Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL & INVESTMENT CORP.
Petitioner,

- versus -

C.T.A. CASE NO. 6086

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 26 2001

x - x

DECISION

This is a judicial claim for refund or issuance of a tax credit certificate in the amount of *twenty one million four hundred seventy thousand four hundred ninety pesos* (P21,470,490.00) allegedly representing unutilized excess creditable withholding taxes for the calendar year 1997.

The facts are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines and is engaged in business as an investment house. Its principal office is located at 3/F AsianBank Center, Sen. Gil J. Puyat Avenue, Makati City.

On April 15, 1998, Petitioner filed its 1997 annual income tax return (ITR) but amended the same on January 31, 2000 (Joint Stipulation of Facts, CTA records, page 139).

In its 1997 amended ITR (Exhibit B), Petitioner reported a net loss of P6,669,678.00 (Exhibit B-1) and unutilized excess creditable taxes withheld during the calendar year 1997 of P21,470,490.00 (Exhibit B-5) which Petitioner opted to refund as indicated in the return (Exhibit B-6).

On April 6, 2000, Petitioner filed an administrative claim for refund corresponding to its alleged 1997 excess creditable withholding taxes in the amount of P21,470,490.00 (CTA records, page 97).

With the inaction of the Respondent on its claim for refund, Petitioner filed the instant Petition before this Court on April 14, 2000 pursuant to Sections 204(3) [now Section 204(C)] and 230 [now 229] of the Tax Code, which are all hereinbelow quoted, thus:

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** —The Commissioner may –
>
> xxx xxx xxx
>
> "(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 (2) years after the payment of the tax or penalty: x x x "

> "**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 collected 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; x x x."

"In any case, no such suit or proceeding shall be filed 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: x x x."

In his Answer filed through registered mail on May 19, 2000, Respondent interposed the following Special and Affirmative Defenses:

"4. The alleged claim for refund is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

8. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(C) and 229 of the Tax Code, as amended, x x x.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

Petitioner, in support of its claim, presented testimonial and documentary evidence. Respondent, on the other hand, did not offer any controverting evidence.

The parties having submitted their respective memorandum, the case was submitted for decision on June 20, 2001.

The issues presented before this Court, as agreed upon by both parties in the "Joint Stipulation of Facts and Issues" (CTA records, page 140) are as follows:

1.) Whether or not Petitioner has overpaid income tax for calendar year ended December 31, 1997 in the amount of P21,470,490.00;

2.) Whether or not the Petitioner is entitled to the refund of the said amount;

3.) Whether or not the said overpaid income taxes are substantiated by evidence; and

4.) Whether or not the income from which the taxes were withheld was included as part of the gross income for 1997.

In its memorandum, Petitioner relied on the following provisions of Sections 51(d) [now 58(D)], and 69 [now 76] of the Tax Code, to wit:

> **"Sec. 51. *Returns and Payment of Taxes Withheld at Source.*** x x x
>
> (f) Income of recipient. – <u>Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 295 (now 204);</u> if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 50."

> **"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.) <u>Be refunded the excess amount paid, as the case may be</u>.
>
> 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."

The foregoing provisions clearly allow the refund of the excess amount of income tax withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return of the taxpayer in a given taxable year which was likewise not utilized in the succeeding taxable year.

Proceeding now to the first issue, Petitioner's 1997 amended income tax return shows that it incurred a net loss and had no income tax liability against which the reported 1997 creditable withholding taxes of P21,470,490.00 may be applied or credited. Further, Petitioner did not carry-over the amount of P21,470,490.00 in its income tax return for the succeeding taxable year 1998 (Exhibit U-4). Hence, the amount of P21,470,490.00 appears to have been excessively paid and refundable as of December 31, 1997 in accordance with the aforequoted provisions of law.

The next issue that We have to tackle is whether or not the 1997 reported income tax overpayment of P21,470,490.00 is substantiated by documentary evidence.

As oft-cited by this Court in similar cases, the refund of excess creditable withholding taxes is dependent on Petitioner's compliance with the following three basic requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

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3. That the income upon which the taxes were withheld were included in the return of the recipient [*Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

Records reveal that Petitioner complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return *(ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957)*. The claimed excess creditable withholding taxes subject of the instant Petition were for the taxable year 1997 for which Petitioner filed its original annual income tax return on April 15, 1998 (CTA records, page 157). Counting from this latter date, Petitioner's administrative and judicial claims for refund filed on April 6, 2000 and April 14, 2000, respectively, fall within the two-year period prescribed under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code.

Petitioner likewise established the fact of withholding by presenting Certificates of Creditable Tax Withheld at Source issued by various withholding agents for the year 1997, detailed as follows:

Exh.	Period Covered	Withholding Agent	Income Tax Withheld
1.) for underwriting/professional fees received by Petitioner			
K	March 1997	A. Soriano Corporation	P 2,218,004.00
K-1	March 1997	A. Soriano Corporation	(35,000.00)
K-2	March 1997	A. Soriano Corporation	(25,000.00)
K-3	March 1997	A. Soriano Corporation	(25,000.00)
K-4	March 1997	A. Soriano Corporation	(10,000.00)
K-5	March 1997	A. Soriano Corporation	(5,000.00)
K-6	March 1997	A. Soriano Corporation	(7,500.00)
K-7	March 1997	A. Soriano Corporation	(50,000.00)
K-8	March 1997	A. Soriano Corporation	(50,000.00)
O	1997	Equitable Banking Corporation	29,996.00
S	Jan. to Dec. '97	Hi Cement Corporation	1,750.00
F	4th Qtr 1997	Asianbank Corporation	48,095.25

L	April 1997	Ayala Land, Inc.	167,500.00
M	1997	Ayala Land, Inc.	607,750.00
N	November 1997	Int'l Family Food Services, Inc.	20,000.00
P	January to March 1997	The Philippine American Life Insurance Co.	562.63
R	April 1 to Jun 30, 1997	The Phil. American Life Insurance Co.	222.60
T	1997	San Miguel Properties Phils. Inc.	900.00
		subtotal	P 2,887,280.48

2.) for transfer of real property

F	4th Qtr 1997	Asianbank Corporation	P 18,120,478.50
		subtotal	P 18,120,478.50

3.) for rental of real property

C	Jan - Dec. '97	Far Travel Inc.	P 38,818.05
D	Jan.- Dec. '97	AB Leasing & Finance Corp.	18,652.80
E	Jan.- Dec. '97	Anscor Hagedorn Securities, Inc.	77,995.20
G	3rd Qtr 1997	Asianbank Corporation	48,095.25
H	2nd Qtr 1997	Asianbank Corporation	64,127.00
I	1997	Stock Transfer Service, Inc.	196,027.00
J	Jan. 1 to Dec. 31 '97	Bautista Picazo Buyco Tan & Fider	17,665.32
Q	June 1-30, 1997	A. Soriano Corporation	1,350.00
		subtotal	P 462,730.62
		Total	P 21,470,489.60

The question of Petitioner's compliance with the third requirement is similar to the fourth issue raised by both parties. A perusal of the various certificates of creditable tax withheld at source show that the amounts of P2,887,280.48 and P18,120,478.50 represent taxes withheld from underwriting/professional fees received by Petitioner and from its sale/transfer of real property in 1997, respectively. The remaining claimed creditable taxes of P462,730.62 were withheld from Petitioner's 1997 income from rental of real property. Petitioner proved that it declared in its amended 1997 income tax return as part of its gross income of P278,508,357.00 (Exhibit B-3) the income related to the claimed creditable taxes of P2,887,280.48 and P18,120,478.50 or in the sum of P21,007,758.98. However, this Court cannot ascertain whether or not Petitioner declared the rental income pertaining to the creditable taxes of P462,730.62 as there was no indication in the return nor in the audited financial statements regarding the same.

In sum, except for the creditable taxes of P462,730.62 for which Petitioner failed to prove that it declared the rental income corresponding thereto, this Court finds Petitioner to have sufficiently proven its claim. Therefore, Petitioner is entitled to a refund of the substantiated 1997 excess creditable withholding taxes of P21,007,758.98.

Respondent, in his memorandum, argued that the certificates of creditable tax withheld at source do not constitute conclusive evidence of payment and remittance of withholding taxes to the BIR, the same being mere proof of withholding of taxes and not payment or remittance thereof. According to Respondent, the best proof of remittance of the taxes withheld is the certification from the BIR's Revenue Accounting Division.

Time and again, this Court has consistently ruled that a refund claimant/taxpayer need not prove the fact of remittance/payment to the BIR of the claimed creditable withholding taxes because neither the law nor the rules and regulations require him to do so. Revenue Regulations No. 12-94 merely prescribes the submission of withholding tax certificates in claiming refund of excess creditable withholding taxes. It bears stressing also that under Sections 50(b) & 51 [now Sections 57(B) & 58] of the Tax Code, the withholding of creditable income taxes and the remittance thereof to the BIR is the responsibility of the payor/withholding agent and not the payee (Petitioner). Correspondingly, the failure to withhold and remit payments of amounts withheld will make the payor/withholding agent liable and not the payee (Petitioner). Therefore, Petitioner's submission of a certification from the BIR's Revenue Accounting Division as to the remittance of the claimed creditable taxes withheld is not necessary. Additionally, in the case of *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434 dated October 10, 1997*, the Supreme Court held that a refund claimant, aside from complying with the two-year prescriptive period, need only to prove the inclusion of the income payments which were the basis of the withholding taxes and *the fact of withholding*.

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in the amount of **TWENTY ONE MILLION SEVEN THOUSAND SEVEN HUNDRED FIFTY EIGHT & 98/100 PESOS (P21,007,758.98)** in favor of Petitioner representing unutilized creditable income taxes withheld at source for taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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