REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**BETTY SY CHUA,**
Petitioner,

- versus -

**C.T.A. CASE NO. 5502**

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**
JUL 08 1998

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# D E C I S I O N

This case involves a judicial action for the refund of the sum of ₱301,315.61 representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the calendar years ended December 31, 1994 and December 31, 1995.

Petitioner is an individual taxpayer residing at #18 East Avenue, Pinyahan, Quezon City. She is a medical doctor by profession and is also engaged in the business of leasing property under the business name of Lyman Office and Commercial Building.

For the calendar year 1994, petitioner filed her Individual Income Tax Return on February 13, 1995, reflecting, among others, a refundable amount of ₱63,492.13 (Exhs. A, and A-1 to A-6, inclusive).

For the calendar year 1995, petitioner filed her Individual Income Tax Return on April 15, 1996 showing a total refundable amount of ₱301,315.61 (Exh. B). Petitioner alleges that out of the amount of ₱301,315.61, the sum of ₱61,492.13 represents creditable withholding tax payments for the year 1994.

On April 11, 1997, petitioner filed a letter claim for refund with the Bureau of Internal Revenue seeking for the refund of the amount of ₱301,315.61, representing unused creditable withholding tax at source based on Section 51(d) of the Tax Code, as amended (Exh. D).

Since respondent has neither granted nor acted upon the claim for refund, petitioner is left with no recourse but to file the instant petition for review on April 14, 1997 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Respondent, in her Answer, raises as special and affirmative defenses the issue of prescription with regard to the claim for refund for the calendar year 1994; that the claim was not properly documented; and that claims for tax refund/credit are construed *strictissimi juris* against the taxpayer since refunds are in the nature of exemptions from taxation, citing the case of **Manila Electric Co. vs. Commissioner of Internal Revenue, 162 SCRA 351**.

In order to support her entitlement to the said claim, petitioner presented the following documents:

a. The 1994, 1995, and 1996 final income tax returns (Exhs. A, A-1 to A-6, B, and C);

b. The various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. D to OO, inclusive of sub-markings); and

c. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. D and D-1).

The aforementioned documents were all admitted by the Court in a Resolution, dated December 4, 1997.

Respondent, on her part, opted not to present evidence but forwarded to the Court the BIR records of this case.

Eventually, this case was submitted for decision sans the memorandum of the respondent.

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of ₱301,315.61, representing alleged overpaid creditable withholding tax for the calendar years 1994 and 1995.

Petitioner cites as legal bases Sections 51(d), and 204(3) of the Tax Code, as amended.

For easy reference, pertinent portions of Sections 51(d), and 204(3) of the Tax Code, as amended, are hereby quoted as follows:

> **"Sec. 51. *Returns and Payments of taxes withheld at source.*** - xxx
>
> (d) Income of Recipient. - Income upon which any creditable tax is required to be withheld at source under Section 50 shall be included in the return of its recipient but <u>any excess of the amount of tax so withheld over</u>

> the tax due on his return shall be refunded to him subject to the provisions of section 204; if the income 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.
>
> **Sec. 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may -
>
> (1) xxx
>
> (2) xxx
>
> (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." (Underlining supplied)

The issue presented before us is nothing new. In fact this Court has already laid down three basic requirements, for a taxpayer to comply with, in order to be entitled to the refund of excess creditable withholding tax at source and these are the following:

> 1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3. The fact of withholding is established by a copy of statement (BIR Form

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> 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; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

A circumspect study of the records and evidence of the case revealed that petitioner met the requirements mentioned above.

As regards requirement number one, the claim for refund of overpaid income tax arising from the excess payment of withholding tax at source should be filed both with the Commissioner of Internal Revenue and with this Court within the two-year period from the date of payment of the tax as provided under Section 230 of the Tax Code, as amended. A verification of the judicial claim for refund of petitioner for the calendar year 1994 disclosed that she only filed the instant action on April 14, 1997 whereas the date of payment of the tax was on February 13, 1995, the date when the annual income tax return of petitioner was filed. Therefore, the 1994 claim for refund in the amount of ₱63,492.13 has already prescribed for being filed beyond the two-year period provided by law **(Commissioner of Internal Revenue vs. The Philippine**

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**American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corp. vs. 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 vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989).** With respect to the 1995 overpaid creditable withholding tax in the amount of ₱237,823.48, the filing of the claim for refund was within the two-year period. It appears from the records that the filing of the administrative claim for refund with the Bureau of Internal Revenue was done on April 11, 1997 (Exh. D) and the petition for review with this Court on April 14, 1997. The counting of the two-year period commences to run on April 15, 1996, the time when the petitioner filed her final income tax return for year 1995.

Going now to the second requirement, petitioner undoubtedly showed that the income upon which the creditable withholding taxes for 1995 were paid was included in her gross income. This is shown in Schedule 1, Section D of the 1995 annual income tax return of petitioner (Exh. B).

Lastly, the certificates of creditable withholding tax at source (BIR Form 1743.1) for the year 1995

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supported the amount of creditable taxes withheld in the amount of ₱237,823.48 (Exhs. W to KK inclusive, and MM to OO). Furthermore, these creditable withholding taxes for the year 1995 were not utilized in the succeeding year 1996 as shown by the 1996 income return of petitioner (Exh. C).

The entitlement of petitioner to the 1995 claim for refund was even confirmed by counsel for the respondent during the hearing of February 5, 1998, where he manifested that the report of the revenue examiner affirms the factual basis of petitioner's claim and that the taxes withheld have been remitted to the respondent's bureau (See Minutes of the Session, February 5, 1998, p. 100, CTA records).

**WHEREFORE**, in view of the foregoing, the petition for review is partially meritorious. The claim for refund of petitioner for the calendar year 1994 is hereby DENIED for being filed out of time but the claim for refund for excess creditable withholding tax for the calendar year 1995 is GRANTED. Accordingly, respondent is ordered to **REFUND** in favor of petitioner the sum of ₱237,823.48.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

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**WE CONCUR:**

**RAMON O. DE VEYRA**
Associate Judge

**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
Court of Tax Appeals

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