REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASEO REALTY AND DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4254

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/10/93

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

# D E C I S I O N

The case at bar invokes petitioner's claim for the tax refund of P254,999.00 representing alleged overpaid income tax for the calendar year ending December 31, 1985.

Petitioner, Paseo Realty and Development Corporation, is a corporation duly organized and existing under Philippine laws with principal office in Makati, Metro Manila.

On April 14, 1986, petitioner filed its Income Tax Return for 1985, with the Bureau of Internal

Revenue, declaring a refundable income tax in the amount of P254,999.00, detailed as follows:[1]

| | |
|---|---|
| Income (Schedule 4 - Rentals/Leases) | P1,855,000.00 |
| Less: Deductions | 1,779,842.00 |
| Net Income | P 75,158.00 |
| Tax Due | P 18,790.00 |
| Less: | |
| Prior year's excess credit | 181,039.00 |
| Balance of Tax Due | (P162,249.00) |
| Less: | |
| Tax credit - 5% expanded withholding tax on rentals | 92,750.00 |
| TOTAL AMOUNT OF TAX DUE/ REFUNDABLE | (P254,999.00) |

A separate claim for refund or tax credit was filed on April 13, 1987 with respondent's office regarding petitioner's prior year's excess credit in the amount of P181,039.00.[2]

Subsequently, petitioner filed on October 1, 1987 a written claim for refund or tax credit of P73,960.23, representing excess creditable

---

[1] Exh. A-1.

[2] Exh. F. Note: A separate petition was filed with the Court docketed as CTA Case No. 4148 with respect to the claim for refund of P181,039.00. On April 3, 1992, this Court arrived at a decision granting the petition. On appeal, the Court of Appeals in its decision (GA - G.R. SP No. 27903) dated July 31, 1992 reversed the CTA decision on the ground that no decision was rendered by the respondent Commissioner of Internal Revenue thus making the petition with the CTA premature. A Motion for Reconsideration is now pending with the same Court.

withholding taxes for the year 1985.[3] The claim for refund of P73,960.23 was arrived at after deducting the 1985 tax liability of P18,790.00 from the current year (1985) withholding tax on rentals amounting to P92,750.00.

On April 15, 1988, there being no action on the claim for refund or tax credit, petitioner filed the instant judicial claim for refund of the amount of P254,999.00 instead of P73,960.23.

Respondent alleged as special and affirmative defenses lack of cause of action for failure of petitioner to state the date when the tax was paid. Furthermore, the income tax return standing alone is not sufficient to prove entitlement to the claim being sought. Moreover, in actions for refund, the burden is on the petitioner-taxpayer to show entitlement thereto.

Petitioner offered in evidence, the following documents:

a. 1985 Income Tax Return (BIR Form No. 1702) together with the auditor's report and its financial statements;[4]

---

[3] Exh. G.

[4] Exh. A-1.

b. Statements of Tax Withheld at Source (BIR Form No. 1743) issued by Citibank, N.A. as withholding agent;[5] and

c. Letter dated September 24, 1987 filed with the respondent's office on October 1, 1987 seeking the tax refund or credit of the amount of P73,960.23 as alleged excess creditable withholding taxes for the year 1985.[6]

Respondent maintains that the petition states no cause of action for failure of petitioner to allege the date of payment of the tax being claimed for refund.

Respondent for his part waived his right to present any evidence. Instead, he submitted the case based on the pleadings.

We disagree with respondent's position.

Section 292 (now 230) of the National Internal Revenue Code provides a two-year prescriptive period to file a suit for a refund of tax erroneously or illegally collected or of any sum alleged to have been excessively collected counted from the date of payment. The date of payment for corporate income taxpayers has been construed to mean the period when the income tax return is

[5] Exhs. C and C-1.

[6] Exh. G.

required to be filed.[7] Corporate annual income tax returns are requested to be filed on or before the 15th day of April (if on a calendar basis) or on the 15th day of the fourth month following the close of the fiscal period, as the case may be.[8] The "two-year prescriptive period is thus computed at the time of the filing of the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax".[9]

In this case, the two-year prescriptive period commenced to run, at the earliest, from the time petitioner was required to file a return, that is, on April 15, 1986. Petitioner filed a written claim for refund or tax credit with the respondent on October 1, 1987. Hence the two-year period for

---

[7] Sec. 87(c) NIRC.

[8] Sec. 87(b), ibid.; Unibake Inc. v. Commissioner of Internal Revenue, CTA Case No. 3987, July 31, 1989.

[9] Commissioner of Internal Revenue v. TMX Sales, Inc., et. al., G.R. No. 83736, January 15, 1992; ACCRA Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue v. Asia Australia Express, Ltd., represented by Soriamont Steamship Agencies, Inc., and Court of Tax Appeals, G.R. No. 85956, April 10, 1989; Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA - G.R. SP No. 26839, July 31, 1992; and Servicewide Specialists, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals, CA - G.R. SP No. 25893, November 9, 1992.

judicially claiming for a refund has not yet lapsed when the petition was filed on April 15, 1988.

In the case of ***Servicewide Specialists, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals, CA - G.R. SP No. 25893, February 14, 1992,*** the question relative to the prescriptive period for claims for refund has been sufficiently discussed and clarified as follows:

> "The ruling was subsequently clarified by this Court in a later case, Commissioner of Internal Revenue vs. Insular Lumber Co., Dec. 11, 1967, 21 SCRA 1237. It was there held that Sections 306 and 309 of the Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the National Internal Revenue Code. <u>In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2), of the Civil Code</u>. xxx xxx xxx. 'In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified.'"

Again this Court in the case of ***Citytrust Banking Corporation v. Commissioner of Internal***

*Revenue, CTA Case No. 4099, May 28, 1991,* has ruled:

> "Although the title of Sec. 230 of the Tax Code is 'Recovery of Tax Erroneously or Illegally Collected', the title alone is not controlling. By the tenor of Sec. 230, the two-year limit applies to actions to recover -
>
> 1. any national internal revenue tax erroneously or illegally assessed or collected;
>
> 2. any penalty claimed to have been collected without authority; or
>
> 3. any sum alleged to have been excessive or in any manner wrongfully collected
>
> (See Muller & Phipps v. Commissioner of Internal Revenue, 103 Phils. 145, March 20, 1958). The overpaid income taxes in this case fall under #3 for although they were legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they were nonetheless 'excessive'."[10]

This case evidently involves claim for refund of excessive payment of income tax covered by the 5% withholding of rental income of petitioner. Thus, the two-year period of filing a claim for refund with this Court is in order.

Respondent further argued that petitioner failed to present as proof of payment and remittance the Official Receipts or Central Bank

[10] Affirmed by the Court of Appeals in Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA - G.R. SP No. 26839, July 31, 1992.

Confirmation Receipt issued by respondent, that the presentation of Statement and Certificate of Withholding although establishing a prima facie evidence of withholding is not enough to prove that the taxes withheld were in fact remitted to the Bureau of Internal Revenue, and likewise, the income tax return is insufficient proof of refundability.

Time and again this Court has ruled that in claims for refund of excess withholding taxes petitioner-taxpayers need only prove the following:

(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;

(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.[11]

[11] Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.

The law and/or the implementing revenue regulations do not require the production of Central Bank Confirmation Receipts or the Withholding Tax Return or the verification by the revenue enforcement officer of the statement of withholding taxes.[12] All that is required to show proof of withholding is the presentation of Statement of Tax Withheld at Source (BIR Form 1743.1) showing the income received and the amount of tax withheld therefrom and that the income was included to form part of petitioner's gross income as stated in its income tax return. The reason for this is simple. The withholding agents are not within the control of the payee taxpayer but are the tax agents of the Commissioner of Internal Revenue. The withholding agents merely hold the amount in trust for the government.13

It appears from the documents presented by petitioner that only the amount of P73,960.23 was

---

[12] Commissioner of Internal Revenue v. The Philippine American Life Insurance Co. and The Court of Tax Appeals, CA - G.R. SP No. 26598, March 26, 1992; Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, supra.; Ateneo de Manila v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989; and Commonwealth Pacific Consultants Ltd. v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982.

[13] Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA -G.R. SP No. 26839, supra.

asked for in its claim for refund/tax credit filed in the administrative level. But in the petition brought before this Court petitioner prays for the refund of the whole amount reflected as income tax refundable in the income tax return for 1985 or the amount of P254,999.00. Subsequently in its memorandum petitioner admitted that it was merely asking for the refund of P73,960.23 representing the excess withholding taxes paid for the year 1985. In fact, respondent also admitted that in the event petitioner is entitled to the refund claimed it must only be for the amount of P73,960.23 and not P254,999.00 as prayed for in the petition.

Petitioner was able to establish that it filed a written claim for refund/tax credit with the respondent in the amount of P73,960.23. Inasmuch as the jurisdiction of the Court is exclusively appellate in nature, the Court shall therefore limit its review with what petition claimed initially in the administrative level. Moreover, there has already been filed a separate petition with respect to the remainder of P181,039.00. This Court has already granted such claim in its decision dated April 3, 1992 in CTA Case No. 4148.

**WHEREFORE**, in view of the foregoing circumstances, respondent is hereby ordered to **REFUND** in favor of petitioner the amount of P73,960.23, representing its excess creditable withholding tax for the year 1985. No costs.

**SO ORDERED.**

Quezon City, Metro Manila, August 10, 1993.

**MANUEL K. GRUBA**
Associate Judge

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Judge

**RAMON O. DE VEYRA**
Associate Judge

# CERTIFICATION

I hereby certify tha 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