Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EQUATORIAL REALTY DEVELOPMENT INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 4409**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

11/3/93

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

D E C I S I O N

This case involves a claim of petitioner for refund of alleged excess creditable expanded withholding tax in the total amount of P431,831.47.

Petitioner is a corporation organized and existing under the laws of the Philippines doing business as a real estate lessor. Its income consists entirely of rentals paid by its lessees of its real properties. It alleges that its lessees, as withholding agents of the government, withhold from their rental payments 5% expanded withholding tax in compliance with Section 1(c) of Revenue Regulations No. 13-78, as amended.

Petitioner alleges further that when it paid its income taxes for 1987 tax year, it had a refundable amount totalling P263,031.86, computed as follows:

Taxable Income 1987	P 385,740.52
Tax due (35%)	135,009.18
Less: Prior Year's excess credit	169,578.24
Creditable Expanded Withholding Tax 1987	228,462.80
Amount Refundable	**P 263,031.86**

and that when it filed its income tax return for 1988 tax year, it had a resulting refundable amount of P431,831.47, computed as follows:

Taxable Income 1988	P 188,710.06
Tax Due (35%)	66,048.52
Less: Prior Year's Refundable Amount/Excess Credit	263,031.86
Creditable Expanded Withholding Tax 1988	234,848.13
Amount Refundable	**P 431,831.47**

On November 23, 1989, petitioner filed with the respondent, through the Appellate Division, its claim for refund of the aforesaid amount of P431,831.47 and alleges that despite its repeated follow-up, the said claim was not acted upon and that it has no other plain and adequate remedy except to file the instant petition considering that the statutory period of two (2) years within which to file such claim is about to prescribe.

Respondent avers in his answer that petitioner's claim for refund "is still being investigated by respondent;" that the "credit for expanded withholding taxes" claimed by petitioner "have not been shown to be in accordance with law and regulations;" that the taxes collected are presumed to have been paid and collected in accordance with law; the petition states no cause of action in that it did not allege the date when the tax sought to be refunded or credited was paid and that it is "incumbent upon the petitioner to show compliance with the provisions of Sections 243 and 246 (formerly Sections 292 and 295) of the Tax Code."

In its Resolution dated July 8, 1992, the Court dismissed the petition for lack of interest to prosecute. Petitioner's Motion for Reconsideration, without objection of respondent, was granted.

Subsequently, petitioner formally offered the following documentary evidence:

> Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1) for the year 1987 issued to petitioner by its various tenants. (Exhibit A to A-27);
>
> Schedule of 5% expanded withholding taxes withheld from the rental payments to petitioner by the withholding agents of respondent for the year 1987, totalling P228,673.70. (Exhibit B);
>
> 1987 Income Tax Return of petitioner. (Exhibit C);

Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1) for the year 1988 issued to petitioner by its various tenants. (Exhibit D to D-23);

Schedule of 5% expanded withholding taxes withheld from the rental payments to petitioner by the withholding agents of respondent for the year 1988, totalling P234,848.14. (Exhibit E);

1988 Income Tax Return of petitioner. (Exh. F); and

Claim for Refund dated November 21, 1989. (Exh. G)

After respondent has submitted his comment on the aforestated evidence offered by petitioner and the latter's reply thereto, the Court admitted all the said Exhibits from A to G inclusive. Dates for the reception of respondent's evidence were set but respondent failed to present his evidence notwithstanding several postponements upon his request. Thus the Court was constrained to rule "that respondent's right to present his evidence is deemed waived". Both parties waived the filing of Memorandum in support of their respective contentions.

Section 8 of BIR Revenue Regulations No. 13-78 implementing the provisions of Presidential Decree No. 1051, amending Sections 30 and 53 of the National Internal Revenue Code provides:

> Section 8. ***Claims for tax credit or refund.*** — Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by 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.

Petitioner has shown that it declared in its income tax returns (Exh. C and F) its income from the rentals paid by the lessees of its real properties and that the amounts withheld by said lessees are specified in the copies of their statements in BIR Form No. 1743 (Exhibits A to A-27).

Petitioner seasonably filed its petition within the period allowed by law, under Sec. 230 of the Tax Code the pertinent provision is herein quoted to wit:

> **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 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.
>
> 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.

Clearly, herein petitioner properly filed its petition for review on December 14, 1989, well within the period provided for by law. Petitioner likewise established that the income upon which the taxes were withheld were included in the tax return. Moreso, petitioner has clearly proven by documentary evidences that income tax were withheld (Exhibit C and F) from the rentals paid by the lessee of its real properties as evidenced in the copies of their statements in BIR Form No. 1743 (Exhibit A to A-27).

Considering that it has complied religiously with the requirement of the law, as a way of proving entitlement to the refund sought for. The Court is convinced that it deserves the relief being prayed for.

Cases of this nature were properly disposed of by this Court as held in *Paseo Realty and Development Corporation vs. CIR*, CTA Case No. 4528, dated April 30, 1993.

In view of the Foregoing, respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner the sum of P431,831.47 representing excess expanded withholding tax.

SO ORDERED.

Quezon City, Metro Manila, November 3, 1993.

MANUEL K. GRUBA
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 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