REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

LEGACY HOMES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5791

HON. BEETHOVEN D. RUALO, COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 04 2001

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P4,967,125.67 (see Petitioner's Memorandum, p. 260, CTA records), plus interest at legal rate, allegedly representing excess or overpaid income taxes for the year ended December 31, 1996.

The antecedent facts follow.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of development, sale and lease of real property with principal office at Phase 5, Block 124, Lot 20, Villa de Calamba, Calamba, Laguna (Exhibit A).

For the taxable year 1996, Petitioner filed its quarterly income tax returns, all of which showed losses in its operations:

Exh.	Period Covered	Date Filed	Taxable Income(Loss)	Tax Withheld
B	1st Quarter	May 30, 1996	(P8,198,364.75)	P 298,245.00
C	2nd Quarter	August 29, 1996	(3,981,819.05)	205,977.68
D	3rd Quarter	November 29, 1996	(7,419,399.41)	2,371,648.04

On April 15, 1997, Petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1996, reflecting a net loss of P8,446,116.00, with tax credits/payments totalling P5,380,813.00 (Exhibit E). Petitioner opted to apply as tax credit to the succeeding taxable year 1997 its unutilized tax payments. However, it failed to do so as it ended up again in a loss position in 1997 (Exhibit G). Thus, on April 12, 1999, Petitioner filed with RDO No. 56 of the Bureau of Internal Revenue, a letter claim for the refund of its unutilized tax credit for the year 1996 in the amount of P5,380,813.00 (Exhibit F), on the basis of the following provisions of the Tax Code:

> **Section 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:
>
> x x x x x x x x x
>
> (3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction, No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

> **Section 230 (now Section 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 begun 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.

There being no immediate action on the part of herein Respondent and the two-year prescriptive period was about to lapse, the instant petition was filed on April 14, 1999.

In his Answer filed on June 10, 1999, Respondent raised the following Special and Affirmative Defenses:

> "3. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation by the respondent's Bureau;
>
> 4. It is incumbent upon petitioner to show that the total amount of P5,380,813.00, claimed as excess or overpaid income taxes for the year ended December 31, 1996, were erroneously or illegally collected;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. In an action for tax refund, the taxpayer has the burden of establishing its right thereto, and failure to sustain the same renders the claim for refund fatal;

7. Petitioner must undoubtedly show that it has complied with the provisions of Section 204 in relation to Section 230 (now Section 229) of the Tax Code; and

8. The rule is well-established that claims for refund/tax credit are construed in strictissimi juris against the taxpayer as it partakes the nature of exemption from tax."

In their "Joint Stipulation of Facts and Simplification of Issues" filed before this Court on August 11, 1999, the parties submitted the following issues for resolution:

a. Whether or not there was erroneous and/or illegally withheld and/or overpaid income taxes in the amount of FIVE MILLION THREE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED THIRTEEN PESOS (P5,380,813.00) for the calendar year ended December 31, 1996?

b. Whether or not the erroneous and/or illegally withheld and/or overpaid income taxes in the amount of FIVE MILLION THREE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED THIRTEEN PESOS (P5,380,813.00) is duly substantiated by documentary evidences?

c. Whether or not the erroneous and/or illegally withheld and/or overpaid income taxes in the amount of FIVE MILLION THREE HUNDRED EIGHTY THOUSAND EIGHT HUNDRED THIRTEEN PESOS (P5,380,813.00) was applied to the income tax payable for the calendar year ended December 31, 1997?

d. Whether or not the income payments received by the Petitioner for the calendar year ended December 31, 1996 which was subjected to creditable withholding tax formed part of the gross income declared by the Petitioner in its Annual Income Tax Return for 1996?

In support of its case, Petitioner offered the following in evidence:

Exhibits	Description
A	SEC Amended Articles of Incorporation

A-1 & A-2	External Independent Auditor Report to the Court of Tax Appeals (CTA)
A-3	Certificates of Creditable Withholding Tax 1996 (BIR Form No. 1743-750)
A-4	Withholding Tax Returns 1996
A-5 & A-6	Supplemental External Independent Auditor Report to the CTA
A-5-1	1994 ITR & breakdown of gross sales during the year, including list of individual sales (32 pages)
A-6-1	1995 ITR & breakdown of gross sales during the year, including list of individual sales (32 pages)
A-7-1	1996 ITR & breakdown of gross sales during the year, including list of individual sales (27 pages)
B, C & D	1996 Quarterly Income Tax Returns
E	1996 Corporation/Partnership Annual Income Tax Return with the 1996 Audited Financial Statements
F	Tax Credit claim letter to the BIR dated April 8, 1999 in the amount of P5,380,813.00
G	1997 ITR (14 pages) including the Audited Financial Statements
G-2	1998 ITR (26 pages) including the Audited Financial Statements

However, in its Memorandum filed last February 8, 2001, Petitioner reduced the amount of its claim from P5,380,813.00 to P4,967,125.67 in view of the findings of the independent CPA disallowing the amount of P132,724.83 either because the withholding was not supported by the corresponding certificates or the income was not reported as part of the gross income in the income tax return. Petitioner likewise admitted that the Withholding Tax Certificate in the amount of P280,962.50 pertaining to the tax withheld by Science Park of the Philippines (Exhibit A-5, p. 8 of 9) should have been issued in 1995 and not 1996; therefore, the same must also be excluded.

Respondent's counsel, on his part, presented no evidence and submitted this case for decision based on the pleadings. He likewise failed to file his Memorandum within the period given by the Court.

After a careful scrutiny of the evidence adduced solely by Petitioner, this Court rules against the latter.

It bears stressing that in claims for refund of unutilized or excess creditable withholding taxes, one of the basic requirements is that the Petitioner must show to the satisfaction of this Court that the amount sought to be refunded was not carried over to the succeeding taxable year(s). To prove this point, the succeeding years' returns are vital for the same would show that it did not apply its unutilized or excess creditable taxes to its tax liabilities during the succeeding years.

Since the period covered in the instant petition is 1996, Petitioner presented its 1997 and 1998 returns. Both returns showed that the amount of P5,380,813.00 which Petitioner originally sought to claim as tax credit was carried over until 1998. In its 1998 return, however, Petitioner signified again its intention of carrying over the said amount as tax credit on the following year. Unfortunately, Petitioner failed to present its 1999 Income Tax Return for this Court to determine with certainty that its 1997 unutilized tax payments were no longer carried over. In this Court's recently decided case of **Isuzu**

Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5812 dated March 28, 2001, We ruled on the importance of presenting the succeeding year's return as evidence, thus:

> "Petitioner's 1996, 1997 and 1998 Annual Income Tax Returns disclosed that the claimed 1996 unutilized creditable withholding taxes of P4,623,685.00 were carried-over to 1997 and 1998 taxable years. It is worth noting that petitioner has indicated again its intention of applying the said 1996 unutilized creditable withholding taxes up to the succeeding year 1999. Since Petitioner failed to present its 1999 Annual Income Tax Return, this Court cannot determine with certainty whether or not the aforesaid tax credits were actually utilized or applied against its 1999 income tax liability. Thus, the non-presentation of its 1999 Annual Income Tax Return is fatal to its claim for refund. *(Filinvest Development Corporation vs. CIR, et. al., CA-GR SP No. 56800, dated August 18, 2000)"*

Additionally, this Court observed that in Petitioner's 1997 Annual Income Tax Return, the "x" mark in the box to be refunded was handwritten and the typewritten "x" mark in the box to be applied as credit to next year appeared to have been erased. Since the rest of the entries in the said return were typewritten, it would seem that Petitioner merely belatedly indicated in its 1997 annual income tax return its choice to refund the amount considering that the same was handwritten and the amount of P5,380,813.00 was still carried over in 1998. In **CTA Case No. 4958 entitled Citytrust Investment Philippines, Inc. vs. Commissioner of Internal Revenue** promulgated on April 25, 1996, this Court had the occasion to pass upon a more or less similar issue:

> "It is to be noted that the 1991 final tax return of petitioner shows that the boxes indicating the choices "to be refunded" and "to be applied to the next succeeding taxable year" are both marked with "x" (Exhibit G). We find this an incongruous situation as one can not ask that the same amount to be

> refunded and at the same time to be applied as tax credit to the succeeding taxable year. However, a close scrutiny of the same tax return for 1991 revealed that what was originally marked with an "x" was the box referring to the choice "to be applied as tax credit to the succeeding taxable year" because the marking "x" has the same typewriter print as the rest of the figures contained in the said return. The other marking of "x" for the box referring to the choice "to be refunded" was obviously made with a pen or pencil leading us to give more credence to the option of petitioner of applying the amount to the next succeeding taxable year. So, if the petitioner had indeed applied the same refundable amount to satisfy its tax liabilities for the succeeding year of 1992, then the present claim for refund must be denied because to grant the same would in effect be granting twice the refund of the same amount which is detrimental to the interest of the government."

The failure of Petitioner to present its 1999 Corporation Annual Income Tax Return is fatal to its claim for refund. Well-settled is the rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434 dated October 10, 1997).**

WHEREFORE, premises considered, the instant Petition for Review is hereby denied for insufficiency of evidence. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

577

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