LHB

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5353

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 22 1997

x -x

DECISION

This is a judicial action for the refund or for the issuance of a tax credit certificate of the sum of P448,698.00, representing overpaid creditable withholding tax for the calendar year ended December 31, 1993.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the business of property management with office address at FEBTC Center Building, Sen Gil Puyat Avenue, Makati City.

On April 14, 1994, petitioner filed its 1993 Annual Income Tax Return reflecting creditable withholding taxes in the amount of P709,723.00, representing prior year's excess credit of P104,494.00 and the current creditable tax withheld in the amount of P605,229.00. Since petitioner only had an income tax liability of P261,025.00 for the calendar year 1993, petitioner alleges that it overpaid its income tax in the sum of P448,698.00.

Petitioner opted to carry over this overpaid income tax as tax credit to the succeeding taxable year 1994 pursuant to Section 69 of the Tax Code, as amended. However, in the calendar year 1994, petitioner suffered net loss from its operations in the sum of P962,089.00, therefore it was unable to apply the excess income taxes against its anticipated income tax liability in 1994.

Subsequently, on June 6, 1995, petitioner filed a letter claim for refund with the Bureau of Internal Revenue in the amount of P448,698.00, allegedly representing overpaid income tax for the calendar year 1993 (Exhibit "H").

The apparent inaction of the respondent on the claim for refund prompted the petitioner to file this present judicial action on April 12, 1996 and to toll the running of the two-year period allowed under Sec. 230 of the Tax Code, as amended.

Upon these facts, respondent advanced the following special and affirmative defenses thus:

> 1. Petitioner's claim for tax refund or request for issuance of tax credit certificate in the amount of P448,698.00 allegedly representing excessive overpaid income tax for the taxable year 1993 is still under administrative investigation;

> 2. Taxes paid are presumed collected in accordance with law and regulations, hence, not refundable;
>
> 3. In an action for tax refund the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to said action;
>
> 4. It is incumbent upon the petitioner to show compliance with the provisions of Sections 204 and 230 of the Tax Code, as amended;
>
> 5. Well-settled is the rule that claims for refund are construed strictly agains claimants since they partake of the nature of exemption from taxation, **(Resins, Inc. vs. Auditor General, 75 SCRA 754, 1969).**

In support of its claim for refund, petitioner presented various documentary exhibits which consist of the following:

a. The 1993 Annual Income Tax Return (Exhs. "A" to "A-4", inclusive);

b. The 1994 Annual Income Tax Return (Exhs. "G" and "G-1");

c. The letter-claim for refund with the Bureau of Internal Revenue (Exh. "H"); and

d. The various Certificates of Creditable Withholding Tax at Source [BIR Form 1743.1] (Exhs. "B" to "E-1", inclusive).

These documents were not objected to by the respondent insofar as their existence is concerned but takes exception to the veracity of the figures supplied therein.

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of

P448,698.00, representing overpaid creditable withholding tax for the calendar year 1993.

The legal basis of petitioner in claiming for the refund of its overpaid income tax is Section 69 of the Tax Code, as amended, which reads as follows:

> "Sec. 69. ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Underscoring supplied)

Based on the above proviso the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

Since petitioner did not utilize the 1993 overpaid income tax in the succeeding year 1994, due to the losses incurred for that year, the amount of P448,698.00 appears to be refundable. However, petitioner must prove its entitlement for refund by substantial evidence.

Section 230 of the Tax Code provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code is hereby quoted as follows:

> "Sec. 230. ***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 without authority, or of any sum alleged to have been excessive 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 begun after the expiration of two 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 face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (Underscoring supplied)

Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following three requisites, namely:

> 1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) 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).**

A perusal of the evidence submitted by the petitioner reveals that petitioner's claim for refund was timely filed within two years from the date of payment of the tax. Its claim for refund with the Bureau of Internal Revenue was filed on June 6, 1995 (Exh. "H") and its Petition for Review with this Court was filed on April 12, 1996. The two-year period commenced on April 15, 1994, the time required by law for the petitioner to file its final income tax return for the calendar year 1993 (**Commissioner of Internal Revenue v. TMX** Sales, **Inc. et al., G.R. No. 837736, January 15, 1992**).

In addition, the 1993 creditable withholding taxes were duly supported by Certificates of Creditable Withholding Tax at Source (BIR Form 1743.1) in accordance with the requirements of Revenue Regulations No. 6-85, as amended, itemized as follows:

Withholding Agent	Amount of Income Payment	Amount of Tax Withheld	Exh.
Francisco Automotive Dist., Inc.	P 175,000.00	P 8,750.00	B, B-1 & B-2
FEB Stock Brokers, Inc.	6,924,710.00	346,235.52	C, C-1 & C-2
Far East Bank Dev't Corp.	2,451,965.20	122,598.26	D, D-1 & D-2
FEB Insurance Brokers, Inc.	2,552,913.18	127,645.66	E, E-1 & E-2
T O T A L	P12,104,588.38	P605,229.44	

It was further established that the income upon which these creditable withholding taxes were paid were included in petitioner's return (schedule 5, Exh. "A"). However, we would like to stress that petitioner did not present any evidence with regard to the prior year's excess credit in the amount of P104,494.00. It even failed to attach the first page of the 1992 annual income tax return on the 1993 income tax return for us to verify if said amount was indeed excessive.

Thus, we are constrained to deny said portion for lack of evidence. A recomputation of petitioner's overpaid income tax will show that it is entitled to the amount of P344,204.44, detailed as follows:

1993 Creditable withholding tax at source	P 605,229.44
Less 1993 income tax liability	261,025.00
AMOUNT REFUNDABLE	P 344,204.44

WHEREFORE, finding the petition for review meritorious, respondent is hereby ordered to **REFUND** or in the alternative to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the sum of **P344,204.44**, representing overpaid income tax for the calendar year ended December 31, 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals