REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TIFFANY TOWERS REALTY CORP.,
Petitioner,

- versus -

C.T.A. CASE NO. 5100

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 06 1998

x - x

DECISION

This case involves a judicial action for the refund of the sum of ₱2,884,786.00, representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the calendar year ended December 31, 1992.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located at 6th Flr., Fortune Building, 160 Legaspi Street, Legaspi Village, Makati City. Petitioner is primarily engaged in the business as a developer/dealer of real estate properties which include land, building, condominiums, townhouses and other similar properties.

On April 13, 1993, petitioner filed its 1992 Annual Income Tax Return reflecting a refundable amount of

245

₱1,185,699.00 (p. 11, CTA records). However, on July 6, 1993, petitioner amended its 1992 income tax return, reflecting instead of ₱1,185,699.00 overpaid income tax in its original return, a refundable amount of ₱4,394,707.00 (Exhs. A, and A-1, Petitioner). The details of which are as follows:

Gross Income	₱105,545,883.00
Less: Deductions	99,799,551.00
Net Income	₱ 5,746,332.00
Tax due	₱ 2,011,216.00
Less:	
a. Prior years excess credit	₱ 3,196,915.00
b. Quarterly payments made this year	-
c. Creditable tax withheld	3,209,008.00
Total	₱ 6,405,923.00
Amount Refundable	**₱ 4,394,707.00**

Out of the total refundable amount of ₱4,394,707.00, petitioner opted to apply the sum of ₱3,209,008.00, representing total creditable tax withheld during the year 1992, against its income tax liability on the succeeding calendar year 1993 in the amount of ₱324,222.00. Hence, there still remain an unutilized 1992 creditable withholding tax of ₱2,884,786.00, computed as follows:

1992 Creditable withholding tax	₱3,209,008.00
Less 1993 income tax liability	324,222.00
1992 Refundable balance	₱2,884,786.00

246

On April 15, 1994, petitioner filed a letter claim for cash refund or issuance of tax credit certificate with the Bureau of Internal Revenue seeking the amount of ₱2,884,786.00, representing excess creditable withholding tax payment for the year 1992 (Exh. BBBBB, Petitioner). And, on even date, petitioner instituted the instant appeal with this Court, pursuant to Section 230 of the Tax Code, as amended.

The only issue confronting this Court is whether or not petitioner is entitled to the refund of the sum of ₱2,884,786.00, representing overpaid creditable withholding tax for the calendar year 1992.

Petitioner is firm on its stand that it is entitled to the refund sought. It cites as legal bases Sections 69 and 230 of the Tax Code. For easy reference Sections 69 and 230 are hereby quoted:

> **Sec. 69. Final adjustment return.** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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
>
> <u>(b) Be refunded the excess amount paid, as the case may be</u>.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, <u>the refundable amount shown on its final adjustment return may be credited against</u>

247

the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Underlining supplied).

'Sec. 230. ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: ***Provided, however***, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underlining supplied).

x x x x x x x x x."

Petitioner further submitted various documents in support to its claim for refund (Exhs. A to BBBB, inclusive of submarkings, Petitioner).

Respondent, on the other hand, is convinced that petitioner is no longer entitled the refund of P2,884,786.00. She presented in evidence the memorandum submitted by Revenue Officer, Celestino M. Mejia, dated April 12, 1996, recommending the denial of the claim for refund for lack of merit and factual basis (Exhs. 5, 5-a

248

and 5-b, Respondent, pp. 119 and 120, CTA records) on the ground that the amount sought to be refunded was already utilized by petitioner during the calendar year 1994 (Exh. 6, Respondent, p. 121, CTA records).

To controvert said finding of the revenue officer, petitioner submitted additional and rebuttal evidence which consisted mainly of the amended annual income tax returns for the years 1993, 1994, and 1995 as well as the original 1993, 1994, and 1995 annual income tax returns with corresponding attachment of auditor's reports (Exhs. CCCCC, CCCCC-1, DDDDD, DDDDD-1, EEEEE, and EEEEE-1, Petitioner, pp. 153 to 213, CTA records). These documents were submitted by petitioner in order to prove that the balance of ₱2,884,786.00 was not carried-over nor applied in the calendar years 1994 and 1995.

After a perusal of the evidence submitted by both parties, this Court favors petitioner's cause. The rebuttal evidence submitted by the petitioner, particularly the amended returns for the years 1993, 1994 and 1995, negated the findings of the revenue officer. The amended income tax returns show that the balance of the overpaid 1992 creditable withholding tax of ₱2,884,786.00 was never applied nor utilized by the petitioner in the succeeding years.

The Court noted that the revenue examiner, in recommending the denial of the claim for refund, centered his investigation on the original income tax returns for the years 1993, 1994 and 1995 without taking into account the amendments made thereto by the petitioner.

What is now left for the Court to consider is petitioner's compliance with the following requisites in order to be entitled to the refund sought:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3. The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom. **[Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The 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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

A careful examination of the rest of the evidence presented by petitioner reveal the following facts:

250

First, petitioner filed within the two-year period its claim for refund with the BIR and its appeal with this Court. It filed on April 15, 1994 both its letter-claim for refund with the BIR and the instant petition for review. The two-year prescriptive period commenced to run on April 13, 1993, the date when petitioner filed its 1992 annual income tax return **(Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 837736, January 15, 1992).**

Second, as testified by petitioner's witness, Mrs. Cristeta de la Cruz, the income subject to withholding tax were reported in the gross income portion of the income tax return. (TSN, March 7, 1995, pp. 23 to 26).

However, as to the third requirement, petitioner failed to convince the Court that it is entitled to the full amount sought. An examination of the schedule of prepaid taxes (Exh. L, Petitioner) revealed that some of the listed withholding taxes therein were not covered by proper receipts, or were overstated and some were not valid proofs of creditable withholding tax at source and therefore should be deducted in the computation of the allowable refund. The details of such disallowances are as follows:

Clients Name	Gross Amount	Amount of Tax Withheld	Reason
Irquz Marketing Services	₱ 63,157.92	₱ 3,157.92	No supporting receipt/document
Marben Foods Phils., Inc.	603,993.40	30,199.97	No supporting receipt/document
The Red Kettle Co., Inc.	623,040.00	7,788.00	Overstated; see Exh. Q
Melanie C. Billones	6,190,804.64	81,587.88	Overstated; see Exh. S-2
Letty Tan	2,748,160.00	68,704.00	Payment for DST; see Exh. FFF-1
Leonora Rivera Milner	5,551,000.00	69,387.50	Overstated; see Exh. S-2
Sherry Jane Marbella	1,387,500.00	34,687.50	No supporting receipt/document
T o t a l	₱17,167,655.96	₱295,512.77	

217

A recomputation of refundable overpaid 1992 income tax would show that petitioner is entitled to a lesser amount of ₱2,589,273.23, to wit:

Total 1992 Creditable withholding Tax at Source (Exh. A, Petitioner)		₱3,209,008.00
Less:		
a. 1993 Income Tax Due	₱324,222.00	
b. Unallowable creditable withholding tax	295,512.77	619,734.77
Amount refundable		₱2,589,273.23

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED**. Respondent is ordered to refund or issue tax credit in favor of petitioner in the sum of ₱2,589,273.23, representing overpaid income tax for the calendar year 1992.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTICATION

I hereby certify that this decision was reached after due consultation with the member 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

273