REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL AND INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5512

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 30 1999

x - x

DECISION

Case before us is a petition for review seeking for the refund or issuance of a tax credit certificate in the amount of Four Hundred Ninety One Thousand Five Hundred and Twenty pesos and One Centavo (P491,520.01) representing the alleged unutilized creditable withholding taxes erroneously remitted in 1994.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. During the taxable year 1994, petitioner's withholding agents allegedly remitted to the Bureau of Internal Revenue (BIR) creditable withholding taxes amounting to P491,520.01 detailed per its 1994 schedule of prepared taxes (Exh. R) which are as follows:

EXH.	WITHHOLDING AGENT (PAYOR)	INCOME TAX WITHHELD
B	AB Corporation	₱ 83,316.09
C	Anscorland	5,092.23
D,E	ABCIC-TID (Philamlife & A. Soriano)	13,534.20

F	ESCA, Inc.	3,452.10
G	Far travel	43,776.16
H	GSIS	75,000.00
I	MM International	1,433.16
J	Pestrol	18,523.08
K	Dolphin	2,858.25
L	Total Ventures	15,593.98
M	Reed Phils.	2,101.88
N	Shimex Trading	18,157.35
O	Celestino's International	20,597.39
P	PNB-PNOC	185,962.15
Q	SILVER-Circle	1,371.36
	New Directions	675.63
	Lanuza Carreon	75.00
Total		₱ 491,520.01
Per Income Tax Returns		492,199.00 (Exh.A).

However, for the said year, petitioner incurred a net loss of ₱ 520,957.00 as reflected in its 1994 Income Tax Return (Exhibit A-4). As a consequence thereof, petitioner was not able to utilize the said amounts as tax credit for 1994.

Petitioner carried over to taxable year 1995 its reported 1994 creditable taxes withheld of ₱ 492,199.00. Since Petitioner ended up in 1995 with a net loss of ₱ 14,381,529.00 (Exh. V-3), the said creditable withholding taxes remained unused as of 1995. Thus, on April 11, 1997, the Petitioner, thru its counsel filed with the BIR, a letter-claim for the refund of the unused creditable taxes withheld in the amount of ₱491,520.01 (Exh. T)

Since the Respondent did not act upon the Petitioner's claim for refund and the two-year prescriptive period was about to expire, the instant petition for review was filed on April 15, 1997.

Respondent, in his Answer, set up the following Special and Affirmative defenses:

4. Petitioner's claim has already prescribed;

5. Petitioner has no cause of action;

6. Petitioner has already applied as tax credit the total amount of P 491,520.01 to the years 1995 and 1996, hence no longer refundable;

7. Petitioner has not proven by competent evidence its allegation of net Loss operation and had it not for the inordinate, unreasonable, unallowable and unsupported claim for expenses as deduction, the Petitioner would have been required to pay the excess tax still due under Section 69(a) of the Tax Code, as amended;

8. The best evidence for the payment and remittance of taxes withheld are the official receipts;

9. In claiming for refund, it is incumbent upon petitioner to prove that it is indeed 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;

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

11. Petitioner has not shown sufficient compliance with the provision of Section 230 of the Tax Code;

12. The affidavit of Non-Forum Shopping attached to the instant petition was not executed by the petitioner but by the petitioner's counsel which is not in accordance with Administrative Circular No. 4-94;

13. Consequently, petitioner is not legally entitled to the claim herein sought to be refunded.

Petitioner, to prove its case, presented the following exhibits:

Exhibits	**Particulars**
A	Annual Corporate Income Tax Return of AB Capital and Investment Corporation for the year 1994
B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q	Various Certificates of Creditable withholding tax withheld at source
R	Petitioner's Schedule of Prepaid taxes for 1994
S	Annual Corporate Income Tax Return of AB Capital and Investment Corporation for the year 1995
T	BIR Letter Claim for Refund of overpaid income Tax for 1994 dated April 10, 1997
U	Annual Corporate Income Tax Return of AB Capital and Investment Corporation for the year 1996
V	BIR Letter Claim for Refund of overpaid income Tax for 1995 dated Oct. 3, 1997

Respondent, on his part, submitted the following exhibits as evidence:

Exh. 1-Letter of Authority No. 140550 dated March 17, 1998;

Exh. 2-Memorandum of the Revenue Officers and their findings recommending the denial of the petitioner's claim for refund and the basis thereof.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund in the amount of ₱491,520.01 representing alleged overpaid income tax for the calendar year ended 1994.

After a careful scrutiny of the facts and evidence attendant to the case at bar, this Court finds that indeed petitioner is entitled to the refund sought for or to the issuance of a tax credit certificate. Petitioner anchors its stand on Section 69 of the National Internal Revenue Code which provides:

> "**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) <u>Be refunded the excess amount paid, as the case may be</u>.
>
> 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. (underscoring supplied)

It is clear from the wordings of Section 69 of the Tax Code that the petitioner may rightfully claim for the refund of the taxes withheld and remitted during the year 1994. However, for the said year petitioner has no tax liability to speak of as it incurred losses amounting to ₱520,957.00 rendering it impossible to utilize the excess creditable tax withheld. Thus it opted to credit the refundable income tax payment against the income tax liabilities for the succeeding taxable year as indicated by the "X" mark in the box "to be applied as credit for next year". However, this did not materialize for petitioner was again in a net loss position. Thus, legally speaking, petitioner's claim for refund of the taxes withheld and remitted during the year 1994 is meritorious because until now, it remained unutilized.

As regards the contention of the respondent that petitioner has not shown proof of the loss incurred, We find this to be without merit. Suffice it to state, that in the case of Citytrust Banking Corp. vs. CIR CTA Case No. 4099 May 28, 1991, this particular issue has already been settled, to wit:

> "Respondent's contention that a mere allegation of loss does not ipso facto merit a refund is unmeritorious. As stated, respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence, the income tax return should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by petitioner in the year. (see also BPI as liquidator of Paramount Acceptance Corp. vs. CIR CTA Case No. 4257, December 20, 1993)

The records of the case, also revealed that petitioner was able to comply with the basic requirements needed for the grant of refund of excess creditable taxes withheld at source, to wit:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the 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 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 (sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corp. vs. CIR, CTA Case No. 4134, November 11, 1991)

A perusal of the evidence submitted by petitioner reveals that it has successfully met the above requirements. The claim for refund was timely filed within two years from the date of payment of the tax. Its claim for refund with the Bureau of Internal Revenue was filed on April 11, 1997 (Exh. T) and its petition for Review with this Court on April 15, 1997. Both dates of filing fall well within the two year period from April 17, 1995 (Exh. A-3), the considered date of payment of petitioner's 1994 income tax.

Petitioner likewise declared in its 1994 income tax return the income payments from which the creditable taxes of ₱491,520.01 were withheld as part of its gross income from investment, banking, consultancy and others, and financing totalling ₱172,136,045.00 (Exh. A, Section C, schedule 1; CTA records, p. 65-67)

And to support its claim for refund of ₱491,520.01, petitioner also submitted the Certificates of Creditable Tax withheld at source issued by various withholding agents (Exhs. B to Q). However, after considering the documents submitted, we disallowed some of the claimed amount. The Court noted that petitioner failed to submit the Certificates of Creditable Tax Withheld at Source to prove the fact of withholding (and remittance) by the following agents:

WITHHOLDING AGENTS	**INCOME TAX WITHHELD**
New Directions	₱ 675.63
Lanuza Carreon	₱ 75.00
	₱ 750.63

Moreover, as correctly pointed out by the respondent, some Certificates bear the name of Asian Bank Corporation (with TIN No. 000-523-909) as payee instead of AB Capital and Investment Corporation (with TIN No. 320-000-841-331). Although petitioner's witness testified that the withholding agents committed an error in writing the name of the payee, the same holds no water for it is not the proper person to testify regarding the error committed but the withholding agents themselves. Further, when asked to by its own counsel if these were booked in the books of account of Asian Bank Corporation, she replied that she has no knowledge (tsn, Sept. 23, 1997, hearing; pages 29-30). Thus, the following amounts were likewise disallowed:

INCOME TAX WITHHELD	**WITHHOLDING AGENTS**	**EXH.**
₱ 3,452.10	ESCA, Incorporated	F
18,523.08	Pestrol, Inc.	J
1,371.36	Silver circle	Q
₱ 23,346.54		

While this Court is convinced of petitioner's entitlement to the refund sought, we can only grant such amount that has been duly proven, which in this case is ₱467,422.84, computed as follows:

Total amount of claim for refund		₱ 491,520.01
Less: Disallowances		
1) No accompanying Certificates of creditable tax withheld at source	₱ 750.63	
2) Payee in the certificates is not the petitioner	23,346.54	24,097.17
		₱ 467,422.84

WHEREFORE, in the light of the foregoing, the Petition for Review is **GRANTED** and the Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of P467,422.84 representing unutilized creditable Income tax withheld at source for the 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 this 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
Court of Tax Appeals