether or not Petitioner's excess/unutilized creditable withholding taxes for the taxable year 1996 in the aggregate amount of P2,793,541.00 is fully substantiated by documentary evidence.

As basis of its claim for refund, Petitioner relied on the provisions of then Section 69 (now Section 70) in relation to Section 230 (now Section 229) of the National Internal Revenue Code, which provides, thus:

> **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 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.

On the contrary, Respondent asserts that the provisions of Section 69 provides the legal basis for the denial of Petitioner's claim for refund since what may be the subject of refund under the said provision is the excess of the quarterly tax payments made during the calendar year or fiscal year over the estimated total tax due during the same taxable year and not the excess creditable income tax paid in the previous year that has not been applied to the succeeding taxable year. Moreover, Respondent asserts that the remedies provided under Section 69 involving a claim for refund and of a claim for an automatic tax credit for the succeeding taxable year are in the alternative and the choice of one precludes the other. Thus, having manifested the option for an automatic tax credit in its 1996 Income Tax Return, Petitioner cannot now be allowed to make another option of claiming administrative and judicial claims for refund. As an additional argument, Respondent asseverates that Petitioner made no option of either a refund or automatic tax credit of its alleged remaining balance in its return ended December 31, 1997 after application to its 1997 taxable amount due to its alleged unutilized 1996 creditable income tax excess payments which runs contrary to the express requirement under paragraph 2, Section 7 of Revenue Regulations No. 10-77 which reads, thus:

> "any excess of the quarterly payment over the actual income tax computed and shown in the adjustment in final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the estimated quarterly income tax liabilities for the quarter of the succeeding taxable year. <u>The corporation must signify in its annual corporate adjustment return its intention whether to request for the refund of overpaid income taxes</u> or claim for automatic tax credit to be applied against its income tax liabilities for the quarter of the succeeding taxable year <u>by filling up the appropriate box on the corporate tax return (BIR Form No. 1702)</u>." (Underscoring supplied)

Considering the above arguments and the applicable jurisprudence on the m... coupled with pertinent documentary evidence, led this Court to hold for the Petitioner a... against the Respondent.

Whatever merit the Respondent's arguments might have against subject claim for refund, this Court cannot simply go against settled jurisprudence on the matter.

In a litany of cases, this Court has repeatedly ruled that the grant of refund to taxpayer of its excess unutilized creditable withholding tax is dependent upon its compliance with the following requisites, to wit:

a) That the claim for refund was filed within two years as prescribed under Section 230 (now 229) of the Tax Code;

b) That the income upon which the taxes were withheld were included in the return of the recipient;

c) That the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. **(Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000)**

In fact these aforementioned 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.**

There is no dispute that Petitioner complied with the first requisite of filing the claim for refund with the BIR within two years as prescribed under Section 230 of the Tax Code and the instant Petition for Review with this Court on April 15, 1999, e[illegible] two years reckoned from the date it filed its annual income tax return for calendar [illegible] 1996 on April 15, 1997 (Exh. A).

Parallel to this, Petitioner also complied with the second requirement having disclosed the fact that its total income of P40,984,399.00 earned as of December 31, 1996, the amount from which the creditable tax was withheld, and reflected in Petitioner's Certificate of Creditable Tax Withheld at Source (Exh. E) were included in the annual income tax return of the Petitioner for calendar year 1996.

And lastly, Petitioner was able to establish the fact of withholding when it presented in evidence the certificate of final tax withheld at source (Exh. E), thus, proving that the amount of P1,502,317.43 has been withheld from Petitioner.

Thus, having substantially proven its entitlement to the refund sought for by having complied with the conditions set by law, conformably, We hold that the Petitioner must be extended the relief prayed for.

WHEREFORE, in the light of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate for the amount of P2,338,935.00 in favor of the Petitioner representing unutilized creditable withholding tax for the year 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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