REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORIENT PACIFIC CAPITAL INVESTMENT CORPORATION (Citicorp Investment Philippines),
Petitioner,

-versus -   C.T.A. CASE NO. 3358

THE ACTING COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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

10/22

D E C I S I O N

This is a claim for tax credit in the amount of P487,336.00 in favor of petitioner for overpaid 1979 income tax arising from unapplied creditable tax withheld.

This amount of tax credit claim is P487,336.00 representing income tax withheld on interest income of petitioner from time and savings deposit and from debenture bonds. For income tax purposes, petitioner's operations in 1979 resulted in a loss. (Exhs. B and B-1, B-4, B-5 and B-6; Testimony of Ms. Doris Mendoza, January 27, 1980, pp. 5-7, t.s.n.) Consequently, it had no income tax liability for said year against which the creditable withholding taxes could be applied.

Petitioner, therefore, made an overpayment of Four Hundred Eighty Seven Thousand Three Hundred Thirty Six Pesos (P487,336.00) representing overpaid 15% withholding tax on interest on petitioner's time and savings deposits and debenture bonds. (Exhs. B-2, B-3; pp.5-7, t.s.n., Jan. 27, 1988.)

The amount claimed was certified to have been withheld by its withholding agents, namely: the Bank of the Philippine Islands, the Metropolitan Bank and Trust Co. Inc., the International Corporate Bank and the Far East Bank & Trust Co., Inc. The amounts withheld by said withholding agents were remitted to the Government, together with other amounts withheld by said withholding agents from other taxpayers during such withholding periods. (Exhs. C, C-1; D, D-1, D-2; E, E-1, E-2; F, F-1, F-2; G, G-1, G-2; H, H-1, H-2; I, I-1, I-2; J, J-1, J-2; K, K-1, K-2, K-3, K-4, K-5, K-6, K-7, K-8; L, L-1, L-2,; M, M-1, M-2, M-3, M-4; N, N-1, N-2, N-3, and N-4; testimony of Ms. Doris Mendoza, pp. 7 to 14, t.s.n., Jan. 27, 1988.)

Consequently, in a letter filed with respondent's office by petitioner, through its auditors on July 10, 1980 (Exhs. A, A-1; Par. 6, Petition, admitted as to filing of claim on July 10, 1980, Par. 4, Answer), petitioner requested for a tax credit in the amount of P487,336.00 representing overpaid withholding tax for the year 1979 (Exh. A; Par. 6, Petition; admitted par. 4, Answer).

Both the claim for tax credit as well as the Petition for Review had been filed within two years from the date the withholding taxes were paid (Exhs. A and A-1; Petition for Review, CTA Rec.), said claim and petition having been filed on July 10, 1980 and July 30, 1981, respectively.

In Paragraph 7 of respondent's answer, he alleges that:

> "7. Granting for the sake of argument that petitioner is entitled to a tax credit, petitioner's claim for tax credit for the period prior to July 30, 1979, two years prior to the filing of this petition on July 30, 1981, has prescribed;"

In other words, respondent in effect claims that the following portions of the claim for tax credit have been barred by prescription:

Withholding Agent	Portion withheld from petitioner	Date of paymt to the Gov't	Exhibit
Metrobank	P 712.19	1-25-79	"E-2"
- do -	12,040.97	4-25-79	"F-2"
- do -	2,439.49	7-25-79	"G-2"
IBAA	369.10	1-19-79	"J-2"
- do -	1,502.79	4-24-79	"K-2"
- do -	499.66	7-19-79	"K-4"

Interbank	1,060.89	1-18-79	"L-2"
- do-	1,579.96	4-06-79	"M-2"
- do-	180.25	7-16-79	"M-4"
TOTAL	P20,385.30		

Noteworthy is the fact that with the exception of the amounts covered by Exhibits "E-2" (P712.19), "J-2" (P369.10) and "L-2" (P1,060.89) or a total amount of P2,042.18, which represent withholding tax paid in 1978, and remitted by the withholding agents in January of 1979, all other amounts were withheld during the year 1979 (Certifications of withholding banks, Exhs. F - P12,049.97, G - P2,439.49, K - P1,502.79 and P499.66, M - P1,579.96 and P180.25).

To date, respondent has not yet granted petitioner's request for tax credit. (Par. 5, Petition; admitted in par. 1, Answer)

The only issues to be resolved in this case are:

1. Whether or not the income tax on interest income of petitioner withheld from it in 1979, and paid by the withholding agents to the Government are refundable;

2. Whether or not petitioner's claim for tax credit for sums remitted to the Government by the

withholding agents prior to July 30, 1979 (i.e., more than two years prior to filing of Petition for Review on July 30, 1981) have been barred by prescription.

Petitioner contends that the taxes withheld on interest income paid by petitioner on its savings and time deposits and on its debenture bonds are refundable and that petitioner's claim for tax credit, except only for the amount of P2,142.18 which is barred by prescription, can be allowed.

Respondent, however, maintains that the income tax on interest income, withheld and paid by petitioner through its depository banks, was collected in accordance with law and regulations and hence not refundable. It is further asserted that the amount that is for tax credit of P487,366.00 as alleged overpaid withholding tax, was already considered and deducted in the computation of its net income reflected in its returns filed with respondent's Bureau. Respondent Commissioner had reach this conclusion as shown by the findings of his revenue examiner (Nora E. Tamayo) after an investigation of the petitioner's 1979 corporate annual income tax return, wherein a deficiency income tax assessment was ascertained to be still due and collectible from the latter for the said period in the amount of P1,185,985.60, and documentary stamp taxes in the amount of P765,884.33, computed as follows:

"INCOME TAX

Net income per return		P2,538,885.00
ADD: Unallowable deductions/ additional income interest expense . .	P5,635,329.15	
Total adjustment		P5,635,239.15
Net income per investigation		P3,096,444.00
Less: Personal and Additional exemptions		-
Net income subject to tax		P3,096,444.00
Income tax due thereon		P1,229,577.60
LESS: Income tax already withheld		P 487,366.00
Deficiency tax		P 741,241.00
ADD: Surcharge		-
Interest Max.		P 444,744.60
Compromise		-
TOTAL AMOUNT DUE & COLLECTIBLE . . .		P1,185,585.60

OTHER TAXES

Documentary stamps:	Sec. 223	P 427,674.33
	Sec. 225	338,210.00
TOTAL AMOUNT DUE & COLLECTIBLE . . .		P 765,884.33

(Pages 77, 78 & 79, BIR records)."

Finally, respondent claimed that to grant petitioner's claim for tax credit would only result to a double tax credit, not to mention the fact that petitioner has outstanding tax liabilities in the amounts of P1,185,585.60 and P765,884.33 representing its deficiency income and documentary stamps taxes, respectively, for the year 1979. He concluded, citing allegedly a similar case involving issues identical to the instant case (***Tax Service of the Phils. vs. Commissioner of Internal Revenue***, *CTA CASE No. 2326*), this Honorable Court in denying the claim of the petitioner for tax credit ruled "x x x It appearing that the sum of P7,293.47 has been applied by respondent in partial payment of the alleged deficiency income tax due from the Estate, by way of tax credit, the claim for refund prayed for is hereby denied. x x x."

We note that the report of Revenue Examiner Nora E. Tamayo (pp. 77, 78 & 79, CTA rec.) has not been approved by the Commissioner of Internal Revenue. Neither has she been presented to testify on her report. Hence, her report can not be taken as concrete evidence in this case of her findings that the said P487,366 withholding tax was already considered and deducted in the computation of its net income reflected in its return filed in respondent's Bureau.

The corporate annual income tax return of petitioner for the calendar year ended December 31, 1979 shows that the claimed tax credit of P487,336 was not considered and deducted in the computation of its net income reflected in its return. (Exhs. B-1, B-2 & B-3.)

The law applicable is Section 53 of the National Internal Revenue Code, quoted hereunder, is clear and explicit:

> "Sec. 53. Withholding of tax at source x x x.
>
> "(e) Withholding tax on interest on bank deposit.
> "(1) Rate of withholding tax. Every bank or banking institution shall deduct and withhold from the interest on bank deposits (except interest paid or credited to non-resident alien individual and foreign corporations), a tax equal to fifteen percent of the said interest. **Provided, however,** That no withholding of tax shall be made if the aggregate amount of the interest of all deposit accounts maintained by a depositor alone or together with another in any one bank at any time during the taxable period does not exceed three hundred fifty pesos a year or eighty-seven pesos and fifty centavos per quarter. For this purpose, interest on a deposit account maintained by two persons shall be deemed to be equally owned by them.
>
> "(2) Treatment of bank deposit interest. - **The interest income shall be included in the gross income in computing the depositor's income tax liability in accordance with existing law.**"

The interest income subjected to withholding tax being then required to be included in the taxpayer's gross income in computing his income tax liability, any withholding taxes paid by taxpayer was therefore subject to refund in the event the taxpayer suffered a loss instead of realizing taxable gain. Thus, having incurred a loss of P2,538,885.00 petitioner is therefore entitled to the refund of taxes paid amounting to P487,336.00.

As to interest on bonds, the Expanded Withholding Tax Regulations, Revenue Regulations 13-78, as amended by Revenue Regulations No. 6-79 then provided:

> "Section 1. - Income payments subject to withholding tax and rates prescribed therein. - Except as herein otherwise provided, there shall be withheld a <u>creditable income tax</u> at the rates herein specified for each class of payee from the following items of income payments to persons residing in the Philippines.
>
> x x x
>
> "h) Interest Payments on Bonds or similar Indebtedness - On interest payment other than interest which is exempt from income tax under Section 29 (b)(8)(D) of the NIRC, as amended, on bonds or similar evidence of indebtedness, except tax-free covenant bonds, the interest of other payment on which is subject to withholding under Section 53 of the Tax Code, issued by any corporation and by all government agencies including government owned or controlled corporations - 15% (underscoring supplied).

It follows from the aforequoted provisions of law and regulations, therefore, that the withholding taxes on interest earned by petitioner on its savings and time deposits and on its debenture bonds in 1979 (i.e., prior to the amendment which subjected interest on deposits and yield on deposit substitutes to final withholding taxes), partook of the nature of creditable (not final) withholding taxes. Petitioner having incurred losses, a fact not disputed by respondent, such creditable income tax withheld should be credited in favor of petitioner.

Respondent's allegation in his answer that said withholding taxes in the amount of P487,336.00 were collected in accordance with the law and regulations does not forclose petitioner's right to the tax credit. The law and regulations on creditable withholding taxes are premised on the recognition that the taxpayer's ultimate tax liability, if any, is determinable only at the end of the taxable year. Hence, the tax for the year is finally determined to be either refundable or subject to additional payments with the filing of the Final or Adjustment Return for the year in question.

The allegation of the respondent Commissioner that, assuming that subject taxes are refundable, petitioner's claim for the period prior to July 30, 1979, or two years prior to the filing of the petition on July 30, 1981, had prescribed is without basis in law and jurisprudence. The 2-year period provided in Sec. 292 of the Tax Code of 1979 is really to be counted from time the tax for the year falls due.

That the two-year period is to be counted from the end of the taxable period finds support in a decision rendered by the Supreme Court in the case of ***Gibbs vs. Commissioner*** (15 SCRA 318) when it categorically ruled: "A taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 of the Revenue Code starts to run with respect to payments effected through the withholding tax system." (underscoring supplied).

This has been modified by this Honorable Court, for very sound reasons, in ***TMX Sales, Inc. vs. Commissioner of Internal Revenue***, *CTA Case 3745, April 29, 1988*, wherein the 2-year period was counted from the date the final return was filed, and the amount still due (or refundable) finally ascertained. This is because under the law in 1979, as well as at present, the tax for the year, if any amount is still payable falls due on the same date as the filing of the final or adjustment return.

It appears from the aforequoted Gibbs decision that taxes paid prior to July 30, 1979 have not prescribed as the two-year period should be counted not from July 30, 1979 but from December 31, 1979, the end of the taxable year of petitioner corporation. If we apply the TMX decision which takes into account the change in the law since the promulgation of the old Gibbs case, the 2-year period should be counted from February 27, 1980 (date when petitioner filed its 1979 Final Tax Return).

Consequently, with the exception of the amount of P2,142.18 which is conceded by petitioner as withholdings for 1978 and is therefore barred by prescription:

Withholding agent	Portion withheld from petitioner	Date of paymt to the Gov't	Exhibit
Metrobank	P 712.19	1-25-79	"E-2"
IBAA	369.10	1-19-79	"J-2"
Interbank	1,060.89	1-18-79	"L-2"
Total	P2,142.18		

The rest of the amount of P487,336.00 is to be credited in favor of petitioner.

WHEREFORE, petitioner Orient Pacific Capital Investment Corporation (Citicorp Investment Philippines), is entitled to a tax credit of P485,193.82.

No pronouncement as to costs.

SO ORDERED.

Quezon City, Philippines, October 27, 1990.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ALEX Z. REYES
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

CONSTANTE C. ROAQUIN
Associate Judge
Court of Tax Appeals