REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DUVAZ CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5617

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 02 2001

x - x

DECISION

This case involves a claim for refund/tax credit of overpaid income taxes in the amount of P5,880,117.00 for the calendar year ended December 31, 1995.

Petitioner is a domestic corporation with business address at 10th Floor, The Peak Building, Alfaro St., Salcedo Village, Makati City.

On April 15, 1996, Petitioner filed its annual income tax return for the calendar year ended December 31, 1995 declaring a net loss in the amount of P2,429,208.00 and creditable taxes withheld in the sum of P466,438.00 (Exh. A).

On June 20, 1996, Duvaz Corporation and RDR Property Holdings, Inc. (RDR, for short) executed the Articles of Merger and Plan of Merger whereby the entire assets and liabilities of the latter will be transferred to and absorbed by the former, being the surviving corporation. On February 5, 1997, the Securities and Exchange Commission approved said Articles of Merger and Plan of Merger (Exh. E).

For the calendar year ended December 31, 1995, RDR filed its annual income tax return on April 15, 1996 showing a net income of P 3,182,263.00 and a tax due of P7,768,584.00. Thus, there remained an excess tax credit amounting to P5,413,679.00 (Exh. C).

By virtue of the approved merger, RDR ceased to exist and its income tax credits for the year 1995 were transferred to herein Petitioner. Therefore, the total excess tax credits of Petitioner for the year 1995 amounted to P5,880,117.00.

For the year 1996, Petitioner filed its Annual Income Tax Return on April 15, 1997 reflecting a net loss in the amount of P25,463,496.00 (Exh. F). Hence, the said 1995 excess tax credits although carried over by the Petitioner in 1996, was not utilized. In fact, the total tax credits for the period was P7,648,557.00, consisting of prior year's excess credit of P5,880,117.00 and the total taxes withheld for the year in the sum of P1,768,440.00 (Exh. F-4).

Consequently, Petitioner filed an administrative claim for refund with the Respondent on March 30, 1998 for the refund of the unutilized creditable taxes withheld of P5,880,117.00 covering the period 1995 pursuant to Sections 69 and 230 of the Tax Code, as amended (Exh. G).

Inasmuch as the two-year prescriptive period within which to file a judicial claim was about to expire, Petitioner filed the instant petition on April 14, 1998.

Respondent, by way of Special and Affirmative Defenses, states:

1) The amount claimed for refund has been applied as credit to the next succeeding year, hence, no longer refundable;

2) Petitioner is subject to paragraph (a) instated of (b) of Section 69, NIRC, since it failed to substantiate and prove the allowability of the deductions claimed, including that of RDR, for the year 1995 pursuant to Section 29(a), (b), (c),

(d), (e) and (f) of the Tax Code which is necessary in this particular case in view of the affirmative allegation of net loss operation interposed by the petitioner;

3) The administrative claim for refund filed by the petitioner before the respondent's Bureau is defective since it failed to establish the fact of withholding by attaching a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom pursuant to Section 10 of Revenue Regulations No. 6-85, hence, does not even merit to be given due course;

4) The petition states no cause of action as it does not allege the date/s when the tax/es sought to be refunded was/were actually paid;

5) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

6) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund/credit; and

7) Well-settled is the rule that claims for refund are construed in *strictissimi juris* against the claimants since it partakes of the nature of an exemption from taxation.

To buttress their respective positions, the parties presented both testimonial and documentary evidence. However, the Respondent opted not to submit his memorandum.

The issues submitted for Our resolution are:

(a) Whether or not Petitioner is entitled to the refund of excess creditable taxes withheld for the period 1995 in the amount of P5,880,117.00; and

(b) Whether or not Petitioner has duly substantiated its claim.

Claims for refund of excess or unutilized creditable withholding taxes are principally governed by Sections 69 and 230 of the Tax Code, as amended, hereunder quoted:

> **SEC. 69.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be.
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, 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.

> **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.
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> 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Based on the evidence on record, Petitioner had excess or unutilized tax credits for the year 1995 (Exhs. A, C and E) in the total amount of P5,880,117.00. Despite the carry over of the said amount, the same was not utilized in view of the fact that for the year 1996, Petitioner incurred another net loss (Exh. F). To further prove that the amount subject of this claim was not carried over to the year 1997, Petitioner likewise submitted its 1997 Annual Income Tax Return (Exh. H).

Clearly, from the above discussion, it appears that as Petitioner was in a net loss position for the years 1995 and 1996, it had no tax liability for said period. *Ergo*, Petitioner is legally entitled to the refund of said excess or unutilized creditable taxes withheld for the period covered by this petition.

Nonetheless, Petitioner has to prove by substantial evidence its compliance with the requirements in claiming for refund of creditable taxes withheld laid down by the Supreme Court in **Citibank N. A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** to wit:

> 1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;
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> 2) That the income upon which the taxes were withheld were included in the return of the recipient; and
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> 3) That the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Duvaz Corporation and RDR Property Holdings, Inc. both filed their 1995 income tax returns on April 15, 1996. The administrative claim for refund was filed by herein Petitioner on March 30, 1998 while the judicial claim was filed on April 14, 1998. All told, the first requirement was fully met.

As regards the second requisite, RDR Property Holdings, Inc., the absorbed corporation, had a total creditable withholding taxes for the year 1995 in the amount of P13,182,263.00. The income corresponding to these taxes withheld arose from sales and rental of real properties.

The income from the sale of real properties were included and declared in the 1992, 1993, 1994 and 1995 corporate annual income tax returns of RDR which Petitioner presented as evidence (Exhs. I-1, I-3, I-5 & C). Petitioner also submitted RDR's 1995 audited financial statements as well as the summaries of sales of condominium units from 1992 to 1995 (Exh. I-7) to reconcile the amounts of sales found in the capital gains tax returns or withholding tax returns. Relative to RDR's rental income, the same was included and declared in the corporation's 1995 annual income tax return and audited financial statements.

Duvaz Corporation, on the other hand, declared only the amount of P5,775,420.00 as selling price (Exh. A-5) in its 1995 income tax return and not the amount of P5,975,000.00 shown in the capital gains tax return (Exh. B-1). As to Duvaz Corporation's rental income, a discrepancy is also found when the certificates of creditable taxes withheld at source (Exhs. B-2 & B-3) were compared with the schedule of creditable taxes withheld (CTA rec., p. 75). In its 1995 income tax return, Duvaz Corporation only declared the amount of P1,997,368.00 (Exh. A-4) as its total income instead of P3,435,000.00 as reflected in the certificates of creditable taxes withheld at source (Exhs. B-2 & B-3).

Finally, as to compliance with the third requirement, Petitioner presented monthly remittance returns of income taxes withheld (BIR Form No. 1743-W), the certificate of creditable taxes withheld at source (BIR Form No. 1743-750) and the capital gains tax return/application for certificate authorizing registration (BIR Form 1701-E/A), to prove that the taxes subject of this claim were indeed withheld. However, We observed that one of the certificates, particularly Exhibit D-22, was dated 1996.

WHEREFORE, in view of the foregoing, Petitioner's claim for refund is hereby **GRANTED** but in a reduced amount of P5,399,321.33, computed as follows:

DUVAZ CORPORATION

Taxable Income (Loss)		(P 2,429,208.00)	
Tax Due		P 0.00	
Less: Allowable Tax Credit			
Declared income from sales of property	P5,775,420.00		
Add: Declared income from rental	1,997,368.00		
Total declared income for 1995	P7,772,788.00		
Multiplied by withholding tax percentage	5%		
Allowable Tax Credit		P 388,639.40	
Amount Refundable			P 388,639.40

RDR PROPERTY HOLDINGS, INC.

Taxable Income	P22,195,953.00
Tax Due	P 7,768,584.00

Less: Allowable Tax Credit

WITHHOLDING AGENT	EXHIBIT	TAX WITHHELD
P.B. Communications	D-1/D-1-a	P 1,882,735.00
Angping & Associates	D-2	1,920,000.00
TAI Resources Int'l.	D-3	418,370.63
Duvaz Corporation	D-4	2,940,000.00
Perlita Bautista	D-5	55,808.50
Zita Yu Ong	D-6	45,908.00
Ambrosio Lina, Jr.	D-7	55,625.00
Magnum Enterprises	D-8	1,715,000.00
Golden Agribusiness Corp.	D-9	42,093.00

Estrella Manrique	D-10	54,780.00
Ferdinand Buensalida	D-11	53,954.00
Angen Realty Corp.	D-12	183,750.00
Conrado Vitug	D-13	97,458.13
Angen Realty Corp.	D-14	371,643.00
Arthur Yan	D-15	100,180.20
Asian Technicon Managers	D-16	372,375.00
Berisa Development Corp.	D-17	439,097.70
Gillian Joyce Virata	D-18/D-18-a	195,000.00
Rosalie Wells	D-19	448,298.13
Rosalie Wells	D-20	418,800.00
Beta Electric Corp.	D-21	25,000.00
Violeta Dorado	D-23	123,750.00
Cai Dong Yang	D-24/D-24-a	262,500.00
Benjamin Hian Tek Cua	D-25/D-25-a	160,500.00
Asian Meridian Mgt. Corp.	D-26/D-26-a	101,213.60
Ma. Agnes Oreta	D-27/D-27-a	107,199.84
Roberto Tambunting, Jr.	D-28/D-28-a	45,030.00
Communications Solutions	D-29	22,500.00
Phil. Telegraph & Telephone	D-30	96,250.00
Republic Broadcasting System	D-31	24,000.00
Permanent Homes	D-32	445.75
Allowable Tax Credit		P12,779,265.48

Amount Refundable	5,010,681.93
Total Amount Refundable	**P 5,399,321.33**

Accordingly, Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** or in the alternative, **ISSUE** A TAX CREDIT CERTIFICATE in favor of the Petitioner in the amount of P5,399,321.33 representing excess or unutilized creditable taxes withheld for the calendar year ended December 31. 1995.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
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