REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEAL
QUEZON CITY

THE PHILIPPINE BANKING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 5569**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 04 2000

x - x

DECISION

The case at bar seeks for the refund of the amount of P56,764.923.83 allegedly representing Petitioner's unutilized creditable withholding taxes for the year 1995.

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Philbank Building, Ayala Avenue, City of Makati.

In the year 1995, Petitioner's income from the sale of its land & building along Ayala Avenue in the City of Makati and various real estates foreclosed by it as well as rental income were allegedly subjected by its payors to withholding taxes in the total amount of P56,764,923.83, broken down as follows:

A. **FROM SALE OF REAL PROPERTY**

WITHHOLDING AGENT	INCOME PAYMENT	AMOUNT OF TAX WITHHELD	EXH.
Security Land Corporation	986,375,481.00	55,000,000.00	A

Abat, Marcelo	651,100.00	19,533.00	B
Aldos, Lorna M.	107,930.00	3,765.00	C
Alphaphot Realty and Dev't Corp.	4,000,000.00	200,000.00	D
Atok, Imelda A.	237,600.00	3,564.00	E
Azada, Yvonne M.	259,200.00	3,888.00	F
Bryan Dist. & Services, Inc.	259,200.00	3,888.00	G
Buzon, Irene	3,800,000.00	190,000.00	H
Caro, Emerita A.	370,800.00	5,562.00	I
Catolico, Virgilio	90,000.00	1,350.00	J
Chiongbian, Victor	1,914,600.00	57,438.00	K
Cobarrubias, Jose Victor O.	1,100,000.00	33,000.00	L
Daclis, Robert	259,200.00	3,888.00	M
Del Rosario, Regino Anselmo	3,500,000.00	175,000.00	N
Domingo, Leticia	215,000.00	3,225.00	O
Dominguez, Joanne Albert	1,766,000.00	58,278.00	P
E.B. Villarosa & Partner Co. Ltd.	7,000,000.00	350,000.00	Q
Hidalgo, Bienvenido C.	669,540.00	20,086.00	R
Marcial, Rodolfo M.	138,000.00	5,400.00	S
Mendoza, Eric	1,500,000.00	67,638.75	T
Mendoza, Felimon	294,000.00	4,410.00	U
Natividad, Cornelio F.	500,000.00	7,500.00	V
Navarro, Leticia	800,000.00	24,000.00	W
Norona, Aluysius M.	450,000.00	6,750.00	X
Norona, Aluysius M.	403,500.00	6,052.00	Y
Quibod, Armando M.	650,000.00	19,500.00	Z
Ramos, Arsenio	1,800,000.00	200,000.00	AA
Soriano, Yolanda V.	259,200.00	3,888.00	BB
Tan, Mercy Bos	259,200.00	3,888.00	CC
Tan, Nehemiah Uy	259,200.00	3,888.00	DD
Terraces Realty & Dev. Corp.	4,428,000.00	221,400.00	EE
Tiotuico, Renato J.	250,000.00	3,750.00	FF
Torres, Gladys Glenda D.	216,000.00	3,240.00	GG
TOTAL	1,024,782,751.00	56,713,770.40	

B. FROM LEASE OF REAL PROPERTY

WITHHOLDING AGENT	AMOUNT OF INCOME PAYMENT	AMOUNT OF TAX WITHHELD	EXH.
Allied Banking Corporation	64,125.00	3,206.28	HH
Philippine Overseas Employment Administration	348,000.00	17,400.00	II
Manly Tours & Travel Corp.	252,000.00	12,600.00	JJ
Golden Star Travel Service	110,800.00	5,400.00	KK
Eastern Assurance & Surety Corp.	49,000.00	2,450.00	LL
Fortune Life Ins. Co., Inc.	81,215.00	3,954.00	MM
Ernesto B. Mendoza-Kumintang	72,600.00	3,630.00	NN
Glaser Loans & Credit Corp.	57,462.00	2,873.10	OO
TOTAL	1,035,202.00	51,513.38	

C. TOTAL OF CREDITABLE TAX WITHHELD AT SOURCE

From Sale of Real Property	P56,713,770.45
From Lease of Real Property	51,153.38
	P56,764,923.83

On April 15, 1996, Petitioner filed its Corporate Annual Income Tax Return (ITR) for the calendar year ended December 31, 1995 (Exh. QQ) which showed a total gross income of P1,631,316,064.00, total deductions of P1,633,938,284.00, net operating loss of P2,622,220.00, and refundable amount of P58,384,996.00 (Exh. QQ-3) which it sought to be applied as tax credit to the succeeding taxable year as indicated in Number 6, Section B of the said ITR.

However, since Petitioner was also at a loss position for the succeeding calendar year ended December 31, 1996 (Exh TT), the aforesaid creditable withholding taxes were not utilized for the said taxable year.

In a letter dated August 28, 1997, which was received by the Respondent's Bureau on September 2, 1997, Petitioner demanded the refund/tax credit of the amount of P56,764,923.83, representing its unutilized creditable withholding taxes for 1995, inasmuch as it had no tax liability for the years 1995 & 1996 from which to credit the said amount (Exh. PP).

Due to Respondent's inaction on Petitioner's claim for refund/tax credit, Petitioner filed with this Court the instant Petition for Review on December 24, 1997.

Petitioner presents the proposition that it is entitled to the refund of the amount of P56,764,923.83 representing its alleged unutilized creditable withholding taxes for the year 1995 as authorized in Section 6 of Revenue Regulation (RR) No. 6-85, as amended, to wit:

Section 6. ***Statement of income payment made and taxes withheld –***

> "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 the income was earned or received."

Further, said refund is in order as it has complied with the requirements of Section 10 of RR No. 12-94, which reads:

Section 10. Claims for Tax Credit or refund-

> (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

x x x

By way of Special and Affirmative defenses, Respondent argued that (1) Petitioner's claim for tax refund is undergoing the process of administrative investigation and evaluation, (2) the aforestated amount of P56,764,923.83 being claimed by Petitioner was not properly documented, (3) taxes paid to and collected by the government are presumed to have been made in accordance with law and regulations, hence, not refundable. (4) in an action for tax refund, the burden of proof is upon the taxpayer to establish its right thereto and failure to sustain the burden is fatal to said action, (5) it is incumbent upon the Petitioner to show that it has faithfully complied with the provisions of section 204 in relation to section 230, both of the Tax Code and (6) claims for refund are construed strictly against claimants since they partake of the nature of exemption from taxation.

The issue that comes to the fore for our consideration is whether or not Petitioner is entitled to the refund/tax credit of the amount of P56,764,923.83 allegedly representing its excess/unutilized creditable withholding taxes for the year 1995.

There is no doubt that any excess of the amount of tax so withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return shall be refundable to the taxpayer. This is clearly provided by section 51(f) [now Section 58 (D)] of the Tax Code, which states:

> **"Sec. 58.** ***Returns and Payment of Taxes Withheld at Source-*** **.**
>
> *(D) Income of Recipient.-* Income upon which any creditable tax is required to be withheld at source under Section 57 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 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 56.
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> x x x

However, this does not mean that the taxpayer is automatically entitled to its claim for refund. It must establish by sufficient evidence its entitlement thereto.

A careful scrutiny of the evidence adduced by Petitioner revealed that the bulk of the claimed refundable amount is sourced from the sale of its land and building along Ayala Avenue to Security Land Corporation in the year 1995 for P1,100,000,000.00, allegedly subjected to a withholding tax of P55,000,000.00 (see Capital Gains Tax Return, Exh. A) which Petitioner now claims to be refundable since it has no tax liability for the years 1995 & 1996, as it was in a loss position during that period.

The Court affirms Petitioner's stance.

Revenue Memorandum Circular (RMC) No. 7-90 dated January 16, 1990, clearly provides that "all sales, exchanges or transfers of real properties (whether classified as ordinary or capital asset) by corporations consummated on or after January 1, 1990 are <u>subject to the creditable withholding tax</u>." However, in the case of individuals, estates, trusts, trust funds or pension funds, only sales, exchanges or transfers of real properties classified as ordinary assets, consummated on or after January 1, 1990, are subject to the creditable withholding tax. Sales by individuals of real properties classified as capital assets remain subject to the 5% capital gains (final) tax.

Further, the said RMC provides that in the case of a corporation the amount of withholding tax paid to the BIR evidenced by Confirmation Official Receipts (CR/ROR) and covered by BIR Form Nos. 1743 W and 1743 B is creditable against its income tax liability for the quarter in which payments or remittance of taxes were made.

Moreover, Revenue Regulations No.12-94 dated June 27, 1994, provides that "the gross selling price or total real property, whether held as capital or ordinary asset by a corporation not habitually engaged in the real estate business shall be subject to a seven and one half percent (7.5%) creditable withholding tax.

Thus, there is no doubt that the amount of P55,000,000.00 is creditable to Petitioner's tax liability for 1995, and since it has no tax liability to which it can credit the said amount, for the said year and in the succeeding year of 1996, Petitioner is entitled to the refund of the same. It is therefore a necessity on the part of the internal revenue service to investigate and examine carefully the tax returns of the taxpayer.

It is not amiss however to mention that Petitioner should have used the rate of 7.5% as clearly stated in RR No. 12-94 and not the 5% rate as shown in its Capital Gains Tax Returns/Applications for Certificate Authorizing Registration (Exh. A).

It must be noted however that under the New Tax Code (Republic Act 8424), sale by a corporation of its capital assets are subject to a final tax of 6%, and no longer to creditable withholding taxes [Sec. 27 (D)(5)].

A perusal of the evidence submitted by Petitioner reveals that its claim for refund was timely filed within two years from the date of payment of the tax. Its final income tax return for the calendar year 1995 and its claim for refund was filed with the Respondent's Bureau on April 15, 1996 (Exh. QQ) and September 2, 1997 (Exh. PP), respectively, while the instant Petition for Review was filed with this Court on December 24, 1997. The two-year prescriptive period within which to claim a refund commences to run at the earliest on the date of the filing of the adjusted final tax return *(ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957).*

In addition, the creditable withholding taxes were duly supported by a Capital Gains Tax Return and Certificates of Creditable Withholding Tax at source in accordance with the requirements of Revenue Regulations No. 6-85 (Exh. A to OO, inclusive).

It was likewise established that the income upon which these creditable withholding taxes were paid were included in Petitioner's annual income tax return (Exh. QQ). Thus, the Court agrees with Petitioner that it has complied with the requisites laid down by the Supreme Court, in the case of *ACCRA Investment Corp. vs. CA , supra),* in the refund of creditable withholding taxes, to wit: (1) that it has shown on the return of the recipient that the income payment received was declared as part of the gross income, (2) the fact of withholding is established by a copy of the statement duly issued by the withholding agent to the payee and (3) that the taxpayer filed its claim for refund within the two-year period prescribed under Section 230 of the Tax Code. It was however noted by the Court that the "Certificates" issued by Mercy Bos Tan (Exh. CC), Nehemiah Uy Tan (Exh. DD), Terraces Realty and Development Corp. (Exh. EE), Gladys Glenda Torres (Exh. GG), Manly Tours & Travel Corp. (Exh. JJ) and Golden Star Travel Services (Exh. KK) in the amounts of P3,888.00, P3,888.00 P221,400.00, P3,240.00, P12,600.00 and P5,400.00, respectively, did not indicate the particular year in which the income payment and the withholding of tax were actually made, thus, the Court placed no probative value on these. documents. The Court therefore has disallowed the total amount of P250,416.00, constituting the amounts found in the aforementioned certificates from the claimed refund.

Respondent did not object to the documentary evidence offered by the Petitioner as proof of its claim for refund but only took exception to the purpose for which the same was offered. Neither did Respondent question Petitioner's income tax return for the year 1995. Hence, Respondent is hereby considered to have vouched the veracity of the Petitioner's exhibits. The instant case was submitted for decision without any evidence submitted by Respondent.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is partially **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** A Tax Credit Certificate in favor of herein Petitioner in the amount of P56,514,507.83, representing the latter's unutilized creditable withholding taxes for the year 1995. No costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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