REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN MIGUEL PROPERTIES, INC.
(formerly: Monterey-/San Miguel Properties, Inc. which was Monterey Farms Corporation originally),
Petitioner,

- versus -

C.T.A. CASE NO. 5483

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 07 1999

x - x

DECISION

Before Us for consideration is a Petition for review filed by the petitioner on April 4, 1997 seeking for a refund of the sum of **TWENTY FIVE MILLION SEVEN HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED FIFTY SEVEN AND FORTY CENTAVOS** (₱25,768,357.40) or in the alternative, the issuance of a Tax Credit Certificate for the said amount, representing allegedly overpaid creditable withholding tax for the taxable year 1994.

The antecedent facts of this case are undisputed.

Petitioner is a domestic corporation engaged in the farming business. It is organized and existing under and by virtue of Philippine laws with principal office at PCPD Building, Sitio Sto. Niño de Bonifacio, Western Bicutan, Taguig, Metro Manila.

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Records of this case show that on April 15, 1995, Petitioner filed its Annual Income Tax Return for the year 1994 reflecting a net loss in the amount of P30,191,468.00. For the same taxable year, Petitioner allegedly paid its corporate quarterly income tax and its creditable withholding tax at source withheld by its various withholding agents in the total amount of P25,778,927.00 (Annex "A"), computed as follows:

Qtr. 1994	Taxable Income	Tax Paid	Tax Date	Annexes
Corporate Quarterly Income Tax				
1st	₱15,878,953.00	₱ 5,557,633.00	May 30, 1994	"B"
2nd	44,206,812.00	15,472,384.00	Aug. 30, 1994	"C"
3rd	12,587,770.00	3,030,720.00	Nov. 30, 1994	"D"
	TOTAL	**24,060,737.00**		

Creditable Income Tax

Various Withholding Agents	1,718,190.00	(explained hereunder)
TOTAL	**₱25,778,927.00**	

Withheld from various income payments made to the petitioner in 1994 (e.g. sale to large taxpayer, sale/rental of real property)

Withholding Agent	Amount	Annexes
Roque Woodworks Corp.	₱ 10,350.00	"E"
Roque Woodworks Corp.	10,350.00	"F"
Phil. Dairy Products	1,375,000.00	"G"
SuperValue, Inc.	100,423.79	"H"
WenPhil Corp.	31,826.77	"I"
WenPhil Corp.	44,742.68	"J"
WenPhil Corp.	35,360.64	"K"
San Miguel Corp.	219.60	"L"
Purefoods Corp.	80,507.93	"M"
United Laboratories, Inc.	409.09	"N"
Dealco, Inc.	29,000.00	"O"
Total	**₱1,718,190.00**	

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Admitting that it would not be able to present the two (2) certificates of withholding tax in the amount of ₱10,569.00, the amount stated above representing petitioner's withholding tax withheld by its various withholding agents was later reduced in petitioner's Supplemental Memorandum to ₱25,768,357.40.

Claiming that there was a loss in its operation in 1994 and 1995, Petitioner, allegedly, was not able to utilize the aforesaid excess income tax payments against its tax liabilities.

On March 27, 1996, Petitioner filed with the respondent Bureau of Internal Revenue an administrative claim for refund involving its alleged excess income tax payments.

Obtaining no affirmative response from the respondent, petitioner elevated its claim to this Court on April 4, 1997 via Petition for Review.

In his Answer filed through registered mail on May 5, 1997, respondent prayed for the dismissal of this case and interposed the following Special and Affirmative Defenses, to wit:

5. Petitioner's claim for refund is under verification/investigation by respondent Commissioner of Internal Revenue;

6. In an action for tax refund, petitioner must show that the taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;

7. Claims for refund are construed strictly against the claimants since they are in the nature of exemption from taxation.

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(Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);

8. Taxes are presumed to have been paid and collected in accordance with law.

After the issues have been joined and the parties have submitted their respective memorandum, this case was deemed submitted for decision on March 9, 1999.

Forming the crux of the controversy is whether or not petitioner was able to present sufficient evidence to warrant the issuance of a Tax Credit Certificate or refund of the amount of ₱25,768,357.40 covering its alleged overpaid income tax payments for taxable year 1994.

In its Memorandum, Petitioner buttresses its stance citing its alleged compliance with the rule on substantiation. Thus, having submitted in evidence all the necessary documents to support its claim for refund/tax credit, petitioner opines that the grant of its claim by this Court is warranted.

Upon the other hand, respondent, in its Memorandum filed through registered mail on December 1, 1998, submits that petitioner is not entitled to the refund sought since the latter failed to show that the income from which taxes were withheld was declared as part of petitioner's gross income in its income tax return. To bolster its opposition, respondent further contends that the Statements and Certificates of Tax Withheld presented and offered by the petitioner as proof of withholding are not conclusive evidence of payment and remittance to the

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Bureau of Internal Revenue, thus, respondent asserts that in view of the foregoing considerations , a judgment should be rendered dismissing the instant petition.

We find for the petitioner.

A cursory reading of the facts would readily reveal that this case presents no novel issue. This Court, in a long line of cases, has laid down the basic requirements before a claim for refund of excess creditable withholding tax at source may be granted. For a clearer disposition of this case, the said requirements are reproduced hereunder; viz:

> 1) That petitioner filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 229 (now 230) of the National Internal Revenue Code, as amended;
>
> 2) That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3) That the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom. (Sec. 10, Rev. Reg. 6-85; City Trust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/ FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994.

Anent the first requirement, the law requires that both the administrative claim for refund with the Bureau of Internal Revenue and the elevation of the case

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with the Court of Tax Appeals via a Petition for Review must be made within two (2) years from the payment of the tax as prescribed under Section 229 of the Tax Code which reads thus:

> **Sec. 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 filed 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.

To the above requirement, petitioner has complied for having filed its administrative claim for refund with the BIR on March 28, 1996 (Annex "T") and its Petition for Review with the Court of Tax Appeals on April 4, 1997, both dates well within two (2) years from April 11, 1995, the date petitioner filed its Annual Income Tax Return for the year 1994 (Annex "A").

Likewise, upon thorough scrutiny of the records, more particularly the transcript of stenographic notes, We conclude that the income upon which the income taxes were withheld at source were included as part of the gross income declared in Petitioner's income tax returns which fact was confirmed convincingly

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and to this Court's satisfaction by Petitioner's witness, Mrs. Emerita Dizon who testified in this wise, viz:

x x x

Q. In exhibit E which you have testified earlier that there was a withholding tax of P1,375,000 upon which how much was the gross income of this?

A. P27,500,000.

Q. My question is this P27,500,000 included in the sales collected you just reported earlier?

A. It is included in the sales and gross income tax.

Q. In the same token Madam Witnesses, exhibit F it was already testified that there was a withheld tax here of P10,350,000. Can you just state to us how much was the gross income of this?

A. P207,000. sir.

Q. This particular exhibit F, who is the withholding agent?

A. B. Roque Woodworks Corporation, sir.

Q. This P207,000. Gross income is this or is this not included in your total gross income?

A. It is included in the gross income.

Q. In the same token in exhibit G which you testified that there was a withheld tax of P29,000 by withholding agent DEALCO Inc. How much was the gross income of this?

A. P580,000. Sir

Q. Is this included or not included in your gross income reported earlier?

A. Included sir.

Q. In the same token in exhibit H which you earlier testified that this represents withheld amount of P100,423 by withholding agent Supervalue. How much was the equivalent gross income on this?

A. P10,042,379.

Q. Is this included or not in your gross income reported?

A. Included sir.

Q. In exhibit I, here you reported that there was the amount of tax withheld of P31,926 by withholding agent Winfil Corp. in favor of Monterey Farms Corporation. How much was the equivalent gross income of this withheld amount?

A. P3,182,677. Sir.

Q. Is this gross income included or not in your sales collected, reported for 1994?

A. Included sir.

JUDGE ACOSTA
How many more documents?

ATTY. STA. ROMANA
Four more certificates, your Honors.

Q. In exhibit J, you reported that there was an amount withheld of P44,742 by withholding agent Winfil Corp. in favor of Monterey Farms Corporation. What is the equivalent gross income of this withheld amount?

A. P4,478,268.

Q. Is this included or not in your sales collected?

A. Included.

JUDGE DE VEYRA
Is that figure appears in that certificate, the gross?

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ATTY. STA ROMANA
Yes, your Honors.

Q. In this exhibit K, you reported that there was an amount withheld of P35,360 by withholding agent Winfil Corp. in favor of Monterey Farms Corporation. What is the equivalent gross income of this?

A. P3,536,064. sir.

Q. Is this included or not in your sales report in 1994?

A. It is included.

Q. In exhibit L, you reported that there was an amount withheld of P409 by withholding agent United Laboratories in favor of Monterey Farms Corporation. What is the equivalent gross income of this?

A. P40,912.40.

Q. Is this included or not in your sales report?

A. It is included.

Q. For the last certificate, in exhibit M there was a reported withheld in the amount of P80,301 by withholding agent Purefoods Corp. in favor of Monterey Farms Corporation. What is the equivalent gross income of this?

A. P8,550,193.

Q. Is this included or not in our gross sales report?

A. Included.

x x x

As to the last requirement, We reject respondent's contention that the Certificates of Tax Withheld are not conclusive evidence of payment and remittance to the Bureau of Internal Revenue. In the absence of any evidence to the contrary, this Court is of the conclusion that the said certificates must be presumed to be regular on its face and should be deemed to have been accepted as accurate and regular by the respondent. Thus, the amount appearing thereon are likewise presumed to be correct for being made under penalties of perjury. Moreover, submission of said certificates is a requirement under Revenue Regulation No. 6-85, an issuance made by the respondent Commissioner himself.

IN VIEW OF ALL THE FOREGOING, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to issue a Tax Credit Certificate in the amount of **TWENTY FIVE MILLION SEVEN HUNDRED SIXTY EIGHT THOUSAND THREE HUNDRED FIFTY SEVEN AND FORTY CENTAVOS** (₱25,768,357.40) in favor of the Petitioner representing overpaid income tax for the year 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(On Leave)
RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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

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