REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4688

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 17 1995

x - x

D E C I S I O N

This is a claim for the refund of unapplied withholding taxes for the taxable year 1989 amounting to a total of P78,381.78.

Petitioner, a domestic corporation, owns several properties which were leased to the following entities in 1989 and which entities deducted withholding taxes due on the rentals:

NAME OF LESSEE/ WITHHOLDING AGENT	AMOUNT OF RENTALS	AMOUNT Of TAX WITHHELD
Consumer's Grocery and Gen. Mdsr.	P 18,900.00	P 945.00
Winco Enterprises	91,725.00	4,586.25
Negros Navigation Co.	37,500.00	1,875.00
Phil. Explosives Corp.	48,975.00	2,448.75
Phil. Explosives Corp.	48,922.97	489.23
Hemisphere-Leo Burnett	918,720.00	45,986.00
Ener-Vet Inc.,	21,524.00	1,076.20
Onyx Agro Industrial	55,000.00	2,750.00

NAME OF LESSEE/ WITHHOLDING AGENT	AMOUNT OF RENTALS	AMOUNT Of TAX WITHHELD
Atlantic Gulf and Pacific	87,320.00	4,366.00
Sugar Regulatory Board	193,440.00	9,672.00
Maritime Phils. Port Sys.	193,440.00	9,672.00
Makati Agro Trading, Inc.	193,735.00	1,937.35
T O T A L	P1,760,761.97	P78,381.78

(Petition for Review p. 1)

During the year 1989, petitioner incurred a loss amounting to P1,123,943.00 and hence, applied a claim for the refund of the withholding taxes in the amount of P78,381.78 since it had no occasion to apply the same to its income liabilities because of the incurred losses.

On December 18, 1991, petitioner sent a follow-up letter regarding the claim for refund but to no avail. Hence, this petition for review.

The issue on whether or not Petitioner is entitled to the amount of refund claimed is not difficult to resolve as the records of the case reveal that it is indeed entitled to such refund. In fact, the Respondent can neither defend nor prosecute her case so that We were constrained to declare her to have waived her right to present additional evidence. Said, We: "This Court has already considered respondent to have waived the right to present additional evidence on January 20, 1994, due to the many delays caused by her failure to prosecute the case. To show further the inability of respondent to prosecute her case on March 21, 1994 and April 11, 1994 respondent again failed to present her witness causing further delay to the early disposition of this case. Furthermore, since respondent failed to file her memorandum simultaneously with that of petitioner ... and to this date she has not submitted her memorandum, this case is deemed submitted for decision on the basis of the records and the pleadings" (Resolution dated April 15, 1994, CTA records, p. 166)

The records and pleadings of the case at bar indubitably reveal that in taxable year 1989, Petitioner had no taxable income as defined under Section 27 of the National Internal Revenue Code (NIRC). In fact, it incurred substantial losses for that year amounting to P1,123,943.00 (Exh. "L") which remained uncontroverted by the Respondent. <u>There being no occasion to apply subject withholding taxes to its income tax liabilities, petitioner should therefore be refunded of the rental taxes withheld by its lessees pursuant to Section 6 of the Revenue Regulation on Expanded Withholding Tax No. 6-85 which specifically provides, thus</u>:

> Section 6. ***Statement of income payments made and taxes withheld.*** - Every withholding agent required to deduct and withheld taxes

> under these Regulations shall furnish each recepient, in respect to his or its receipts during the calendar quarter or year a written statement (BIR Form 1743) showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom. Such statement (BIR Form 1743) shall be furnished the corporate payee not later than the 20th day following the close of the quarter in which payment was made or not later than March 1 of the following year in the case of individual payee. However, upon request, the payor shall be obliged to furnished such statement to the payee simultaneous with the income payment.
>
> <u>The amount so withheld shall be allowed as a tax credit against the income tax liability of the payee in the taxable quarter or year in which income was earned or received.</u> (Emphasis supplied).

The figures however, as presented by the Petitioner is not in accordance with the evidence on hand. Hence, the correct amount refundable should have been P78,956.78 and not P78,381.78 as evidenced on records, computed as follows:

NAME OF LESSEE/ WITHHOLDING AGENT	AMOUNT OF RENTALS	AMOUNT Of TAX WITHHELD	
Consumer's Grocery and Gen. Mdsr.	P 18,900.00	P 945.00	(Exh. "A")
Winco Enterprises	91,725.00	4,586.25	(Exh. "B")
Negros Navigation Co.	50,000.00	2,500.00	(Exh. "C")
Phil. Explosives Corp.	97,897.00	2,937.98	(Exh. "D")
Hemisphere-Leo Burnett	918,720.00	45,936.00	(Exh. "E")
Ener-Vet Inc.,	21,524.00	1,076.20	(Exh. "F")
Onyx Agro Industrial	55,000.00	2,750.00	(Exh. "G")
Atlantic Gulf and Pacific	87,320.00	4,366.00	(Exh. "H", "H-1" to "H-8")
Sugar Regulatory Board	45,000.00	2,250.00	(Exh. "I")
Maritime Phils. Port Sys.	193,440.00	9,672.00	(Exh. "J")
Makati Agro Trading, Inc.	193,735.00	1,937.35	(Exh. "K")
T O T A L	P1,773,261.00	P78,956.78	

However, since this amount did not represent the amount claimed in the Bureau of Internal Revenue, We are constrained to refund only what was originally claimed and contained in the Petition for Review.

WHEREFORE, in all the foregoing the Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of P78,381.78 representing the unapplied withholding taxes.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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