REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK,
INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4325

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

3/17/94

x - - - - - - - - - - - - x

DECISION

This is a claim for refund of overpaid creditable withholding tax in the amount of P95,190.53 for the calendar year ended 1986.

The record shows that petitioner BPI Family Savings Bank, Inc. is a Domestic Corporation duly organized under Philippine laws. As such petitioner is engaged in the business of banking, financing and leasing with principal office in Makati, Metro Manila. Petitioner in the pursuit of its operation receives rental income from leasing spaces in its head office and branch offices and from petitioner's lessees, withheld the sum of P95,190.53 under the expanded withholding tax regulations. Petitioner declared the rental income as part of its gross income in its income tax return for the year 1986. (Exhibit "A")

The aforementioned income tax return of petitioner showed an alleged net loss of P10,493,399.00 for said taxable year. Hence, according to petitioner the whole amount of P95,190.53 representing Creditable withholding tax should be refunded.

On June 17, 1987, petitioner filed a written claim for refund with respondent of the said amount (Exhibit C) but the latter failed to act on said claim. Hence, the present petition for review filed on January 18, 1989 in order to toll the running of the prescriptive period under section 243 of the Tax Code.

In answer to the instant petition, respondent admits the incontestable facts, such as, petitioner's existence and the filing of the claim for refund, but denies the rest of the allegations of petitioner for lack of knowledge and information sufficient to form a belief as to the truth of the matters alleged therein.

As special and affirmative defenses however, respondent stated among others, that:

> a. the petition states no cause of action as it does not allege the date when the tax sought to be refunded are credited and paid;
>
> b. the mere averment that petitioner suffered a net loss of P10,493,399 for the year 1986 does not ipso facto justify a refund;
>
> c. the amount sought to be refunded were collected in accordance with law;

d. it is incumbent upon petitioner to prove compliance with the provision of Section 243 and 246 of the Tax Code; and

e. the claim for refund are strictly construed against the claimant.

There is no dispute as to whether petitioner filed the instant petition within the two (2) year period of prescription and in support of its claim submitted in evidence among others: Exhibit "A", the annual corporate income tax return. Exhibits "B-B-25", inclusive, Certification of Creditable Income Tax Withheld at the Source, all for the said year.

On the other hand, respondent failed to submit any evidence to controvert the correctness of the tax returns as well as other relevant facts alleged by petitioner. The records show that respondent elected to submit the case for decision on the basis of the pleadings and records of the case.

Both parties opted not to submit their respective memorandum.

The only issue presented for our determination is whether or not petitioner is entitled to the refund of P95,190.53 as alleged overpaid creditable withholding tax at source for the calendar year ended December 31, 1986.

It is the view of the petitioner that it is entitled to the refund of the amount of P95,190.53 as overpaid creditable withholding tax at source for the year 1986. On the other hand, respondent alleged that in an action for tax refund or tax credit it has to be shown that the taxes paid were erroneously or illegally collected from petitioner and that petitioner was not able to prove that it had included as part of its gross income the rental income subjected to such withholding in its income tax return for 1986.

We hold that petitioner is entitled to the refund of P94,413.13 as computed below pursuant to Section 54(b) of the Tax Code in relation to Section 10 of Revenue Regulations N. 6-85, the consolidated expanded withholding tax regulation, which states as a requirement the presentation of documentary evidence showing that for the taxable year in question, the income from which the various creditable taxes were included as part of the petitioner's income. (Citytrust Finance Corporation formerly Investors Finance Corporation IFMCB vs. Commissioner of Internal Revenue CTA Case No. 4046, February 24, 1993)

For the year in question, petitioner suffered a net loss in the amount of P10,493,399.00 as reflected in its annual corporate income tax return computed as follows: (Exh. "A")

INCOME: (Schedule 1)		
Interest loans		P 233,084,715.00
Deposits with other banks		16,552,061.00
Government & other securities		316,091,686.00
Commission and service fee		47,335,790.00
Foreign gain/loss		9,076,827.00
Other income: (Exh. A-2)		
Rental income	P 1,675,950.27	
Income on assets acquired	21,375.22	
Profit/loss on asset sold/ exchange	95,206.95	
Miscellaneous income	16,172,973.56	17,965,506.00
T O T A L		P 640,106,585.00
LESS: DEDUCTIONS		650,599,984.00
NET LOSS		10,493,300.00
TAX DUE		- NIL -
LESS: PRIOR YEAR'S EXCESS CREDIT	P 24,541.41	
1986 CREDITABLE W/HOLDING TAX	95,190.53	119,731.94
TOTAL AMOUNT REFUNDABLE		P 119,731.94

Based on the records, petitioner met the three basic requirements set forth by this Court in its previous decided cases as follows:

> 1. that petitioner filed a claim for refund within the two (2) year period as prescribed by Sec. 292 (now 230) of NIRC;
>
> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom. (Sec. 10, Rev. Regs. No. 6-8; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4143, November 11, 1991, and Citytrust Finance Corporation (Formerly Investors Finance Corporation/PNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, supra).

From among the exhibits presented by petitioner, Exhibit "B-17" was stricken out from the record of the case on the ground that it had been previously cancelled and the same was nowhere to be found in the records. Thus the refundable creditable withholding tax at source is computed with the exception of Exhibit "B-17" as follows:

Withholding Agent	Rental Income	5% With holding tax	Exh.
Berlimed Phil. Corp.	P 31,100.80	1,555.04	B-1
Prudential Life Plan, Inc.	23,925.00	1,196.25	B-3
Summa Kumagi, Inc.	5,337.00	266.85	B-4
Isetann Dept. Store Inc.	345,000.00	17,250.00	B-5
The Phil. American Life Ins. Co.	20,125.00	1,006.25	B-6
Family RTW	103,925.25	5,196.28	B-7
The Insular Life Ass. Co., Ltd.	99,000.00	4,950.00	B-8
Nepumoceno Enterprises	14,400.00	720.00	B-9
BPICC	96,680.20	4,834.01	B-10
Maria S. Evangelista	5,950.00	297.50	B-11
Gul Plaza	35,569.41	1,778.46	B-12
Gul Plaza	3,357.11	167.86	B-13
Malayan Printery	38,400.00	1,920.00	B-14
Filinvest Finance and Leasing Corp.	8,875.00	443.75	B-15
National Bazaar	46,672.50	2,333.65	B-16
Filinvest Finance and Leasing Corp.	13,850.00	692.50	B-18
Sager Realty Co., Inc.	18,200.00	910.00	B-19
Charles Lee	27,617.62	1,380.85	B-20
Lareina Pawnshop	48,300.00	2,415.00	B-21
Orion Radio & Electrical Supply	51,000.00	2,550.00	B-22
Fil. Mgt. & Leasing Services Corp.	20,000.00	1,000.00)	
	8,000.00	400.00)	B-23
Fil. Mgt. & Leasing Services Corp.	4,000.00	200.00	B-24
Pamana Phil., Inc.	41,580.00	2,079.00	B-25
TOTAL	P 1,110,864.89	P 55,543.25	

Withholding Agent	Collection Fees	1% With-holding Tax	Exh.
FCP Credit Corp.	P 3,886,988.18	P 38,869.88	B-2

RECAP:

Source of Income	Amount	Exh.	Withholding Tax Paid
Rental Income	P 1,110,864.89	A-2	P 55,543.25
Collection Fees*	3,886,988.18	A-2	38,869.88
Total	P 4,997,853.07	A-1	P 94,413.13

* Collection fees although not originally alleged to be part of income in the petition for review was considered because the prayer asked for the refund of creditable withholding tax at source which such fee is subject to and indeed forms part of the other income stated in Exh. "A-2" (under miscellaneous).

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to issue a Tax Credit Memo in the amount of P94,413.13 in favor of the Petitioner. No costs.

SO ORDERED.

Quezon City, Metro Manila, March 17, 1994.

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