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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F. JACINTO GROUP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5231

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 15 1997

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DECISION

This case refers to a claim for refund in the amount of ₱1,146,176.30 representing withholding taxes on the income payments made by various clients of F. Jacinto Group, Inc. for the year 1992.

Petitioner is a registered domestic corporation, with office address at 4/F, F. Jacinto House, No. 116 Rada St., Legaspi Village, Makati, Metro Manila. It is engaged in the business of providing management services.

On April 12, 1993, it filed its corporate annual income tax return (Exh. "B", Pet.; p. 52, CTA rec.) for the year 1992. It declared therein a gross income in the amount of ₱28,808,409.00 and business-related deductions in the sum of ₱27,263,853.00, resulting in a net income amounting to ₱1,544,556.00. The tax due was computed at

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P540,595.00, which was paid by applying the available tax credit from the excess tax carried over from 1991.

For the same year 1992, various clients of petitioner withheld and remitted to the government a total amount of P1,465,538.00, details of which are as follows:

Name of Client	Amount Withheld and Remitted	
a) Mindanao Steel Corp.	P 692,350.00	"C-1" (p. 53, BIR rec.)
b) Beatriz Marketing and Trading	283,226.00	"D-1" (p. 54, BIR rec.)
c) Camara Steel Industries, Inc.	444,074.00	"E-1" (p. 55, BIR rec.)
d) Jacinto Iron and Steel Sheets Corp.	45,888.00	"F-1" (p. 56, BIR rec.)
T O T A L	P1,465,538.00	

As this amount was not used to pay any of petitioner's tax liabilities for the year 1992, it was carried over to pay tax liabilities of petitioner for the following quarters of 1993.

In petitioner's 1993 annual income tax return (Exh. "J", Pet.; p. 60, CTA rec.), it declared a gross income of P32,378,318.04 (P31,781,382.56, net of Miscellaneous Income of P596,935.48), and business-related expenses in the amount of P31,465,856.05. The result was a net income of P912,461.99 with a corresponding tax due of P319,361.70. In settling this tax due, petitioner applied the amount of P1,465,538.00, which was the unutilized withholding tax credits in 1992, giving rise to a refundable amount of P1,146,176.30.

On February 3, 1995, petitioner filed with the BIR a claim for refund of the amount of P1,146,176.30. To toll the running of the two-year prescriptive period, petitioner filed the instant petition with this Court on April 11, 1995.

Respondent's Answer (pp. 19-20, CTA rec.) was filed on May 24, 1995 alleging as Special and Affirmative Defenses the following:

> "4. Petitioner's claim for refund is pending administrative investigation;
>
> 5. The amount of P1,146,176.30 claimed by Petitioner as alleged difference between its tax payments and liabilities for the year 1992 and 1993 was not properly documented;
>
> 6. Taxes collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 7. In an action for tax refund the burden of proof is upon the taxpayer to establish its right thereto otherwise, failure to sustain the burden is fatal to said action or claim;
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code as amended;
>
> 9. Well settled is the rule that claims for refund are construed strictly against claimants, since it partakes of the nature of exemption from taxation (**Resins, Inc. v. Auditor General, 25 SCRA 754, 1968**)."

The lone issue to be resolved in this case is, whether or not petitioner is entitled to the refund of the amount of P1,146,176.30, as excess income tax payments in 1992 representing creditable withholding taxes collected by various clients.

In the hearings conducted, petitioner presented Ms. Josephine Reyes, its Finance and Administrative Officer, to identify the documentary evidence, consisting mainly of the following:

1. Written claim for refund filed with the BIR - Exh. "A";

2. Income Tax Returns for the years 1992 and 1993 - Exhs. "B" and "J", respectively;

3. Certificates of Creditable Income Tax Withheld At Source (BIR Form No. 1743-1) - Exhs. "C", "D", "E" and "F";

4. Corporate Quarterly Income Tax Returns for the calendar year 1993 - Exhs. "G", "H" and "I";

5. Alphabetical Lists of Creditable Income Tax Withheld At Source - Exhs. "BK-1", "BI-1", "BM-1" and "BN-1"; and

6. Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W) - Exhs. "L" to "W", inclusive.

Respondent also presented one witness in the person of Noel Marcellano who identified the two (2) documents presented and offered in evidence, namely:

1. Letter of Authority - Exh. "1" (p. 136, CTA rec.) and

2. Memorandum Report dated January 15, 1996 - Exh. "2" (pp. 137-138, CTA rec.).

In his Memorandum report, Mr. Marcellano recommended the granting of the refund in the amount of P1,146,176.00. He stated in his report that:

"The following documents were submitted by the said taxpayer in support of its claim:

1.) Income tax return for 1992, 1993

2.) Formal claim for refund for the excess tax credit for the taxable year 1992

3.) Certificate of Creditable Income Tax Withheld At Source (1743.1)

a.)	Mindanao Steel Corp.	P 692,350.00
b.)	Beatriz Marketing and Trading Corp.	283,226.00
c.)	Camara Steel Industries Inc.	444,074.00
d.)	Jacinto Iron and Steel Sheets Corp.	45,858.00
		P1,465,538.00

4.) Alphabetical List - Creditable Income Tax Return At Source of:

a.) Mindanao Steel Corp.
b.) Beatriz Marketing and Trading Corp.
c.) Camara Steel Industries, Inc.
d.) Jacinto Iron and Steel Sheets Corp.

5.) Monthly Remittance of Income Tax Withheld (1743W) January to December, 1992.

a.) Mindanao Steel Corp.
b.) Beatriz Marketing and

Trading
c.) Camara Steel Industries, Inc.
d.) Jacinto Iron and Steel Sheets Corp.

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In view thereof, it is respectfully recommended that the claim for refund representing excess creditable withholding tax for 1992 be granted." (Underscoring supplied)

After a careful perusal of the records of the case, plus the evidence presented by both parties, the Court found out that petitioner has complied with the requirements to be entitled to a refund, namely:

1. That it filed a claim for refund within the two-year period as prescribed under Section 292 (now 230) of the Tax Code, as amended;

2. That the income upon which the taxes were withheld was included in the return of the recipient, the petitioner herein; and

3. The fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor to the payee, showing the amount paid and the amount of tax withheld therefrom. (Sec. 10, Rev. Regs. 6-85; **Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue v. Court of Tax Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994**)

The Court, however, noted that petitioner did not report all the income payments reflected in the Certificates of Creditable Withholding Tax at Source (BIR Form No. 1743) as shown in Schedule 2 of its 1992 Income Tax Return. Only the amount of ₱28,257,927.00 was reported instead of ₱29,307,888.00 which is the summation of income payments reflected in the certificates. Due to the fact that only the amount of ₱28,257,927.00 was declared in its 1992 Income Tax Return, petitioner is entitled to a refund of the reduced amount of ₱1,093,534.65, computed as follows:

Income Payments declared in the 1992 ITR	₱28,257,927.00
Multiply by	5%
Corresponding Creditable Withholding tax	₱ 1,412,896.35
Less: 1993 tax due	319,361.70
Amount Refundable	₱ 1,093,534.65

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner, the amount of ₱1,093,534.65 as withholding taxes on the income payments made by its various clients for the year 1992.

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