REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS SYNTHETIC FIBER CORPORATION,
Petitioner,

- versus -

C.T.A. Case No. 4063

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

4/4/94

DECISION

This is a claim for tax credit in the total amount of P5,594,137.53 representing alleged overpaid income tax for the taxable year ended December 31, 1984.

The facts and the antecedents of this case are not in dispute.

Petitioner corporation, Filipinas Synthetic Fiber Corporation, is a preferred pioneer enterprise registered with the Board of Investments (B.O.I.) under Republic Act (R.A.) No. 5186, the Investment Incentives Act, as amended by Presidential Decree (P.D.) No. 1789, otherwise known as the Omnibus Investments Code.

During the taxable year 1984, petitioner filed its quarterly income tax returns details of which are as follows:

	March 31, 1984
Net taxable income (January to March)	P 6,577,907.89
Income tax due (TCC No. 02899-A)	P 2,299,767.76

June 30, 1984

Net taxable income (January to June)	P16,210,865.00
Income tax due	5,668,802.76
Less: Quarterly payment	2,299,767.76
Balance (PO No. B-3636105, CR No. B-4128046)	3.369.035.00

September 30, 1984

Net taxable income (January to September)	P17,944,814.00
Income tax due	6,273,185.00
Less: Quarterly payments	5,668,802.76
Balance (TCC No. 616)	604,382.24

Petitioner filed its final adjustment income tax return on April 15, 1985 with a tax refundable in the amount of P5,594,137.53 computed hereunder:

December 31 1984

Net taxable income (January to December)	P1,971,323.00
Income tax due	679,047.47
Less: Quarterly payments	6,273,185.00
Tax refundable	5,594,137.53

On March 14, 1986, petitioner filed with the respondent Commissioner of Internal Revenue a claim for tax credit of the said amount.

To interrupt the two-year prescriptive period and to preserve petitioner's right to judicially claim the tax credit, petitioner filed the instant petition for review on May 24, 1986.

Respondent however in her Answer (C.T.A. Records, pp. 25-26) denied the claim raising the following special and affirmative defenses:

> 1. Petitioner's claim for tax credit is pending investigation;
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> 2. The amount of P679,047.47 claimed by petitioner as outside service income and withheld by its alleged withholding agent is not supported by evidence.
>
> 3. The amount of P3,369,035.00 and P679,047.47 allegedly paid and withheld respectively by the withholding agent of petitioner, assuming the same to be true, were collected in accordance with law and regulations; hence, not refundable;
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> 4. It is incumbent upon the petitioner to show compliance with the provisions of Sections 292 and 295 of the National Internal Revenue Code of 1977, as amended;
>
> 5. Claim for tax refund/credit are strictly construed against claimants since they are in the nature of an exemption from taxation.

While the case was pending before this Court, petitioner furnished the respondent a letter of approval by the B.O.I., dated September 11, 1985, stating among others that the application of the petitioner for Reduced Income Tax (RIT) in the amount of P26,048,563.00 has been approved leaving the amount of P13,257,941.00 as unauthorized deduction representing income from non-registered operations (Exhibit "G"; C.T.A. Records, p. 164).

Based on that letter, respondent computed the amount refundable to the petitioner as follows: (Exhibit "H" C.T.A. Records, pp. 165-166)

Income from non-registered operations		P13,257,941.00
Income from technical services		P 3,087,854.11
Total income subject to regular corporate income tax rates		P16,345,795.11
Tax due thereon		P 5,711,028.00
Less: Payments		
Quarterly payments	P6,273,185.00	
Expanded withholding tax	915.53	P 6,274,100.53
Net refundable amount		P 563,072.53

Respondent recommended that the claim for the 1984 income tax refund "be reduced to only P536,072.53 without prejudice to the right of the subject taxpayer to file a subsequent protest demanding the details of the B.O.I.'s computation of the aforementioned unauthorized deduction". (Exhibit "H", *Ibid*)

Dissatisfied with the recommendation, petitioner filed before the B.O.I. a request for the approval of the disallowed portion of RIT in the amount of P13,257,941.00 (Exhibit "J", C.T.A. Records, p. 168).

The hearings of this case were repeatedly postponed due to the late release of resolution from the B.O.I.

On May 20, 1992, petitioner filed its Formal Offer of Exhibits for which this Court totally admitted in a Resolution dated September 1, 1992. Among the exhibits offered were two letters from the B.O.I., both dated December 6, 1990, one addressed to the petitioner and the other, to the respondent (Exhibits "M" and "N"; C.T.A. Records, pp 182-183). In the said letters, the B.O.I. reduced the unauthorized deduction from P13,257,941.00 to P6,938,236.00.

Respondent waived presentation of evidence and submitted her case for decision without memorandum (January 21, 1993 Session, C.T.A. Records, p. 200).

On June 15, 1993, this Court considered this case submitted for decision for failure on the part of the petitioner to file its memorandum within the allowed period.

The sole issue for determination of this Court is whether or not petitioner is entitled to a tax credit in the total amount of P5,594,137.53 representing overpaid income tax for 1984.

It is undisputed that petitioner is a registered pioneer industry under P.D. No. 1789, otherwise known as the Omnibus Investment Code of 1981. Article 49(d) of the said Code provides:

> ART. 49. *Incentives to Registered Export Traders.* - A registered export trader shall be entitled to:
>
> xxx xxx xxx
>
> (d) For the first five(5) years from registration or commercial operation, to deduct from its taxable income from the domestic and export sales as well as income from other registered operations, in addition to the normal deduction allowed by the National Internal Revenue Code, an amount equivalent to

> twenty per cent (20%) of its total export sales: *Provided*, That the Board upon application of the registered export trader may grant to registered export producer exporting products through the registered export trader not more than 10% of this deduction irrespective of whether the registered export producer has been registered or in commercial operation for five (5) years: *Provided, further*, That the deduction of the registered export producer shall be applicable to its registered operations only;
>
> xxx xxx xxx"

The said statute excluded some portions of the petitioner's income from the computation of income tax. (Gonzales and Gonzales, National Internal Revenue Code, 1984 Rev. Ed. p. 79)

The only reasons for the respondent's objection in granting the refund or tax credit in full amount are the B.O.I.'s disapproval of unauthorized deductions and petitioner's technical services income. However, in respondent's recommendation, she stated that the reduced amount of refund amounting to P563,072.53 was "without prejudice to the right of the subject taxpayer to file a subsequent protest demanding the details of the B.O.I.'s computation of the aforementioned unauthorized deduction" (Exhibit "H", *supra*).

The evidence submitted by the petitioner showed that it requested the B.O.I., in a letter dated September 18, 1989, to approve the disallowed portion of its RIT amounting to P13,257,941.00. (Exhibit "J", C.T.A. Records, p. 168).

The B.O.I., on December 6, 1990, approved the amount of P6,319,705.00 by reducing the unauthorized deduction from P13,257,941.00 to P6,938,236.00 after considering the financial statements submitted by the petitioner. (Exhibit "M", C.T.A. Records, p. 182)

Based on the B.O.I.'s resolution, the tax credit in favor of the petitioner should be P2,774,968.99 computed as follows:

Unauthorized deduction	P 6,938,236.00
Technical services income	3,087,854.11
Total income from non-registered operations	P10,026,090.00
Tax due thereon	3,499,131.54
Deduct: Payments	6,274,100.53
Net refundable amount	P 2,774,968.99

This Court, as a judicial body, adheres to a well-established principle that findings of administrative agencies like B.O.I. or B.I.R. which have expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality and they may be disturbed or set aside by the judicial department only if there is a clear error of law, or abuse of power, or lack of jurisdiction, or grave abuse of discretion. (Sesbreno vs. Ala 208 SCRA 359, Peralta vs. Civil Service Commissioner 212 SCRA 425, Villanueva, Sr. vs. Leogardo, Jr. 215 SCRA 835).

With regard to technical services income in the amount of P3,087,854.11, well settled is the rule that refund partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer. (**Insular Lumber Co. vs. Court of Tax Appeals** 104 SCRA 710, **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation** 207 SCRA 549)

Moreover, petitioner did not question the additional P3,087,854.11 as part of its income from non-registered operations. It did not even bother to submit a memorandum to support its case.

WHEREFORE, in view of all the foregoing, the respondent is hereby **ORDERED** to issue in favor of the petitioner a tax credit in the amount of P2,774,968.99 representing overpaid income tax for the taxable year 1984.

SO ORDERED.

Quezon City, Metro Manila, April 4, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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 Appeals