Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FILINVEST ALABANG, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 6060

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 04 2001

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DECISION

This case involves a claim for refund of excess creditable withholding taxes for taxable year ending December 31, 1997 in the amount of P115,342,511.45.

It appears from the record of the case that Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office located at FAI Administration Office, Filinvest Corporate City, Muntinlupa, Metro Manila. On April 15, 1998 it filed its Corporate Annual Income Tax Return. However, on April 29, 1998, Petitioner filed an Amended Corporate Annual Income Tax Return for year ending December 31, 1997 showing the following data: (Exhibits B & D)

Gross Income	P648,703,870.00
Less: Deductible Expenses	761,042,503.00
Net Loss	(P112,768,633.00)

Prior Year Creditable
Withholding Tax – P 28,057,450
1997 Creditable
Withholding Tax - 115,535,411

Total Unutilized CWT - P143,592,861.00

These taxes withheld in 1996 and 1997 pertain to income earned by Petitioner from sales of various condominium units and commercial lots and leases of real property.

On April 30, 1999, Petitioner filed its Amended Corporate Income Tax Return for the year ending December 31, 1998, showing the following data: (Exh I)

Gross Income		P 16,836,402.00
Less: Deduction	P86,098,644.00	
Net Loss		(P69,262,242.00)
No prior years excess credit	(nil)	
1998 Creditable Withholding Tax	P 3,868,007.00	
Paid ERAP Tax Amnesty	P 2,124,098.00	
Excess credit/overpayment	(P1,743,909.00)	

On September 7, 1998, Petitioner filed its administrative claim for refund with the Bureau of Internal Revenue seeking the refund of excess Creditable Withholding Taxes paid to the BIR for taxable year ended December 31, 1997, in the amount of P115,535,411.00. The claim was not acted upon with finality by the BIR, hence in April 12, 2000; Petitioner filed the instant Petition for Review to prevent the claim from prescribing pursuant to Section 230 of the Tax Code. The claim was however reduced to P115,342,511.45 to correct an inadvertent clerical error committed in the preparation of the schedule of creditable withholding taxes paid where the creditable withholding tax for the sale of a commercial lot to Philippine Eagle Properties, Inc. was erroneously typed P835,900.00 instead of P643,000.00 as evidenced by the Monthly Remittance Return of Income Taxes Withheld (Exh "P-16")

Respondent for his part admits and denies some factual allegations of the Petitioner and alleged by way of special and affirmative defenses, the following:

(7) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. CIR, 67 SCRA 35)

(8) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes 49 Phil. 466; Union Garment Co. vs. Court of Tax appeals, 4 SCRA 304)

(9) In Action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

(10) It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue code;

(11) Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

The sole issue submitted by the parties to be resolved in the instant case, is whether or not Petitioner can substantiate its claim for tax refund.

More particularly to resolve said issue; the following requirements must be met to be entitled to a refund of excess creditable withholding tax:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue code;
2. That the income upon which the taxes were withheld were included in the return of the recipient; and
3. That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payer (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable 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, C.A. 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994].

The aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.**

On the first requirement there is no dispute that the administrative claim for refund was filed on September 7, 1998 while the subject Petition for Review was filed on April 12, 2000, well within the two (2) year prescriptive periods provided under Sec. 230 of the Tax code.

On the second requirement, the aforementioned 1997 ITR (Exh. "D") as amended and the Quarterly Income Tax Returns of the first, second and third quarters of 1997 (Exhs "E", "F" and "G") respectively indicate that the income payments from which the 1997 creditable withholding tax in the amount of P115,342,511.45 (as adjusted) were declared as part of gross income in the amount of P648,703,870.22.

On the third requirement, the fact of withholding taxes reflected in aforesaid 1997 year-end and quarterly ITR's, were actually remitted to the BIR, is established by the respective monthly remittance returns of income taxes withheld (Exhs "P-2" to "P-130"), Certificates of Creditable Withholding Tax at Source (Exhs "P-1", "P-140" to P-143" and "Q-1" to "Q-123", inclusive) and the Certification by Far East Bank and Trust Company (Exh "n" to "n-2").

Based on the audit conducted by the auditing firm, R. S. Bernaldo & Associates, the commissioned independent Certified Public Accountant, it recommends the grant of the claim less the following exceptions:

Amount Applied for Refund	P115,535,411.00
Less: Exceptions	
A – no supporting document for payment	
(1) Asian Appraisal Holdings Inc.	34,091.00
(2) EEI Corporation	33,600.00
(3) Philippine Eagle Properties Corp.	192,900.00
Total	P260,591.00
B – Without BIR Return 1743 W	
(1) Unicorn Construction Co., Inc.	12,550.00
C - Without Batch Control Sheet BF Corporation (not included in the BIR Revenue Accounting Division Certification)	15,532.00
Total Exceptions	(P288,673.00)
Excess Creditable Tax per audit	P115,246,738.00

Respondent's Counsel himself supported the claim itself when he presented the report of Audit investigation conducted by the Revenue Officers of the Large Taxpayers Service of the BIR (Exhs "1" & "2"). The result of the investigation is summarized as follows:

Total Claim filed			P115,535,411.00
Less: Deductions to claim:			
1. no RAD certification on remittance			
Phil. Eagle	643,000.00		
BF Corp	15,532.00		
Asian Transmission Corp.	363,613.00		
EEI Corp	33,600.00		
FAI/Ramon Davila-variance in amount	60.00	1,055,805.00	
2. variance in claim per application vs. Claim filed with CTA-Phil. Eagle Transaction		192,900.00	
3. variance in claim per application vs. Returns/ w/tax certificates			
per return/schedule of claims	115,578,746.00		
per application	115,535,411.00		
variance		43,335.00	
4. Landbank adjustment		184,225.55	
Total Deductions			1,476,265.55
Total allowed claim for tax refund, per audit			P 114,059,145.45

While the report of the BIR contained a lower claimable amount, this court is deducting further from the above total allowable claim two items contained in the independent CPA audit report which are not included above, these are:

Unicorn Construction Co., Inc. 1997 without BIR return (1943 w)	P 12,550.00
Asian Appraisal Holdings Inc. – 11/25/97 No supporting document of payment	34,091.00
Total	P 46,641.00

By deducting the said amount P46,641.00, we further reduced the claimable amount to P114,012,504.45.

Moreover, as can be shown by Petitioner's 1998 amended income tax return, no prior years excess tax credit was carried over to this year and the company still suffered a net loss.

In view of all the foregoing and pursuant to Section 69 of the National Internal Revenue Code:

> "SEC. 69 – FINAL ADJUSTMENT RETURN – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> [a] Pay the excess tax still due; or
>
> [b] Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess of the estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding year."

WHEREFORE, finding the claim meritorious, this court hereby GRANT the claim but in the reduced amount of P114,012,504.45.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
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