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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LINCOLN PHILIPPINE LIFE INSURANCE CORPORATION, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 4522

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

12/1/92

# D E C I S I O N

In the instant case, petitioner prays that "after due hearing, judgment be rendered ordering respondent to refund or grant a tax credit to petitioner in the amount of P37,800.00, representing overpaid income tax as shown in its 1988 corporate annual income tax return" ("Petition For Review", p. 2; CTA Records, p. 2).

In its "Corporate/Partnership Annual Income Tax Return" for taxable (calendar) year 1988 (Exh. "A"; CTA Records, p. 19), petitioner, a corporation duly organized and existing under Philippine law, declared a net loss of P1,300,816.00 (Exh. "A-3"; CTA Records, p. 19) and a corresponding tax due thereon of nil. In said return, petitioner also declared foreign tax credit in the amount of P37,800.00[1] (Exh. "A-4"; CTA Records, p. 19), which is equivalent to the amount claimed therein as "total amount refundable" for calendar year 1988 (Exh. "A-5"; CTA Records, p. 19).

On December 17, 1990, petitioner, through counsel, filed with the Bureau of Internal Revenue a letter, dated December 14, 1990, "requesting for the refund/tax credit of the total amount of P37,800.00, representing its overpaid income tax as of December 31, 1988" (Annex "A", "Petition For Review"; CTA Records, p. 4). As respondent, admittedly, has not acted on this request for refund/tax credit, petitioner, in order to arrest the running of the two-year prescription period under the Tax Code, filed the instant petition with the Court on December 19, 1990.

In support of its instant claim for tax refund/credit, petitioner offered to the Court in

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[1] The Court notes that on the face of petitioner's Annual Income Tax Return for 1988, this amount was declared as "foreign tax credit", and not as "creditable tax withheld", as claimed in the petition for review and undisputed by respondent. However, a close examination of its attachments, particularly Schedule 4, shows that the said amount, in fact, corresponds to the declared expanded withholding tax for the taxable (calendar) year 1988. For this reason, the Court will consider the said P37,800.00 as petitioner's declared creditable withholding tax payments for 1988 instead of foreign tax credit.

evidence its 1988 annual corporate income tax return (Exh. "A"; CTA Records, p. 19), as well as five certificates of creditable income tax withheld at source which cover withholding taxes on certain income payments allegedly received by petitioner for rentals of real property for the year 1988 (Exhs. "B" to "F", inclusive; CTA Records, pp. 40-45). The Court hereunder summarizes the contents of these certificates, as follows:

| Withholding Agent | Amount of Rental Income Payment | Tax Withheld |
|---|---|---|
| Sandoz (Phil) Inc. | P360,000.00 | P18,000.00 |
| Jardine Davies Inc. | 300,000.00 | 15,000.00 |
| Conley & Associates Inc. | 90,000.00 | 4,500.00 |
| The Systems Solution Corporation | 233,333.33 | 11,666.65 |
| Conley & Associates Inc. | 180,000.00 | 9,000.00 |

Respondent, on the other hand, did not offer any evidence, and instead submitted the case at bar for decision based on the pleadings and memoranda (Hearing of January 30, 1992; *See* CTA Records, p. 59).

The sole issue brought before the Court for settlement in the instant case is whether petitioner is entitled to the refund/tax credit of the P37,800.00 it is claiming as allegedly overpaid income tax for taxable (calendar) year 1988.

Respondent, in refuting petitioner's claim for tax refund/credit, sets forth the following as its main argument: Petitioner, having failed (allegedly in accordance with a Commission On Audit Memorandum) to submit Official or Central Bank Receipts evidencing actual payment of the P37,800.00 claimed, must be deemed to have failed in proving its entitlement to the refund/tax credit of said amount under the Withholding Tax System (*See* "Memorandum For Respondent", pp. 2-6; CTA Records, pp. 75-79).

The Court cannot agree with respondent's stand. The Court reiterates its previous pronouncements that it is sufficient for the claimant to show three things in proving claim for refund/tax credit, namely: (1) overpayment of the tax; (2) actual withholding of the same through the submission of certificates of creditable income tax withheld at source; and (3) declaration as part of claimant's taxable income of the income from which the tax was withheld. There is no need for claimant to show the actual payment and receipt issued by the central government of the taxes sought to be refunded/credited; this, notwithstanding the Commission on Audit memorandum quoted by respondent in its memorandum, is meant to guide the actions of the BIR's Refund/Credit Division only. The said memorandum does not guarantee claims for tax refunds/credits.

Neither can the Court agree with respondent's other argument against the claim, that it would be premature for the Court to grant the tax refund/credit claimed since there is an on-going investigation/examination of said claim by the BIR. There is no merit to this contention because the purpose of this case is precisely for the Court to make a determination, independent of any findings made by the BIR, on whether the said claim for refund/tax credit should be allowed. More importantly, under the provisions of R.A. 1125, the Court has properly acquired jurisdiction over the instant case and consequently, it can decide the case pending any investigation/examination by the BIR.

Notwithstanding the Court's disagreements with respondent's contentions against petitioner's claim for tax credit/refund, however, the Court nevertheless finds that petitioner is entitled to only a partial tax refund of its 1988 income tax in the amount of P13,500.00.

The Court stated earlier the three requisites for the successful claim for tax refund/credit. In the case at bar, it is evident from a scrutiny of the evidence submitted that there is no indication of actual withholding (that is, the second requisite) of the remaining P24,300.00 of the claim for refund/tax credit for which the Court disallows.

First, the total amount withheld in Exhibits "B" to "F", inclusive, does not equal P37,800.00; and this amount is not equal to the sum of any two or more of the withholding taxes evidenced by said certificates. Second, it must be noted that, among the attachments to petitioner's 1988 annual income tax return, is a breakdown of the P37,800.00 declared by petitioner in 1988 as creditable withholding tax (*See* CTA Records, p. 35), which reads as follows:

Schedule of Creditable Income Tax
Withheld at Source
December 31, 1988

| For The Year | Name of Withholding Agent | Amount |
|---|---|---|
| 1987 | Conley & Associates, Inc. | P 1,500.00 |
| 1988 | Sandoz (Phils.) Inc. | P 6,000.00 |
| 1988 | Jardine Davies Inc. | 3,750.00 |
| 1988 | Conley & Associates, Inc | 12,000.00 |
| 1988 | Manila Garden Hotel | 3,300.00 |
| 1988 | The Systems Solution Corp. | 11,250.00 |
| | TOTAL | P36,300.00 |

Clearly, this schedule can be reconciled with petitioner's Exhibits "A" to "F", inclusive (CTA

Records, pp. 40-45) only insofar as the tax withheld from Conley & Associates Inc., in the total amount of P13,500.00. The other amounts do not tally with the certificates submitted to the Court in evidence, and in fact, no such certificate covering the alleged withholding by Manila Garden Hotel was offered as evidence.

**WHEREFORE,** finding petitioner's claim for refund of the amount of P37,800.00 in alleged overpaid income taxes for taxable (calendar) year 1988 partly without basis, the Court grants the same only in part. Respondent is hereby ordered to refund to petitioner or to issue a tax credit in its name in the total amount of P13,500.00, representing overpaid income tax for 1988. The instant petition for review, with respect to the amount of P24,300.00, is hereby dismissed for lack of merit.

**SO ORDERED.**

Quezon City, Metro Manila, December 1, 1992.

**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 between 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