Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

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

- versus -

C.T.A. CASE NO. 4691

12/6/93

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

D E C I S I O N

This case involves a claim for refund of overpaid creditable withholding tax from income payments for calendar year 1989 in the amount of ₱199,255.60.

Petitioner is a corporation organized and existing under the laws of the Philippines with address at BPI Building, Ayala Avenue corner Paseo de Roxas, Makati, Metro Manila.

On April 16, 1990, petitioner filed with the Bureau of Internal Revenue its annual income tax return for 1989 showing a refundable amount of ₱877,857.60, computed as follows:

Income Schedule 2 -		₱ 19,560,000.00
Less: Deductions		20,134,621.00
Net Loss		₱ **574,621.00**
		127.00
		6,348.00
Tax Due		(568,146.00)
Less:		
a.) Prior Years Excess Credit	₱ 678,602.00	
b.) Quarterly Payments made this year	-	
c.) Creditable tax withheld (expanded withholding) [Exh. A]	199,255.60	₱ 877,857.60
Total Amount Due/Refundable		**(₱ 877,857.60)**

The amount of ₱678,602.00 prior years excess credit is subject of a separate claim for refund pending before this Court by the petitioner which is as follows:

CTA Case No.	Year Included	Amount Being Claimed
4530	1988	₱ 140,020.00
4440	1987	362,617.00
TOTAL		₱ 502,637.00
Less : Amount to be accounted for		678,602.00
Discrepancy		**₱ 175,965.00**

The discrepancy in the amount of ₱175,965.00 was explained in CTA Case No. 4440 based on petitioner's Formal Offer of Evidence which is quoted hereto:

> "Exhs. 'A' and 'A-1' are offered to show that the petitioner filed an income tax return and an amended income tax return for the calendar year 1987, showing a prior years excess credit of ₱202,541.00 against which was applied the income tax due for 1987 of ₱27,576.00, leaving a balance of ₱175,965.00 and that in addition to this balance, the taxpayer also reported creditable taxes withheld in 1987 of ₱362,617.00 to make a total amount refundable of ₱538,582.00, which the taxpayer indicated would be applied as Tax Credit to the succeeding taxable year.

In this connection, it was learned that the remaining balance of ₱175,965.00 has not been judicially claimed.

On December 20, 1991, petitioner filed a claim for refund with respondent's Legislative Ruling and Research Division asking for the refund of the remaining ₱199,255.60, representing alleged excess creditable withholding tax for 1989. Without waiting for respondent's decision, petitioner filed on December 27, 1991, a petition for review before this Court.

After a thorough review of the arguments raised by both parties this Court arrived with the following findings. In the process of going over the records of the case, the Court noted that the 1990 Income Tax Return was not presented in evidence by the petitioner. Had it been presented in evidence, petitioner may have claimed as tax credit the amount sought for. Accordingly, since the 1990 Income Tax Return was not presented, it cannot be ascertained whether the refundable amount of ₱199,255.60 was already credited being part of ₱877,857.60 applied for as tax credit to the succeeding taxable year 1991. There is no way by which this Court can determine how much it is legally entitled to.

Unfortunately, petitioner fall short in its obligation to submit that vital document which would have worked to his advantage. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the time tested doctrine that claims for refund are construed strictly against claimant (*Commissioner of Internal Revenue vs. Ledesma*, G.R. No. L - 17509, January 30, 1970, 31 SCRA 95).

To the Court's mind, granting petitioner's prayer will be a dangerous road to follow, thus endangering our time tested maxim that justice will be served to anyone who earnestly seek for it.

WHEREFORE, in view of the foregoing, this case is hereby dismissed for lack of merit.

SO ORDERED.

Quezon City, Metro Manila, 6 December 1993.

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