REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI DATA SYSTEMS CORPORATION, (formerly, Filipinas Management & Leasing Services, Inc.),
Petitioner,

- versus -

C.T.A. CASE NO. 4440

3/3/94

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - - x

D E C I S I O N

Petitioner seeks to recover by way of this petition for review alleged creditable taxes withheld for the year 1987 in the amount of P362,617.00.

Petitioner, BPI Data Systems Corporation, formerly Filipinas Management & Leasing Services Corporation, is a corporation engaged in the business of rendering computer services to the affiliates of the Bank of the Philippine Islands.

On April 15, 1988, petitioner filed it's Corporate Annual Income Tax Return (Exh. A) for the calendar year ending

December 31, 1987. The return shows a Net Loss of P156,971.00 and a "NIL" tax liability. However, there appears a refundable amount of P565,158.00, consisting of prior year's excess credit of P202,541.00 and creditable taxes withheld in 1987 of P362,617.00. Then on May 24, 1988, petitioner filed an Amended Income Tax Return (Exh. A-1) for the year 1987 showing a refundable amount of P538,582.00, computed as follows:

Computer Services Fees		P31,681,055.00
Miscellaneous Income		1,280,736.00
Gross Income		P32,961,791.00
Less: Deductions		32,885860.00
NET INCOME		P 75,931.00
TAX DUE		P 26,576.00
LESS:		
a) Prior Year's Excess Credit	P202,541.00	
b) Quarterly Payments	-	202,541.00
Balance of Tax Due		(P175,965.00)
LESS: Tax Credit		
Creditable taxes withheld in 1987		362,617.00
AMOUNT OF TAX REFUNDABLE		(P538,582.00)

On March 26, 1990, petitioner filed with the respondent a claim for refund in the amount of P362,617.00, representing excess withholding taxes for the year 1987 (Exhs. C and C-1).

Without waiting for respondent's decision on the claim for refund, petitioner filed a petition for review with this Court on April 16, 1990 (Monday), the next working day following April 15, 1990 (Sunday). As ruled by the Supreme Court when the last day for filing a petition for review falls on a holiday or a Sunday the petition is timely filed if done on the next working day. **(Galang v. Workmen's Compensation Commission, 44 SCRA 221.)** In this case, the last day for filing a suit to claim for a refund falls on April 15, 1990 (a Sunday), therefore, the filing of the petition on April 16, 1990 (a Monday) was considered timely filed.

Respondent raised the defense of prescription and that the petition states no cause of action for failure of petitioner to state when the taxes withheld were paid. Respondent averred that taxes withheld are deemed paid when remittance thereof becomes due at the end of the year, that is, on December 31, 1987. The petition filed on April 16, 1990 is beyond the two-year prescriptive period under Section 230 of the National Internal Revenue Code. The burden is on the petitioner to show entitlement to the refund claimed.

The issue is whether or not petitioner is entitled to be refunded the amount of P362,617.00, representing alleged creditable taxes withheld for the calendar year 1987.

Contrary to the contention of respondent that the two-year period should be counted from December 31, 1987 when the taxes withheld are deemed paid, the Supreme Court in the case of **Commissioner of Internal Revenue v. TMX Sales, Inc., et. al., G.R. No. 83736, January 15, 1992,** held that the two-year prescriptive period should be computed at the time of the filing of the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax. [See also **ACCRA Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue v. Asia Australia Express, Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals, G.R. No. 85956, April 10, 1989; Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA - G.R. SP No. 26839, July 31, 1992; and Servicewide Specialists, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals, CA - G.R. SP No. 25893, November 9, 1992.]**

"Petitioner is not required to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in its operations." **[Sun Insurance office Ltd. v. Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989; Paseo Realty & Development Corporation v. Commissioner of**

Internal Revenue, CTA Case No. 4528, April 30, 1993 and Jardine Davies, Inc., v. Commissioner of Internal Revenue, CTA Case Nos. 3839, 4013 and 4124, January 20, 1994.]

In this case, since the petitioner is on a calendar basis of reporting its income the final payment of the income tax is on April 15, 1988, which is the 15th day of the fourth month following the close of the calendar period (December 31, 1987). The two-year prescriptive period is counted from April 15, 1988. Petitioner has up to April 15, 1990 to file a suit for the recovery of excess income taxes paid through the withholding agent. April 15, 1990 falls on a Sunday. When the period for filing the petition for review falls on a Sunday or a legal holiday the last day for filing the petition should be understood to be the next day. Therefore, for purposes of computing the two-year prescriptive period, the filing of the petition on April 16, 1990 is still within the period allowed for by law.

Petitioner presented in evidence the Statements of Taxes Withheld at Source (BIR Forms 1743, 1743.1 and 1743A) showing the income received and the amount of taxes withheld therefrom. For 1987, the computer service income received by petitioner amounted to P35,311,726.64 and the tax withheld by various withholding agents namely, the Bank of the Philippine Islands, BPI Credit Corporation, BPI Family Bank and BPI Securities Corporation totalled P362,617.27, itemized as follows:

Exhs.	Income Received	Rate of Tax Withheld	Amount of Tax Withheld
B	P 2,236,000.00	1%	P 22,360.00
B-1	2,236,000.00	1%	22,360.00
B-2	2,236,000.00	1%	22,360.00
B-3	2,657,500.00	1%	26,575.00
B-4	2,657,500.00	1%	26,575.00
B-5	2,657,500.00	1%	26,575.00
B-6	3,043,226.64	1%	30,432.27
B-7	3,018,900.00	1%	30,189.00
B-8	3,007,500.00	1%	30,075.00
B-9	1,957,500.00	1%	19,575.00
B-10	2,657,500.00	1%	26,575.00
B-11	550,000.00	1%	5,500.00
B-12	2,236,000.00	1%	22,360.00
B-13	1,437,000.00	1%	14,370.00
B-14	2,673,600.00	1%	26,736.00
B-15	50,000.00	20%	10,000.00
Total	P35,311,726.64		P362,617.27

It appears from the record that petitioner declared as computer services income only the amount of P32,961,791.00 (See 1987 Statement of Income and Retained Earnings, p. 53, CTA record) instead of P35,311,726.64. Petitioner failed to include the amount of P2,349,935.64 as part of its gross income in the Amended Income Tax Return in order to reflect the actual income received in the sum of P35,311,726.64 (Exhs. B, B-1 to B-15, inclusive).

In claims for refund of excess withholding taxes petitioner need only to prove the following:

"(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (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; 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 and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993.]**

Having failed to overcome the burden of proof with respect to No. 2 - that the income upon which the taxes were withheld were included in the return of the recipient, the Court cannot award the refund claimed for. A recomputation of petitioner's income tax for the year 1987 would reveal that there is still a liability of P283,895.45, computed as follows:

	Amended Return	Should Be
Gross Income	P32,961,791.00	P35,311,727.00
Less: Deductions	32,885,860.00	32,885,860.00
Net Income	P 75,931.00	P 2,425,867.00
Tax Due:	P 26,576.00	P 849,053.45
Less:		
a) Prior Year's Excess Credit	202,541.00	202,541.00

b) Quarterly Payments	-	-
Balance of Tax Due	(P 175,965.00)	P 646,512.45
Less: Tax Credit		
Creditable taxes withheld in 1987	362,617.00	362,617.00
Tax Still Due	(P 538,582.00)	P 283,895.45

Comparing the amended income tax return filed by petitioner with the recomputation made by this Court, there still appears to be an income tax liability contrary to the allegations of petitioner that it is entitled to a refund. It must be remembered that while petitioner is claiming for the refund of excess creditable taxes withheld for 1987 what it is actually claiming for refund is the alleged overpaid income tax which was collected at source. Section 51(d) in relation with Sections 204 and 49 of the National Internal Revenue Code is clear on this point. Pertinent portions of said provisions are quoted hereunder, to wit:

> "**Sec. 51. Returns and payment of the taxes withheld at source. - (a) Quarterly returns and payment of taxes withheld.** - x x x.
>
> x x x   x x x   x x x   x x x.
>
> **(d) Income of recipient.** - Income upon which any creditable tax is required to be withheld at the source under Section 50 shall be included in the return of its recipient but any 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 204; 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 49. (As amended by BP Blg. 41 and PD 1959.) (see PD 1994.) [Emphasis supplied.]

(e) x x x x x x x x x."

"**Sec. 204. Authority of the Commissioner to compromise, abate, and refund/credit taxes.** - The Commissioner may -

x x x x x x x x x x x x.

(3) Credit or refund taxes erroneously or illegally received, 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. (As amended by PD 1773.)"

"**Sec. 49. Payment and assessment of income tax for individuals and corporations.**

(a) Payment of tax. - (1) In general -x x x.

(b) Assessment and payment of deficiency tax. - After the return is filed, the Commissioner of Internal Revenue shall examine it and assess the correct amount of the tax. The tax or deficiency income tax so discovered shall be paid upon notice and demand from the Commissioner.

As used in this Chapter, in respect of a tax imposed by this title, the term 'deficiency' means:

(1) The amount by which the tax imposed by this Title exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts

> previously assessed (or collected without assessment) as a deficiency, and decreased by the amount previously abated, credited, returned, or otherwise repaid in respect of such tax; or
>
> (2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed or collected without assessment shall first be decreased by the amounts previously abated, credited, returned, or otherwise repaid in respect of such tax. (As amended by PD 1994 and EO 37.)"

There is no doubt that the income taxes withheld at source were rightfully collected and paid. However, with respect to the refund of excess creditable taxes withheld the actual claim for refund covers the alleged overpaid income tax corresponding the year 1987. With the underdeclaration of income received by petitioner, it is evident that the income tax collected at source is less than the income tax due per our computation. Petitioner has the burden of proof to show that it is entitled to the refund of the amount claimed as refundable because taxes are presumed to have been collected in accordance with laws and regulations. **[Caltex (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986.]** Having failed to overcome such burden, We see no reason why the claim for refund should be granted.

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED**. Costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 3, 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that the decision was reached after due consultation among 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