REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5536

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 17 1999

x - x

DECISION

This case involves a judicial action for the refund of the sum of ₱3,068,596.24, representing overpaid income tax resulting from an excess payment of creditable withholding taxes at source for the fiscal years ended March 31, 1995 and March 31, 1996. The amount claimed was reduced to ₱2,926,279.42 in petitioner's memorandum (see p. 154, CTA records).

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at PAL Building II, Legaspi Village, Makati City.

On July 28, 1995, petitioner filed its Corporation Annual Income Tax Return for the fiscal year ended March 31, 1995, reflecting a net loss from operations in the amount of ₱362,676,420.00, a nil income tax liability but with a refundable amount of P2,465,067.00, arising from various creditable withholding taxes at source in the amount of P1,055,928.00 and prior year's excess credit of P1,409,139.00 (Exhs. A to A-3, inclusive). On July 29, 1996, petitioner filed its Corporation Annual Income Tax Return for the fiscal year ended March 31, 1996, reflecting another net loss from operations in the amount of P1,432,429,182.00, a nil income tax liability but with a refundable amount of P3,068,596.00, representing various creditable withholding taxes at source in the amount of P2,012,668.00 and prior year's excess credit of P1,055,928.00 (Exhs. B to B-3, inclusive).

Petitioner, believing that it is entitled to the refund of excess payment of income tax pursuant to Section 204(3) of the Tax Code, as amended, filed on two separate occasions, letter-claims for refund. The first letter was filed on July 8, 1996, in the amount of P1,055,927.80 representing excess income tax payment for fiscal year ended March 31, 1995 (Exhs. C to C-3, inclusive) and the second letter was filed on September 30, 1996, in the amount of P2,012,668.44 representing overpaid income tax for fiscal year ended March 31, 1996.

The inaction of the respondent on both claims for refund compelled petitioner to file the instant petition for review on June 25, 1997 in order to conform with the reglementary period of two years as provided for under Section 230 of the Tax Code, as amended.

Respondent, in his Answer, raises the following special and affirmative defenses:

> 6. The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid. **(Manufacturer's Bank and Trust Co. as Trustee for Gen Trust Plan vs. CIR, CTA Case No. 1654, November 29, 1965).**
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> 7. The best evidence of the payment and remittance to the BIR of the withholding taxes allegedly withheld by the payor are the official receipts (ATAPS);
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> 8. The expenses claimed by petitioner in its income tax returns in question are not totally allowable, thus even if granting, for the sake of argument, that the withholding tax payments for that (sic) years are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes;
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> 9. Petitioner has not shown proof that it has incurred losses in the years involved, mere declaration in the return without being supported by records of pertinent papers proving that the claimed deductions were really paid or incurred during the year in question is insufficient;
>
> 10. Petitioner has not shown proof that the deductions claimed are all allowable in accordance with the conditions mandated in Section 29(a), (b), (c), (d), (e), (f), (g), (h) and (i) of the National Internal Revenue Code (NIRC), as amended;
>
> 11. In claiming for refunds, it is incumbent upon petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

> 12. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95 (1970); Manila Electric Co. vs. CIR, 67 SCRA 35 (1975)**; and
>
> 13. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the NIRC.

During trial, petitioner presented, among others, the following documentary exhibits in order to support its judicial claim for refund:

a. The Corporation Annual Income Tax Returns for fiscal years ended March 31, 1995, 1996 and 1997 together with the audited financial statements (Exhs. A to A-3, B to B-3, and G to G-4);

b. The letter-claims for refund with the Bureau of Internal Revenue (Exhs. C to C-3 and D to D-2); and

c. The report of the independent CPA discussing the results of the audit and verification of petitioner's claim for refund, together with the pre-marked certificates of creditable withholding taxes (Exhs. H to H-4-1-x, inclusive).

This case was submitted for decision sans the evidence and memorandum of the respondent.

The issue to be resolved in this case is whether or not petitioner is entitled to the refund of the total sum of P2,926,279.42, representing alleged overpaid income taxes for the fiscal years ended March 31, 1995 and March 31, 1996.

We shall resolve the issue in the light of existing jurisprudence.

In the case of **Citytrust Finance Corporation vs. Court of Tax Appeals and The Commissioner of Internal Revenue, CA G.R. SP No. 28239, dated March 14, 1994,** the Court of Appeals affirmed this Court's decision and declared that for a claim for refund of excess creditable withholding tax to prosper, three basic conditions must be met, to wit:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 230 (now 229) of the National Internal Revenue Code;
>
> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. 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; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993).**

Based on the records of the case, petitioner has satisfactorily proven its compliance with the above requisites.

First, the claim for refund was timely filed within two years from the date of payment of the tax pursuant to

Section 230 of the Tax Code, as amended. The claims for refund covering taxable years ended March 31, 1995 and March 31, 1996 were filed with the Bureau of Internal Revenue on July 8, 1996 and September 30, 1996, respectively, and the instant petition for review was filed on June 25, 1997. The two-year period commences to run on July 28, 1995, for income tax paid in fiscal year ended March 31, 1995 and on July 29, 1996, for income tax paid in fiscal year ended March 31, 1996 (**Commissioner of Internal Revenue v. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992**).

Petitioner also established the fact that the income upon which these creditable withholding taxes were paid were included in petitioner's final adjustment returns. It was positively pointed out by petitioner's witness, Mr. Mario Aguas, that income from which the taxes were withheld were included in petitioner's annual income tax returns. In part, the testimony of Mr. Aguas reads as follows:

ATTY. VENTANILLA

Q. In coming up with this report Mr. Aguas, what were the documents that you audited and examined?

A. We have stated in our report that we have checked and if I may read the procedures that we have carried out.

Q. Go ahead.

A. First of all we checked the completeness of the available certificates which evidence the taxes withheld from Philippine Airlines, Inc. And then we proceeded to reconcile these amounts per certificates with the schedule of taxes withheld provided to us by Philippine Airlines, Inc. And from there we examined the certificates and we ascertained the following: xxx. And last procedure, we ascertained that <u>the corresponding income from which the related taxes withheld were withheld from Philippine Airlines, Inc., was declared as part of its gross income for income tax purposes</u>, by tracing the same against the related source post by Philippine Airlines, Inc.; xxx.

xxx xxx xxx

ATTY. VENTANILLA

After you have conducted this audit, what was the result of your findings, Mr. Aguas?

A. Our findings are contained in the report and if I may again read the report.

Q. Please.

A. On the basis of the procedures that we have performed which we have stated previously, we noted that the claim for refund by Philippine Airlines, Inc. representing the unapplied creditable withholding taxes for the fiscal years ended March 31, 1995 and March 31, 1996 amounting to ₱2,916,885.02 which are shown in exhibit H-2 is properly supported by the required certificates of withholding taxes BIR Form 1743-750, the said represents taxes withheld from Philippine Airlines, Inc. which are evidenced by certificates of withholding taxes, BIR Form 1743-750 made available to us as of February 23, 1998 and for which <u>the corresponding income was declared by Philippine Airlines, Inc. as part of its gross income for income tax purposes</u> in those years. (t.s.n., February 24, 1998, pp. 8 to 14; Underlining supplied)

The above-named CPA is an independent auditor commissioned by the Court to examine petitioner's claim for refund pursuant to CTA Circular 1-95, as amended.

In conclusion, We find for and in favor of the petitioner. The amount of ₱2,926,279.42 is duly supported by Certificates of Creditable Withholding Tax at Source (BIR Form No. 1743.750) and this was confirmed by the commissioned auditor (Exhs. H to H-4-1-x).

As regards respondent's objections that the best evidence of payment and remittance to the BIR of the withholding taxes are the official receipts (ATAPs); and that the income tax returns of petitioner are not conclusive evidence that petitioner incurred net operating losses from business, the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997,** has settled such issues. Quoted hereunder is an excerpt of the said decision:

> "In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:
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>> "Section 8. *Claims for tax credit or refund.* - Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is declared as part of the gross income and the fact of

> withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form 1743-A) showing the amount paid and the amount of tax withheld therefrom."
>
> A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. xxx. (Underlining supplied)

The above pronouncement does not mention that official receipts need to be produced in order to establish facts of payment of income tax. The matters that are required to be shown are the inclusion of the income payments in the income tax return and the fact of withholding. Neither is petitioner required to show proof of the truthfulness of every item in the income tax return. Moreover, respondent counsel failed to consider that the certificate of creditable withholding tax produced by the petitioner is sufficient evidence to show payment as it is issued pursuant to their own Revenue Regulations 6-85.

In sum, petitioner has overcome the burden of proof and should be entitled to the relief sought.

WHEREFORE, finding the petition meritorious, respondent is hereby **ORDERED** to **REFUND** in favor of the petitioner the sum of **P2,926,279.42,** representing overpaid income taxes for fiscal years March 31, 1995 and March 31, 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