ib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION
(Formerly Investors Finance
Corporation/FNCB Finance),
Petitioner,

- versus - C.T.A. CASE NO. 4046

COMMISSIONER OF INTERNAL
REVENUE.
Respondent.
x - - - - - - - - - - - - - - - - x

2/24/93

# D E C I S I O N

This is a claim for judicial refund of overpaid withholding tax payments in the amount of P343,391.69 for the calendar year ended December 31, 1983.

The records show that petitioner Citytrust Finance Corporation is a domestic corporation duly organized under Philippine laws. Petitioner is engaged in the financing and leasing business with principal office in Makati, Metro Manila. Petitioner in the pursuit of its business operation has derived income from rentals, commissions, collection fees, insurance agency fees, allowance to solicit insurance, brokers fees and management fees coming from various clients.

On April 16, 1984, petitioner filed with the Bureau of Internal Revenue its Corporate Income Tax Return for the year ending December 31, 1983 indicating a refundable amount of P343,391.69, computed as follows:

| | |
|---|---|
| Gross Income | P189,738,257.00 |
| Less: Deductions | 189,773,344.00 |
| Net Income (Loss) | (P 35,087.00) |
| | |
| Tax Due | NIL |
| Tax Credit for 1983 | 343,391.69 |
| Total Amount Refundable | P 343,391.69 |

On April 14, 1986, petitioner filed with respondent a claim for tax refund in the amount of P343,391.69 for the year 1983 (Exh. BR). Since petitioner suffered a loss in its operations it therefore had no income tax liability against which the creditable withholding taxes could be applied. Thus, petitioner opted to claim for the refund of the withholding taxes paid. As respondent has not acted on the claim for refund, petitioner filed the instant petition for review with this Court.

Respondent admits in his answer incontestable facts, such as: petitioner's having filed its annual corporate income tax return for 1983 and the filing of a claim for refund. He denies petitioner's allegation pertaining to its claim for lack of knowledge or information sufficient to form a belief as to the truth of the matters stated therein.

As special and affirmative defenses, respondent stated among others:

a. That the mere averment that petitioner suffered a net loss from its operation, in the amount of P35,087.00, for the year 1983 does not *ipso facto* merit a refund;

b. That it is incumbent upon petitioner to prove compliance with the provision of Section 292 and 295 of the Tax Code of 1977;

c. That the amount sought to be refunded were collected in accordance with law; and

d. That claims for refund are strictly construed against the claimant.

In his memorandum, respondent maintains that the income from which taxes were withheld was not included as part of its gross income. However, respondent admits that only the amount of P163,365.40 were withheld from petitioner's income of P3,924,123.81 for 1983 (Respondent's Memorandum, p. 218, CTA records). Hence, if at all petitioner is entitled to the refund claimed it should only be P163,365.49, computed as follows: (p. 217, ibid.)

| Nature of Income | Amount | Tax Withheld |
|---|---|---|
| Rental (total payment) | P1,155,217.37 | P 57,761.50 |
| Commissions (total) | 694,471.91 | 11,321.21 |
| Collection fees | 3,208.27 | 158.52 |
| Insurance Agency fee | 57,332.00 | 2,866.60 |
| Allowance to solicit insurance | 6,489.82 | 324.34 |
| Brokers fee (total) | 207,404.44 | 933.32 |
| Management fee | 1,800,000.00 | 90,000.00 |
| TOTAL | P3,924,123.81 | P163,365.49 |

The question submitted for decision is whether or not petitioner is entitled to the refund of P343,391.69 as alleged overpaid withholding income tax for the year 1983.

The Tax Code provides that the withholding agent is required to furnish the payee or recipient of income a written statement (BIR Form 1743W1) showing:

(1) the income or other payments made by the withholding agent; and

(2) the amount of tax deducted and withheld therefrom. [Sec. 54(c) NIRC; see also Sec. 6 of Rev. Reg. No. 6-85.]

On the part of the recipient of the income, it is essential that the income, from which the tax was withheld at source under Section 53, should be included as part of the income declared in his income tax return. If the taxes withheld were over and above the tax due in his return, the same shall be refunded to him pursuant to the provision of Section 295. [Sec. 54(f) NIRC.]

A claim for refund of excess withholding taxes shall be given due course only when the following requirements have been complied with:

(1) that the taxpayer or recipient of income filed a claim for refund within the two (2) year period from the date of payment of the tax;

(2) that the income payment received was declared as part of his gross income in the return; and

(3) the fact of withholding is established by a copy of statement duly issued by the payor to the payee (BIR Form 1743.1) showing:

(a) the amount paid; and

(b) the amount of tax withheld therefrom

*(Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991).*

In the recent case of ***Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA-G.R. SP No. 26839, July 31, 1992,*** the Court of Appeals affirmed in toto our decision in the case of ***Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991,*** and added:

> "Of greater significance also is the respondent Tax Court's observation that the remittance of tax withheld made by the withholding agents could have been easily verified by petitioner, considering that it is within their competence to know, to check and verify the regularity of performance of his subordinates. It underscored the fact that the remittance of withholding taxes by producing the confirmation receipt is not required by law and regulation as the withholding agent is not within the control of the payee taxpayer but are the tax agent of the Commissioner of Internal Revenue. It is on this account that the taxes deducted and withheld are considered special fund in trust for the government until paid to the Bureau of Internal Revenue. The withholding agent merely hold the amount in trust for the government (Resolution of the Court of Tax Appeals, December 3, 1991, Rollo, p. 96)."

During the trial, petitioner offered documentary exhibits to show proof of payment and remittance of the creditable withholding taxes sought to be refunded in its favor. The record shows that petitioner has submitted as evidence various certificates of creditable income tax withheld at source (BIR Form 1743.1), statement of tax withheld at source (BIR Forms 1743 and 1743 A) and the certification issued by various withholding agents to support its claim for refund. Petitioner's 1983 Income Tax Return showed a gross income of P189,738,257.00 (Exhibit "A"). Out of the total creditable withholding taxes claimed by petitioner amounting to P343,391.69 it was able to prove by the presentation of documentary evidence the sum of P204,792.45 only, summarized as follows:

| Nature of Income | Amount | Tax Withheld |
|---|---|---|
| Rental | P1,928,232.97 | P 96,411.62 |
| Commission | 300,626.22 | 15,031.37 |
| Collection Fees | 3,208.27 | 158.52 |
| Insurance Agency Fees | 57,332.00 | 2,866.60 |
| Allowance to solicit insurance | 6,489.82 | 324.34 |
| Management Fee | 1,800,000.00 | 90,000.00 |
| T o t a l | P4,095,889.28 | P204,792.45 |

The following income and the corresponding taxes withheld at source made up the findings of this Court, to wit:

*RENTAL INCOME*

| Withholding Agent | Income | Tax Withheld | Exhibits |
|---|---|---|---|
| Home Financing Corp. | P 790,796.40 | P 39,539.82 | B |
| Citytrust Banking Corp. | 32,190.00 | 1,609.50 | I |
| Citytrust Banking Corp. | 32,190.00 | 1,609.50 | J |
| Citytrust Banking Corp. | 32,190.00 | 1,609.50 | K |
| Industrial World Traders Phils., Inc. | 35,441.28 | 1,772.04 | L |
| Metropolitan Psychological Corp. | 22,769.28 | 1,138.44 | M |
| Cora Suntay & Associates | 35,190.00 | 1,759.50 | P |
| Ministry of Trade & Industry | 141,453.90 | 7,072.70 | Q |
| Entrepreneurs Trading Corp. | 66,225.50 | 3,311.29 | R |
| Meltex Development Co., Inc. | 34,500.00 | 1,725.00 | S |
| Carter International Corporation | 1,297.80 | 64.89 | T |
| Carter International Corporation | 2,132.10 | 106.60 | U |
| Mansteel (Int'l.) Corporation | 5,510.60 | 275.52 | V |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | X |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | Y |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | Z |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | AB |
| A.H. Robins (Phils.) Co., Inc. | 169,787.68 | 8,489.39 | AC |
| A.H. Robins (Phils.) Co., Inc. | 136,704.03 | 6,835.21 | AD |

| | | | |
|---|---|---|---|
| Union Carbide Phils. Inc. | 23,127.00 | 1,156.35 | AE |
| Union Carbide Phils. Inc. | 23,127.00 | 1,156.35 | AF |
| Union Carbide Phils. Inc. | 23,127.00 | 1,156.35 | AG |
| Union Carbide Phils. Inc. | 23,127.00 | 1,156.35 | AH |
| Dinglasan Law Office | 3,500.00 | 175.00 | AQ |
| Jon, Lopez & Co., CPA's | 9,864.00 | 493.20 | AR |
| Private Dev. Corp. of the Phils. | 5,500.00 | 275.00 | AT |
| Borromeo's Specialties Galore | 47,250.00 | 2,362.50 | BA |
| Borromeo's Specialties Galore | 47,250.00 | 2,362.50 | BB |
| Interbank - Cebu Fuente Branch | 33,075.00 | 1,653.75 | BC |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BJ |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BM |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BN |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BO |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BP |
| Standard Insurance Co., Inc. | 3,750.00 | 187.50 | BF |
| Perla Compania De Seguros, Inc. | 5,000.00 | 250.00 | BG |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BK |
| Warner-Lambert Phils., Inc. | 12,923.40 | 646.17 | BL |
| T o t a l | P1,928,232.97 | P 96,411.62 | |

*COMMISSIONS*

| Withholding Agent | Income | Tax Withheld | Exhibits |
|---|---|---|---|
| Perla Compania De Seguros, Inc. | P 11,065.60 | P 553.28 | C |
| Perla Compania De Seguros, Inc. | 40,042.00 | 2,002.10 | D |
| Standard Insurance Co., Inc. | 15,816.20 | 790.76 | M |
| First Integrated Bonding & Ins. Co. | 2,262.80 | 113.14 | AI |
| Fist Integrated Bonding & Ins. Co. | 43,184.00 | 2,159.20 | AL |
| Perla Compania De Seguros, Inc. | 3,990.00 | 199.50 | AP |
| Standard Insurance Co., Inc. | 2,796.40 | 139.82 | O |
| Perla Compania De Seguros, Inc. | 4,636.00 | 231.80 | AK |
| Afisco Insurance Corporation | 3,720.20 | 185.97 | AO |
| Standard Insurance Co., Inc. | 21,320.00 | 1,066.00 | AS |
| Perla Compania De Seguros, Inc. | 44,815.18 | 2,240.76 | BH |
| Perla Compania De Seguros, Inc. | 106,978.04 | 5,349.04 | BI |
| T o t a l | P 300,626.22 | P 15,031.37 | |

*COLLECTION FEES*

| Withholding Agent | Income | Tax Withheld | Exhibit |
|---|---|---|---|
| Phil. Prudential Life Ins. Co. | P 3,208.27 | P 158.52 | W |

*INSURANCE AGENCY FEES*

| Withholding Agent | Income | Tax Withheld | Exhibit |
|---|---|---|---|
| Standard Insurance Co., Inc. | P 57,332.00 | P 2,866.60 | AN |

*ALLOWANCE TO SOLICIT INSURANCE*

| Withholding Agent | Income | Tax Withheld | Exhibit |
|---|---|---|---|
| Yolanda A. Kilayko and/or Ramon E. Kilayko c/o Afisco Insurance Corporation | P 6,489.82 | P 324.34 | AN |

*MANAGEMENT FEES*

| Withholding Agent | Income | Tax Withheld | Exhibits |
|---|---|---|---|
| Fil-Insurance Brokers Corporation | P1,800,000.00 | P 90,000.00 | BD, BD-1, BE & BE-1 |

Respondent is of the opinion that petitioner failed to include as part of its gross income the income from which taxes were withheld in 1983.

Section 54(f) of the Tax Code in relation to Section 10 of the Revenue Regulations No. 6-85, revised and consolidated expanded withholding tax regulations, provides as a requirement the presentation of documentary evidence to show that for the taxable year in question, the income from which the various creditable taxes were included as part of the gross income of petitioner's income tax return. The Court finds that petitioner was able to substantiate his claim for refund base on the table of computations of the various withholding of creditable taxes.

Respondent in his comment to petitioner's offer of evidence admitted Exhibits B, C, D, AI and AQ, representing Certifications issued by various withholding agents. But in his memorandum, respondent pointed out that Exhibits C, D, AI, AQ and BQ should not be considered for being self-serving. He stressed that petitioner did not present BIR Form 1743.1 as prescribed under Section 10 Revenue Regulations No. 6-85.

The Court admitted and took into consideration Exhibits B, C, D, AI and AQ although these are mere certifications considering that the same were not objected to by respondent in his comment. These exhibits were compared from the originals by respondent's counsel. The name of petitioner were indicated therein together with the amount of tax withheld therefrom.

Respondent even though he admits these exhibits in his comment to petitioner's formal offer of evidence still took exception to the fact that the various exhibits presented were not allegedly duly verified by respondent's revenue enforcement officers, therefore, self-serving.

The law and the implementing regulation have adopted a minimal requirement in order that an excess tax credit withheld could be refunded to taxpayers. Petitioner was able to present all three requirements for claiming a refund of excess withholding taxes only with respect to the amount of P204,792.45.

First, a claim for refund dated April 11, 1986 was filed with the Appellate Division of the BIR on April 14, 1986 (Exh. BR) and with this Court on April 15, 1986 well within the 2-year period from date of payment of the tax that is on April 15, 1984.

Second, petitioner presented as documentary evidence it Annual Corporate Income Tax Return for 1983 (Exh. A) showing income as follows:

| | |
|---|---|
| Schedule 1 | P184,886,846.00 |
| Schedule 5 | 4,851,411.00 |
| Total Income | P189,738,257.00 |

establishing the fact that for the taxable year 1983, it has included in its income tax return the particular income from which the various creditable taxes were withheld.

Third, petitioner presented various BIR Forms No. 1743, 1743.1 and 1743 A as proof of withholding of taxes for 1983.

This Court has in numerous cases dismissed the allegations of counsels for the respondent that the other requirements such as the presentation of withholding tax returns, official receipts showing payments of withholding taxes and verification by revenue enforcement officer have to be presented before actual refund should be granted. *(The Philippine American Life Insurance Company v. Commissioner of Internal Revenue, CTA Case No. 4018, November 5, 1991, affirmed by the Court of Appeals in Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., and The Court of Tax Appeals, CA - G.R. No. 26598, March 26, 1992; A. Soriano Corporations v. Commissioner of Internal Revenue, CTA Case No. 4201, August 7, 1991; Commonwealth Pacific Consultants Ltd. v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982; and Ateneo de Manila v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989).*

Exhibits E, F, G and H were not considered by the Court since these exhibits merely showed that the Philippine Association of Finance Companies, Inc., a withholding agent, filed its Quarterly Return of Creditable Income Tax Withheld for 1983. Nothing in the returns indicate that the amount withheld was for the account of petitioner. The same is true with Exhibit BQ, a Certification issued by Ridge Development Corporation, which showed the amount of tax withheld on office rentals but it did not indicate the payee or recipient of the income. Besides, Exhibits E, F, G and H together with Exhibits AW (BIR Form 1743.1) and BQ (Certification of Ridge Development Corporation) were all compared from their respective photocopies. Contrary to the best evidence rule as prescribed under Section 3 of Rule 130 of the Revised Rules of Court there being no showing that the originals were lost or destroyed.

Exhibits AJ, AU, AV, AX, AY and AZ, representing BIR Forms 1743.1 and 1743 of various withholding agents, were also ignored by the Court in evaluating the evidence presented by petitioner taking into consideration the objections raised by respondent it appearing that the name of petitioner was merely added and superimposed to the name of another payee. Said Exhibits did not specifically indicate the name of petitioner as the recipient of the income from which taxes have been withheld therefrom. Furthermore, the TAN of the payee as indicated in BIR Form 1743 and 1743.1 is not the same as the TAN of petitioner which is 0300-615-2 as shown in its income tax return (Exh. A).

Exhibits BD, BD-1, BE and BE-1 were taken into consideration by this Court there being no objections raised on the part of respondent even if the same were merely compared from another xerox copy. In fact, respondent admits in his memorandum that the management fees of P1,800,000.00 from which the P90,000.00 corresponding tax was withheld forms part of petitioner's income for 1983.

**IN VIEW OF THE FOREGOING,** respondent Commissioner of Internal Revenue is hereby ordered to **REFUND** to petitioner CITYTRUST FINANCE CORPORATION the sum of P204,792.45, representing excess payment of withholding taxes for the year 1983.

No pronouncement as to cost.

**SO ORDERED.**

Quezon City, Metro Manila, February 24, 1993.

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**MANUEL K. GRUBA**
Associate 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