**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**STATE LAND INVESTMENT CORP.,**
Petitioner,

- versus -

C.T.A. CASE NO. 6064

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
APR 04 2002

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# DECISION

This petition for review seeks to refund the amount of P9,742,270.51, allegedly representing excess withholding tax credits for the taxable year ended December 31, 1997.

The facts are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with business address located at the 3rd Floor, State Centre Building, No. 333 Juan Luna Street, Binondo, Manila. It is a real estate developer engaged in the development and marketing of low, medium and high cost subdivision projects in Cavite, Bulacan and in the cities of Manila, Pasay and Quezon (paragraphs 1 and 2, Joint Stipulation of Facts and Issues).

Petitioner is registered with the Bureau of Internal Revenue (BIR) with Tax Identification Number (TIN) 000-341-850-000 and adopts a calendar year from January 1 to December 31 for purposes of keeping its books of accounts and for filing its annual income tax returns (paragraph 3, Joint Stipulation of Facts and Issues). As a real estate developer, Petitioner withheld taxes in its property sales transactions ranging from 1½% to 5% of the gross selling price, depending on whether the transaction is a cash sale or under deferred payment plan or installment payment plan.

For the taxable year 1997, Petitioner duly filed its quarterly income tax returns, showing the following details:

| | Period Covered | Taxable Income (Loss) | Tax Withheld |
|---|---|---|---|
| Annex H, Petition for Review | 1st Quarter | P (5,838,415.21) | P2,913,544.11 |
| Annex I, Petition for Review | 2nd Quarter | 13,766,651.13 | 2,896,935.59 |
| Annex J, Petition for Review | 3rd Quarter | (18,490,207.61) | 4,418,579.26 |

On April 15, 1998, Petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1997 (Exhibit B), reflecting a taxable income of P27,723,328.00, with tax due thereon in the amount of P9,703,165.00. Its total tax credits for the said year amounted to P23,632,959.00, inclusive of its prior year's excess tax credits of P9,289,084.00. Thus, after applying its total tax credits of P23,632,959.00 against its income tax liability of P9,703,165.00, the amount of P13,929,794.00 remained unutilized, which Petitioner opted to apply as tax credit to the succeeding taxable year 1998.

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On April 15, 1999, Petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1998, declaring a minimum corporate income tax due in the amount of P4,187,523.00. Petitioner charged the said amount against its 1997 excess credit of P13,929,794.00, leaving a balance of P9,742,271.00. Claiming that taxable year 1997 is still governed by the old National Internal Revenue Code, as amended and Section 68 thereof limits the crediting of the refundable amount shown on a final adjustment return against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year only, Petitioner filed with the Appellate Division of the Bureau of Internal Revenue on April 7, 2000, a letter-claim for the refund of its unutilized tax credit for the year 1997 in the amount of P9,742,270.51 (Annex Q, Petition for Review, Exhibit D).

There being no immediate action on the part of herein Respondent and the two-year prescriptive period was about to lapse, the instant petition was filed on April 13, 2000.

In his Answer filed on May 10, 2000, Respondent raised the following Special and Affirmative Defenses:

> "4. Assuming but not admitting that petitioner filed an application for refund and/or tax credit with the respondent, the same is subject to administrative investigation and resolution (San Carlos Milling vs. Commissioner of Internal Revenue);
>
> 5. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

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6. Petitioner must show that it has complied with the provisions of Section 58(c) and (d) of the Tax Code, as amended, as enunciated in City Trust Finance Corporation vs. C.T.A., to wit:

7. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code;

a) That the claim is filed with the Commissioner of Internal Revenue within the 2-year period from the date of payment;

b) It must be shown on the return of the recipient that the income payment received was declared as part of gross income;

c) The fact of the withholding is established by a copy of the statement duly issued by the payor to payee showing the amount of tax withheld therefrom.

8. Claims for refund of taxes are construed strictly against the claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. versus CIR, 67 SCRA 351.)"

In their "Joint Stipulation of Facts and Issues" filed before this Court on August 23, 2000, the parties submitted the following issues for resolution:

a. Whether or not Petitioner is entitled to a tax refund or applicable tax credit.

b. Whether or not Petitioner has actually been credited with the alleged unutilized and unapplied withholding taxes on the sale of real properties for the taxable year 1997 in the aggregate amount of P9,742,270.51.

In support of its case, Petitioner offered the following in evidence:

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| Exhibits | Description |
|---|---|
| A, B, & C | Annual Income Tax Returns of State Land Investment Corp. for the years ended December 31, 1996, December 31, 1997 and December 31, 1998, respectively |
| D | Letter addressed to the Commissioner of Internal Revenue, dated April 6, 2000 and received by the BIR on April 7, 2000, filing the Petitioner's claim for refund of the excess payment of creditable withholding tax for the taxable year ended December 31, 1997 amounting to P9,742,270.51 |
| H to II | Various License to Sell issued by the Housing and Land Use Regulatory Board for the purpose of proving that Petitioner is habitually engaged in the real estate business and consequently, the sale, exchange or transfer of lots/units from the said project is subject only to creditable withholding tax at the rates of 1.5%, 3% or 5% depending upon the gross selling price |
| AAA | Report of Mr. Ruben Rubio on the results of the procedures performed to verify the Petitioner's claim for refund/tax credit representing excess or overpaid income taxes of P9,742,270.51 |

Petitioner likewise presented documents to support the fact of withholding like the withholding tax remittance returns, transfer certificates of title, certificates authorizing registration and Authority to Accept Payment issued by the BIR, as well as cash vouchers and official receipts.

Respondent's counsel, on his part, presented no evidence on the ground that the investigation has not yet been completed. He submitted this case for decision based on the pleadings (p. 333, CTA records).

After a careful scrutiny of the evidence adduced solely by the Petitioner, this Court rules against the latter.

In this claim for refund of unutilized or excess creditable withholding taxes, the oft-repeated rule that Petitioner must show to the satisfaction of this Court that the amount sought to be refunded was not carried over to the succeeding taxable year(s), deserves reiteration. Clearly, the succeeding years' returns are vital for the same would show that it did not apply its unutilized or excess creditable taxes to its tax liabilities during the succeeding years.

Since the period covered in the instant petition is 1997, Petitioner presented its 1998 income tax return to show that indeed, the amount of P13,929,794.00 which Petitioner originally intended to claim as tax credit was carried over during the said year. But out of the P13,929,794.00, Petitioner was able to utilize only the amount of P4,187,523.00 representing its minimum corporate tax due, leaving the balance of P9,742,271 which it now seeks to refund. However, also evident in the same return is Petitioner's intention of carrying over its 1997 excess tax credit to the following taxable year 1999 by marking an "x" on the box indicating "to be carried as tax credit next year.". Unfortunately, Petitioner failed to present its 1999 Income Tax Return to enable this Court to determine with certainty that its 1997 unutilized tax payments were no longer charged against its tax liabilities for the said year.

In this Court's recently decided cases of **Legacy Homes, Inc. v. Hon. Beethoven D. Rualo, Commissioner of Internal Revenue, CTA Case No. 5791, promulgated on**

**May 4, 2001 and Isuzu Philippines Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5812, dated March 28, 2001,** we ruled on the importance of presenting the succeeding year's return as evidence, thus:

> "Petitioner's 1996, 1997 and 1998 Annual Income Tax Returns disclosed that the claimed 1996 unutilized creditable withholding taxes of P4,623,685.00 were carried-over to 1997 and 1998 taxable years. It is worth noting that petitioner has indicated again its intention of applying the said 1996 unutilized creditable withholding taxes up to the succeeding year 1999. Since Petitioner failed to present its 1999 Annual Income Tax Return, this Court cannot determine with certainty whether or not the aforesaid tax credits were actually utilized or applied against its 1999 income tax liability. Thus, the non-presentation of its 1999 Annual Income Tax Return is fatal to its claim for refund. (*Filinvest Development Corporation vs. CIR, et. al., CA-GR SP No. 56800, dated August 18, 2000)*
>
> Petitioner cannot at the same time claim for refund and continuously apply the 1996 excess tax credits to its succeeding years' income tax liabilities. The two tax remedies of refund and tax credit are alternative and the choice of one precludes the other. *(Philippine Bank of Communications vs. CIR, G.R. No. 112024, dated January 28, 1999)*"

Likewise, in the case of **Paseo Realty and Development Corporation v. Commissioner of Internal Revenue and Court of Tax Appeals,** CA- G.R. SP-No. 33589, promulgated on October 14, 1994, the Court of Appeals passed upon the same issue:

> "In its 1989 income tax return, Petitioner filled up the box "to be applied as tax credit to succeeding taxable year", which signified that instead of a refund, Petitioner will apply the total amount of P172,447.00, which includes the amount of P54,104.00 sought to be refunded, as tax credit for its tax liabilities in 1990. Thus, there is really nothing left to be refunded to petitioner for the year 1989. To grant petitioner's claim for

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> refund is tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government."

The failure of Petitioner to present its 1999 Corporation Annual Income Tax Return is fatal to its claim for refund. Well-settled is the rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434 dated October 10, 1997).**

**WHEREFORE,** premises considered, the instant Petition for Review is hereby denied for insufficiency of evidence. No pronouncement as to costs.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
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

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