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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5096

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 03 1996

x - x

DECISION

This case involves petitioner's claim for the refund of creditable withholding taxes on rental income in the amount of P651,128.33 which was not applied to any income tax due for the year ending December 31, 1991 allegedly due to the loss incurred for said year.

Petitioner, BPI Family Savings Bank, Inc., is a domestic corporation duly organized and existing under the laws of the Philippines with Head Office located at 109 Paseo de Roxas and De la Rosa Sts., Makati, Metro Manila. It is primarily engaged in the general banking business and earns other income coming from the lease of its real properties and from the sale of acquired assets.

For the year 1991, petitioner received rental income from the lease of office space at its Head Office and other Branches and also from the lease of its real properties derived from acquired assets. Petitioner also earned income from the sale of acquired assets. The income earned from these transactions were subjected to withholding tax. These income were included to form part of the gross income of petitioner for the year 1991 as reflected in its 1991 Income Tax Return.

On April 15, 1992, petitioner filed its Income Tax Return for the year ending December 31, 1991 showing a net loss of P11,378,988.00. Since petitioner suffered a loss from its operations, no income tax liability was due for said year. Petitioner therefore was not able to apply the creditable taxes withheld by its various withholding agents for the period in the amount of P651,128.00. Although this amount was carried over to the succeeding year's (1992) Income Tax Return as part of the prior year's excess credit, still the same was not actually applied as a deduction from its 1992 Income Tax Due there being no income tax due by reason of a loss also incurred for that year.

On December 23, 1992, petitioner filed with the respondent a letter claiming for the issuance of a Tax Credit Memo in the amount of P651,128.33 representing overpaid income tax on creditable withholding tax at source for the year 1991. Without waiting for the respondent's decision on its request for issuance of tax credit, petitioner filed this petition for review on April 15, 1994, praying for the refund of the amount of P651,128.33.

Respondent admits that petitioner filed its 1991 Annual Income Tax Return together with the various Certificates of Income Taxes Withheld at Source; the First and Second Quarters Income Tax Returns for 1992; the 1992 Annual Income Tax Return; and its request for the issuance of a Tax Credit Memo. But respondent denies the veracity of their contents, considering that the claim for refund is still being investigated by the Bureau of Internal Revenue. Respondent averred that petitioner has the burden of proving its entitlement to the refund or tax credit claimed for. Claims for refund are in the nature of a tax exemption and are therefore strictly construed against the claimant.

The issue presented is whether or not petitioner is entitled to claim for the refund of P651,128.33, the excess income tax paid for the year 1991 comprised of creditable withholding taxes.

To support its claim for refund petitioner offered in evidence its 1991 and 1992 Annual Income Tax Returns; 1st and 2nd Quarter Income Tax Returns for 1992; Certificates of Creditable Withholding Tax at Source for 1991; and letter claiming for refund filed with the respondent on December 23, 1992.

The following Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1) for the year 1991 issued by various withholding agents presented the following data on the taxes withheld from petitioner, to wit:

Exhs.	Withholding Agents		Income Earned		Tax Withheld
B-1	BPI Credit Corp.	P	142,593.30	P	7,129.67
B-2	Colby Construction & Management Corp.		249,850.00		12,410.00
B-3	BPI Family Bank		430,700.00		21,535.00
B-4	Ongkiko Bucoy Dizon & Asso.		32,000.00		1,600.00
B-5	Pacer Insurance Agencies Inc.		86,000.00		4,300.00
B-6	Schering Phil. Corp.		1,188,830.00		59,441.52
B-7	Virginia Fernandez				50,300.00
B-8	Ceferino D. Sta. Maria		1,136,420.00		56,821.00
B-9	Amityville Realty Corp.		576,800.00		28,840.00
B-10	Armando Liberato				7,400.00
B-11	Melencio S. del Rosario Jr.				5,676.00
B-12	Crispin M. Hidalgo				12,565.00
B-13	Esther Domingo				12,138.00
B-14	Estrella de la Cruz		150,870.00		7,543.50
B-15	Felimon Concepcion				5,020.00
B-16	Josephine Dumlao		372,000.00		18,600.00
B-17	Leandro F. Garcia				6,127.50
B-18	Leo Docto				10,560.00
B-19	Leonor Dorado				3,380.00
B-20	Lina Pajarillaga				9,235.11
B-21	Marilyn Buenafe				9,360.00
B-22	Ceferino D. Sta. Maria		2,048,980.00		102,449.00
B-23	Nancy Paragas				13,850.00
B-24	Nelson Escobar				9,940.00
B-25	Raymundo T. Hernando/ Celeste T. Hernando		240,000.00		12,000.00
B-26	Rene Monasterial				27,600.00
B-27	Rodrigo de Jesus, Jr.		124,640.00		6,230.00
B-28	Romulo E. Samson				6,375.00
B-29	Salvador Magundayao				13,050.00
B-30	Teodoro Barrientos				51,700.00
B-31	Virgilio Villaseran		60,160.00		3,030.50
B-32	Neptune Pawnshop, Inc.		124,450.00		6,222.50
B-33	The Insular Life Assurance Co., Ltd.		144,936.00		7,246.80
B-34	Herminia Nepomuceno		26,400.00		1,320.00
B-35	Phil. Info. Agency		72,000.00		3,600.00
B-36	DHL Philippines Corp.		85,664.60		4,283.23
B-37	Citilens Corp.		18,000.00		900.00
B-38	Mercury Drug Corp.		47,520.00		2,376.00
B-39	Rudy's Mami House		132,000.00		6,600.00

Exhs.	**Withholding Agents**	**Income Earned**	**Tax Withheld**
B-40	The Insular Life Assurance Co., Ltd.	43,560.00	2,178.00
B-41	Family Mini Mart	72,000.00	3,600.00
B-42	Lee Dept. Store	91,500.00	4,575.00
B-43	Princesito Gemmae Snack House	74,400.00	3,720.00
B-44	Teresita R. Reyes	124,000.00	6,200.00
B-45	Nick L. Villatuya, M.D.	42,000.00	2,100.00
	TOTAL		P 651,128.33

Counsel for respondent waived his right to present any evidence, instead he opted to submit the Memorandum Report of the Revenue Officer who recommended a favorable action on petitioner's claim for refund. The Memorandum Report, dated June 19, 1995, of said officer reads as follows:

> "Considering the devolution of cases from the National Office to the District Office, where normally the investigation of the 1991 tax case of the above-subject taxpayer was handled by the Banks Financing and Insurance Division of the Special Operation Service of the National Office, and the lapse of time which should have already completed the investigation of 1991 tax liabilities including the claimed excess/overpayment, it is therefore suggested that the subject claim be approved and be issued the corresponding TCM. However, as a pre-condition to the issuance of TCM, the subject taxpayer must be required to execute an undertaking that the said amount shall not be applied against future deficiency tax for 1991."

After a thorough examination of the Income Tax Returns of petitioner for the years 1991 and 1992, it appears that while petitioner opted to carry over the excess income tax paid (by way of the creditable withholding tax) in 1991 as prior year's excess credit to the next succeeding year (1992), still petitioner was not able to apply the amount of P651,128.33 in 1992, there being no income tax liability due for that year by reason of the loss incurred. Likewise, petitioner has reported the income earned from rentals in Schedule 4 (Exh. A-6) of the Income Tax Return and the income from the sale of acquired assets in Schedule 5 (Exh. A-7) thereof. Petitioner submitted in evidence the various Certificates of Creditable Income Tax Withheld at Source (Exhs. B-1 to B-45, inclusive, pp. 10-53, CTA records) to show the amount withheld therefrom. Finally, the manifestation of respondent that its revenue officer has already recommended a favorable action on petitioner's request and there being no serious objections to the refund sought, it is only but proper to grant the amount claimed for by petitioner after having satisfactorily proven its claim for refund.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. Accordingly, respondent is hereby ordered to refund in favor of petitioner by way of a Tax Credit Memo the amount of p651,128.33, representing overpaid income tax for the year 1991. Without special pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

CERTIFICATION

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