REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

KAPATIRAN REALTY CORPORATION,
Petitioner,

- versus - C.T.A. CASE No. 3941

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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D E C I S I O N

This is a claim for refund by petitioner Kapatiran Realty Corporation of the amount of P290,401.59 representing overpayment of income tax for the years 1983 and 1984.

In petitioner's final adjustment return for 1983, taxable income was P783,293.00, with income tax due thereon of P264,152.00 (Exhs. A to D-6).

It had a withholding tax certificate for 1983 in the amount of P479,783.59 (Exhs. E to E-1), a portion of which ~~in~~ the sum of P311,822.00 was used to pay its tax obligation for the year 1983, resulting in an excess tax payment for 1983 in the amount of P47,670.00 (P311,783.00 - P264,152.00).

Further, although petitioner's withholding tax certificate for 1983 totalled P479,783.59, only the amount of P311,822.00 was claimed as credit for the year 1983, thereby leaving a difference of P167,961.59 (P479,783.59 - P311,822.00).

In its final adjustment return for tax year 1984 petitioner declared a net taxable income of P712,217.00 and income tax due thereon in the amount of P239,276.00 (Exhs. F to F-3).

To settle the aforesaid tax obligation, petitioner credited the following amounts: (1) P47,670.00 representing the excess tax payment in 1983; (2) P167,961.59 representing unclaimed tax credit for 1983; and (3) P314,046.00 representing creditable taxes withheld at source in 1984, or a total tax credit of P529,677.59.

Since the amount of tax credit available for the year 1984 which is P529,677.59, exceeds the amount of tax due for that year which is P239,276.00, petitioner was thus left with a refundable amount of P290,401.59.

Respondent Commissioner of Internal Revenue had not presented any evidence to rebut or contradict petitioner's evidence consisting of its income tax returns and its withholding tax certificates and its claim for refund dated May 25, 1985, (Exh. H). Instead, counsel for respondent submitted this case for decision based on the pleadings.

Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and rest his motion for judgment on these allegations taken together with such of his own as admitted (Bauermann vs. Casas, 10 Phil. 386; Evangelista vs. De la Rosa, 76 Phil. 115), respondent may not be considered to question seriously petitioner's entitlement to its claim for refund. More so, the evidence of petitioner more than sufficiently establishes its right to the refund.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax refund to petitioner Kapatiran Realty Corporation in the amount of P290,401.59 representing overpaid income tax in this case.

Without pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 16, 1988.

CONSTANTE C. ROAQUIN
Associate Judge

WE CONCUR:

AMANTE FILLER
Associate Judge

ALEX Z. REYES
Associate Judge

C E R T I F I C A T I O N

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.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals