REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MANDARIN INTERNATIONAL HOTELS, LIMITED,
Petitioner,

- versus -

C.T.A. CASE NO. 5364

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 05 1999

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DECISION

This case involves a claim for refund of alleged overpaid income tax amounting to ₱1,010,198.00 allegedly representing unutilized creditable withholding tax for the years 1993 and 1994.

As represented, petitioner is a resident foreign corporation existing under and by virtue of the laws of Hongkong and allegedly engaged in the business of managing hotels.

The records show that petitioner, hereinafter referred to as "the Manager" and Manila Mandarin Hotel, Inc. under business name Mandarin Oriental Manila (Exh. I) and hereinafter referred to as "the Owner", entered into a management agreement whereby the former shall manage the hotel of the latter, Mandarin Oriental Manila Hotel ("Hotel" for brevity) in consideration of a fee computed at 10% of the annual gross operating profit of the "Hotel" as defined in the agreement (Exhs. A and A-1).

In the course of its business, petitioner claims that it received income payments from the "Owner" allegedly arising from management fees wherein the 5% withholding taxes were withheld in the amount of P1,108,267.21 and P895,149.00 in the years 1993 and 1994, respectively (Exhs. C and E).

On November 17, 1994, petitioner filed its 1993 annual income tax return reflecting a total income tax due in the amount of P1,363,373.00 as against its prior year's excess credit (P1,769,771.00), quarterly payments (P156,802.00) and creditable tax withheld (P1,108,267.21) in the total amount of P3,034,840.00, resulting in the alleged overpayment of its 1993 income tax in the amount of P1,671,466.00 (Exh. B, p. 82, CTA records).

Petitioner opted to carry over this alleged overpayment as tax credit to the succeeding taxable year 1994 pursuant to Section 69 of the Tax Code, as amended. However, petitioner claims that although this excess credit was applied and partially utilized against its income tax due for the year 1994, its annual income tax return for that year which was filed on June 13, 1995 (Exh. D), still shows a net refundable tax in the amount of P1,010,198.00 computed as follows:

Taxable Income		P4,446,906.00
Tax Due		1,556,417.00
Less: Prior year's excess credit	P1,671,466.00	
Creditable tax withheld	895,149.00	P2,566,615.00
Tax Refundable		P1,010,198.00

Petitioner signified its intention in the return to apply as credit the refundable amount of P1,010,198.00 to the succeeding taxable year 1995. It marked (x) in the box "to be applied as credit to next year" on the face of the return. However, for taxable year 1995, petitioner, in its final income tax return, was unable to apply the amount of P1,010,198.00 as it likewise claimed net operating loss during the said taxable period (Exh. J), choosing instead to pursue a claim for refund.

Subsequently, on March 4, 1996 and then on April 11, 1996, petitioner, through SGV & Co., filed with the respondent Bureau of Internal Revenue a claim for refund and clarificatory letter, respectively, of the above alleged overpaid income tax in the amount of P1,010,198.00 for the years 1993 and 1994.

In order to toll the running of the prescriptive period, petitioner filed the instant petition for review before this Court on April 13, 1996.

Upon these facts, respondent advances the following special and affirmative defenses, thus:

> 1. Petitioner is not entitled to the claim herein sought to be refunded;

2. The petition states no cause of action as it does not allege the date when the tax sought to be refunded was actually paid;

3. The best evidence of payment and remittance of taxes withheld are the Official Receipts;

4. In claiming for refund, it is incumbent upon petitioner to prove that it is entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

6. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code.

The only issue to be resolved by this Court is whether or not petitioner has fully substantiated its claim for refund in the amount of ₱1,010,198.00 allegedly representing unutilized creditable withholding tax for the years 1993 and 1994.

In support of its case, petitioner presented in evidence various documents which among others, consist of the following:

a. Certificate of Registration of Management Agreement between petitioner and Manila Mandarin Hotel, Inc. (Exh. A);

b. The Management Agreement itself (Exh. A-1);

c. Annual Income Tax Returns for calendar years 1993, 1994 and 1995 (Exhs. B, D, J);

d. Certificate of Creditable Withholding Tax at Source (Exhs. C, E);

e. Certificate of Registration of Business Name (Exh. I);

f. Administrative claims for refund duly filed with the Bureau of Internal Revenue (Exhs. G, H).

On the other hand, respondent counsel submits as evidence the following: a) Memorandum to Revenue Officer Rodolfo Rotoni (Exh. 1); b) Letter, dated April 29, 1996, addressed to Sycip, Gorres Velayo & Co. (Exh. 2); and c) the findings of one Revenue Officer Rodolfo Rotoni, dated August 4, 1997, wherein he recommended the denial of the claim, as petitioner was allegedly found to have underpaid its tax liabilities through alleged misrepresentation of its true taxable income giving rise to an indication of fraud (Exh. 3). Petitioner submitted its memorandum while respondent did not.

After a careful scrutiny of all the evidence presented before Us, this Court finds for the petitioner but the conclusion is that it is only entitled to a reduced amount.

It is already well-settled that a claim for unutilized creditable withholding taxes shall be given due course provided that the petitioner show compliance with the following requisites:

1) That it filed its claim for refund within the two (2) year period provided under Section 230 of the Tax Code;

2) That it was shown on the return that the income payment received was declared as part of the gross income;

3) The fact of withholding is established by a copy of 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.

Records show that petitioner complied with the above requirements, We however are inclined to grant a lesser amount than what was claimed for the following reasons:

a) An analysis of the evidence presented by petitioner shows that the quarterly payments in the amount of P156,802.00 allegedly made in the taxable year 1993 was not properly substantiated. Petitioner did not present in evidence its quarterly income tax return pertaining to the calendar year 1993. It is for this reason that We are disallowing this amount in the final computation of refundable taxes.

b) The unutilized income taxes pertaining to 1992 in the amount of P406,397.00 can no longer be included in the computation of the refundable amount because the Tax Code clearly provides that excess income taxes can only be applied or carried over to the next succeeding taxable year. The excess income taxes of 1992 can no longer be carried over to the taxable year 1994. Section 69 of the National Internal Revenue Code provides as follows:

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 estimated quarterly income taxes paid, <u>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 taxable year</u> (as amended by Presidential Decree No. 1705). (Underscoring supplied)

As will be shown later in the final computation, the amount of ₱406,397.00 was deducted from the total available tax credits because this pertains to excess payment for the year 1992 which, as discussed earlier, can no longer be applied to the taxable year 1994.

c) Petitioner is no longer entitled to any refund for the taxable year 1993 because the excess income taxes for this year was already utilized or carried over to the taxable year 1994 as shown below:

Tax Due (1993)	₱1,363,374.00
Less: Prior year's excess credit (1992)	1,769,771.00
Excess Credit (1992)	₱ 406,397.00
Add: Creditable Tax Withheld (1993)	1,108,267.00
Total Available Tax Credit	₱1,514,664.00
Less: Unallowable carry-over to 1994	406,397.00
Excess Credit that can be applied to 1994	₱1,108,267.00
Applied in 1994	1,108,267.00
REFUNDABLE	₱ 0.00

In conclusion, the petitioner is only entitled to the amount of P446,999.00 computed as follows:

Tax Due 1994	P1,556,417.00
Less: Prior year's excess credit	1,108,267.00
Remaining Tax Due	P 448,150.00
Add: Creditable Tax Withheld (1994)	895,149.00
Amount Refundable	P 446,999.00

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a TAX CREDIT CERTIFICATE in favor of petitioner the amount of P446,999.00 representing unutilized creditable withholding tax for the taxable year 1994.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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