REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE FLEMING (PHILS.), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4365

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

11/9/92

D E C I S I O N

This involves a claim for refund of allegedly overpaid income tax for the taxable year 1987, in the amount of P63,181.00

On March 15, 1988, petitioner, a duly authorized Philippine corporation, filed its Corporate/ Partnership Annual Income Tax Return for taxable year 1987 (Exh. "E"; CTA Records, pp. 64-82), therein declaring a net loss in the amount of P322,168.00 and consequently, a tax due of "NIL" (Exh. "E-3"; CTA Records, p. 64). Said return likewise shows a refundable amount of P63,181.00. due petitioner, which amount was computed thus:

687

Tax due on 1987 income	P 0.00
Less: Cash payment made to BIR on May 29, 1987, covered by Confirmation Receipt No. B-10600861 and BIR Payment Order No. C-0404878 (Exhs. "B" and "B-1", respectively; CTA Records, p. 61)	43,204.00
1987 income tax payable as of date of filing of consolidated return	(P 43,204.00)
Less: Tax withheld on advisory fees	19,977.00
Total amount due for 1987 (refundable)	(P 63,181.00)

A formal claim for refund of said amount of P63,181.00 was made by petitioner in a letter, dated December 13, 1988, and received by the BIR on December 19, 1988 (Annex "E", Petition For Review; CTA Records, pp. 24-25), addressed to the Chief of the BIR's Appellate Division.

As respondent has not yet acted on petitioner's claim for refund, the instant petition for review was filed with this Court on May 25, 1989, in order to toll the two-year prescriptive period provided for by the Tax Code.

It is apparent from respondent's memorandum that petitioner's claim for refund of the amount of P43,204.00, which represents the tax payment made by petitioner on May 29, 1987 (evidenced by Confirmation Receipt No. B-10600861 and BIR Payment Order No. C-0404878) is not being questioned. This is clearly shown by the two grounds laid down in said memorandum to negate petitioner's entitlement to the refund sought. These grounds, which both relate solely to the tax withheld at source from advisory fees paid to petitioner, are that:

1. Statements and certificates of tax withheld presented and offered by petitioner as proof of withholding are not conclusive evidence of payment and remittance to the Bureau of Internal Revenue ("Memorandum For The Respondent", p. 3; CTA Records, p. 140); and

2. There is no showing that the income from which taxes were withheld was declared as part of petitioner's gross income tax return ("Memorandum For The Respondent", p.7; CTA Records, p. 144).

Even at this early juncture, therefore, the Court finds that the claim for refund of P43,204.00 is valid and allowable. This conclusion is based not only on the fact that respondent admitted that petitioner had a tax due of "NIL" in 1987 and had paid the amount of P43,204.00 on May 29, 1987; but also on the fact that sufficient evidence, in the form of Confirmation Receipt No. B-10600861 and Payment Order No. C-0404878, was submitted to persuade Us of petitioner's entitlement to said amount.

The issue thus presented to the Court for adjudication is whether or not petitioner's claim for refund of the remaining amount of P19,977.00, representing withholding tax at source from advisiory fees, is proper.

Anent the first ground raised by respondent, as above-quoted, he argues that:

> "Here, private respondent (sic) never presented official or confirmation receipts to prove payments and remittance to the Bureau of Internal Revenue of those amounts indicated in each of the above-mentioned statements and certificates of withholding taxes, amounting to a total of P31,736.70, thus casting reasonable doubt as to the veracity of the alleged payments or remittances to the Bureau of Internal Revenue by private respondent and its withholding agent. xxx" ("Memorandum For Respondent", p. 4; CTA Records, p. 141)

With respect to his second ground, respondent stated thus:

> "The income tax return of petitioner for 1987 do (sic) not show that its income from which taxes were withheld was included as part of its gross income. On the contrary, the evidence shows that it under-declared its gross income. During the year involved, petitioner declared gross income of P399,546.00, while it actually received income of P634,734.00.
>
> "Since petitioner failed to comply with the requirement that the income from which the taxes were withheld shall be declared as part of the gross income in the income tax return, it is not entitled to the refund of the amount sought to be refunded." ("Memorandum For The Respondent", p. 8; CTA Records, p. 145)

While We agree with petitioner that Certificates/Statements of tax withheld at source issued by withholding agents are sufficient proof of such withholding, We find that the evidence submitted in the instant case does not convince Us of petitioner's entitlement to the amount of withholding tax claimed for refund.

The Court's conclusion rests on the following factual findings:

1. The amounts recorded as withheld in the Certificates of Creditable Income Tax Withheld At Source (Exhibits "F" to "J", inclusive; CTA Records, pp. 83-87) are as follows: P1,720.30; P5,876.90; P5,133.80; P16,005.70; and P3,000.00. These amounts total P31,736.70, which is not equal to the P19,977.00 being claimed for refund in the instant petition. More importantly, the said P19,977.00 cannot be obtained from adding any two or more of the amounts stated in Exhibits "F" to "J", inclusive.

This reveals petitioner's failure in showing that Exhibits "F" to "J", inclusive, evidence the withholding of the amount claimed for refund in the instant petition;

2. Exhibits "A", "C", "D", and "E" show the following amounts declared by petitioner as the

amount of taxes withheld and gross income, respectively, for each quarter of 1987:

Quarter	Amount of Withholding taxes	Income
First	P15,151.75	P308,702.65
Second	P 1,138.65	P 29,737.56
Third	P 2,591.30	P 54,442.85
Fourth	P 1,095.30	P 6,662.92

Meanwhile, Exhibits "F" to "J", inclusive, state the following as the respective amounts of income payments from which the creditable income taxes were withheld:

Exhibit	Amount of Income Payment
"F"	P 34,406.00
"G"	P117,538.00
"H"	P102,676.00
"I"	P320,114.00
"J"	P 60,000.00

None of the amounts declared as withholding taxes in Exhibits "F" to "J", inclusive, or any combination thereof, equal any of the quarterly withholding taxes declared by petitioner in its quarterly and annual income tax returns; and none of the amounts declared in Exhibits "F" to "J", inclusive, as income payments, or any combination thereof, equal any of the amounts declared as gross income for the four quarters of 1987 by petitioner in its Exhibits "A", "C", "D" and "E".

This reveals petitioner's failure in showing that Exhibits "F" to "J", inclusive, singly or in any combination, correspond to any of the quarters of 1987;

3. By petitioner's own computation (Reply Memorandum, pp. 4-6; CTA Records, pp. 153-155), it actually received a total of P694,656.00 in 1987. It is then unquestionable that, if the amounts of income payments as stated and evidenced by Exhibits "F" to "J", inclusive, were declared as part of petitioner's income for 1987, that the total of said amounts should equal the computed actual receipt for 1987 (note that as per the schedule attached to petitioner's 1987 consolidated annual income tax return, petitioner's **entire** income for the year came **only** in the form of various advisory fees [CTA Records, p. 65]). However, it is clear that:

Exhibit	Amount of Income Payment
"F"	P 34,406.00
"G"	P117,538.00
"H"	P102,676.00
"I"	P320,114.00
"J"	P 60,000.00
TOTAL	P634,734.00

The foregoing factual findings add up to the following conclusions: Exhibits "F" to "J", inclusive, do not evidence the withholding of the amount of P19,977.00 being claimed in the instant petition; and nowhere in the records is there evidence that the income from which the P19,977.00

claimed withheld was declared by petitioner as part of its 1987 gross income.

Therefore, there being no proof of either the withholding of the amount of P19,977.00 or of the declaration in 1987 of the income from which it was allegedly withheld, the Court cannot allow petitioner's claim for refund of this amount.

WHEREFORE, the Court hereby grants the instant petition in part, and orders respondent Commissioner of Internal Revenue to refund to petitioner P43,204.00 or issue a tax credit in its name in the same amount, representing overpaid income taxes for the year 1987. The Court hereby denies the petition in respect to the claim for refund in the amount of P19,977.00 in allegedly overpaid withholding taxes, for lack of evidence to prove that the said amount was actually withheld and that the income from which the same was allegedly withheld was declared by petitioner as part of its taxable income for the year 1987.

No costs.

SO ORDERED.

Quezon City, Metro Manila, November 9, 1992.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(on leave)
MANUEL K. GRUBA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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