REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RONDEL MANAGEMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4787

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 03 1996

x - x

DECISION

This is a suit instituted by petitioner Rondel Management, Inc. to apply for the refund or tax credit of the amount of P750,475.00 representing alleged excessively paid income taxes for the calendar years 1989 and 1990 due from respondent Commissioner of Internal Revenue.

Petitioner, a domestic corporation duly engaged in the business of rendering management and technical consulting services, filed its Corporate Annual Income Tax Return for the calendar year ending December 31, 1988 on April 17, 1989, showing a refundable amount of P208,076.00, computed as follows:

Income	P3,637,907.00
Less: Deductions	3,453,189.00
Net Income	P 184,718.00
Tax Due	P 64,651.00
Less: Creditable Tax Withheld (Expanded Withholding)	272,727.27
TOTAL AMOUNT REFUNDABLE	P 208,076.00

For calendar year ending December 31, 1989, petitioner filed its Corporate Annual Income Tax Return on April 16, 1990 (Exh. F), showing a refundable amount of P311,399.32, computed as follows:

Income		P3,950,277.00
Less: Deductions		3,700,572.00
Net Income		P 240,705.00
Tax Due		P 84,247.00
Less: Creditable Tax Withheld		
1988 creditable tax carried over to 1989	P212,428.15	
1989 creditable tax withheld	183,218.17	395,646.32
TOTAL AMOUNT REFUNDABLE		P 311,399.32

For the calendar year ending December 31, 1990, petitioner filed its Corporate Annual Income Tax Return on April 15, 1991, showing a refundable amount of P750,475.00, computed as follows:

Income	P12,942,840.00
Less: Deductions	12,353,186.00
Net Income	P 589,654.00

Tax Due		P	206,379.00
Less: a) Prior Year's Excess Credit	P311,399.00		
b) Quarterly Payments	-0-		
c) 1990 Creditable Tax Withheld	645,455.00		956,854.00
TOTAL AMOUNT REFUNDABLE			P 750,475.00

Petitioner filed a claim for refund or tax credit in the amount of P750,475.00 with the respondent on December 12, 1991. Petitioner later seeked to enforce its claim for refund or tax credit by filing a petition with this Court.

Respondent contended that the income tax payments made prior to April 14, 1990 has prescribed pursuant to Section 230 in relation to Section 204 of the National Internal Revenue Code. Petitioner has only two years to file a claim for refund or tax credit with this Court counted from the date of payment of the tax. Since the petition was filed on April 14, 1992, all payments made prior to April 14, 1990 are barred by prescription. Respondent also averred that the amount of P212,428.15 claimed as 1988 excess income tax payment carried over to 1989 is not properly documented. Claims for refund are strictly construed against the claimant. The burden of proof lies with the taxpayer to show that the tax was erroneously or illegally paid. The taxes paid are presumed to have been collected and paid in accordance with law and regulations.

To sustain petitioner's contention that it is entitled to the refund or tax credit sought for, it presented in evidence the following documentary evidence, to wit:

1. 1988 Income Tax Return (Exh. E);

   a. Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743W) by Pacific Plaza, Inc. for the Month of Sept. 1988 (Exh. U); and

   b. Central Bank Confirmation Receipt (Exh. U-1) and BIR Payment Order (Exh. U-2) evidencing remittance made by Pacific Plaza, Inc. to the BIR on the taxes withheld by them from corporations for the month of Sept. 1988.

2. 1989 Income Tax Return (Exh. F);

   a. Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743-1) for the year 1989 from the following withholding agents:

      (1) C. Itoh & Co., Ltd. (Exh. A); and

      (2) Pacific Plaza, Inc. (Exh. B):

         (a) Annual Return of Creditable Income Tax Withheld (Expanded Withholding Tax System) for Calendar Year 1989 of withholding agent Pacific Plaza, Inc. (Exh. Q);

         (b) Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743W) by Pacific Plaza, Inc. for the months of April, May and Oct., 1989 and Sept. 1988 (recognized as taxes paid in 1989 under the accrual method - income having been received in advance in 1988) [Exhs. R, S, T and U, respectively]; and

(c) Central Bank Confirmation Receipts (Exhs. R-1, S-1, T-1 and U-1) and BIR Payment Orders (Exhs. R-2, S-2, T-2 and U-2) evidencing remittances made by Pacific Plaza, Inc. to the BIR on the taxes withheld by them from corporations for the months covering April, May and Oct. 1989 and Sept. 1988, respectively.

3. 1990 Income Tax Return (Exh G);

a. Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743-1) for the year 1990 from the following withholding agents:

(1) Pacific Plaza, Inc. (Exh. C):

(a) Annual Return of Creditable Income Tax Withheld (Expanded Withholding Tax System) for Calendar Year 1990 of withholding agent Pacific Plaza, Inc. (Exh. V) with attached Schedule showing the Summary of Monthly Remittances on taxes withheld from corporations and individuals;

(b) Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743W) by Pacific Plaza, Inc. for the months of March, June and Sept., Dec. 1990 (reflected as Jan. 1991) [Exhs. W, X, Y and Z respectively], and

(c) Central Bank Confirmation Receipts (Exhs. W-1, X-1, Y-1 and Z-1) and BIR Payment Orders (Exhs. W-2, X-2, Y-2 and Z-2) evidencing remittances made by Pacific Plaza, Inc. to the BIR on the taxes withheld by them from corporations for the months covering March, June, Sept. and Dec. 1990, respectively.

(2) Gateway Property Holdings, Inc. (Exh. D)

(a) Annual Return of Creditable Income Tax Withheld (Expanded Withholding Tax System) for Calendar Year 1990 of withholding agent Gateway Property Holdings, Inc. (Exh. F).

(b) List of Payees from whom taxes were withheld by Gateway Property Holdings, Inc. for the year 1990 showing Rondel Management, Inc. as one of the payees of whom the amount of P463,636.34 was withheld (Exhs. I-2 and I-2-a);

(c) Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743W) by Gateway Property Holdings, Inc. for the months of June - Dec. 1990 (Exhs. J, K, L, M, N, O and P, respectively); and

(d) Central Bank Confirmation Receipts (Exhs. J-2, K-1, L-1, M-1, N-1, O-1 and P-1) and BIR Payment Orders (Exhs. J-3, K-2, L-2, M-2, N-2, O-2 and P-2) evidencing remittances made by Gateway Property Holdings, Inc. to the BIR on the taxes withheld by them from corporations for the months covering June - Dec. 1990.

4. Letter request with the BIR for refund or tax credit dated December 9, 1991, received by the BIR on December 12, 1991 (Exh. H)

After the presentation of evidence by petitioner, respondent failed to transmit the BIR records of this case in violation of our rules pursuant to Section 2 of Rule 7 of the CTA Rules neither was she able to present her evidence thereby prompting petitioner to move for the submission of this case for decision. Petitioner filed a memorandum in support of its case while respondent after several extensions of time to do so failed to comply therewith. This case is now submitted for decision based on the pleadings, the documentary and testimonial evidence of petitioner.

In its memorandum, petitioner alleged that its claim for refund or tax credit with respect to the creditable income tax withheld in 1988 in the amount of P208,076.00 has prescribed. Thus, petitioner withdraws its claim for said amount. Petitioner maintains however that the claim for refund or tax credit insofar as the overpaid income taxes for calendar years 1989 and 1990 are concerned. The balance of P538,047.20 is still being enforced by way of this petition for refund or tax credit, computed hereunder as:

1989 Income Tax Due		P 84,247.00
Less: Creditable Tax Withheld		
1989 creditable tax withheld(Exhs. A & B)		183,218.20
1989 INCOME TAX REFUNDABLE		P 98,971.20
1990 Income Tax Due		P 206,379.00
Less: a) Prior Year's (1989) Excess Credit	P 98,971.20	
b) Quarterly Payments	-0-	

c) 1990 Creditable Tax Withheld (Exhs. 1-2,& V)	645,455.00	744,426.20
TOTAL AMOUNT REFUNDABLE		P 538,047.20

The issue posed is whether or not petitioner is entitled to the refund or tax credit of P538,047.20 representing alleged excessively paid income taxes for the calendar years ending December 31, 1989 and 1990 comprising of excess creditable withholding taxes at source.

As so determined, respondent was correct in asserting that the 1988 excess income tax payment claim for refund or tax credit of petitioner has prescribed. Petitioner even admits in its memorandum that indeed its claim for refund or tax credit with respect to the 1988 claim in the amount of P208,076.00 has lapsed and is therefore barred due to prescription.

The reason is simple, it is necessary that in all cases brought before this Court, the suit must be filed within the statutory period of two years from the date of payment of the tax. The requirements provided in Section 230 must be complied with in relation to Section 204 of the National Internal Revenue Code. **(Manila Electric Co. v. Collector of Internal Revenue, CTA Case No. 83, March 30, 1955, cited in Collector of Internal Revenue v. CTA and Hume Pipe and Asbestos Co., Inc., 1 SCRA 90; Paracale-Gamaus Co. v. Blaquera, CTA Case No. 211, August 22, 1956.)** In the case of corporate taxpayers, the date of payment was construed to mean the period when the income tax return is required to be filed, that is, on or before the 15th day of April if the corporation is 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. Thus, the High Court has ruled, that the two-year prescriptive period should be 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. **(Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992; ACCRA Investments Corporation v. The Hon. 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 Service-wide Specialists, Inc. v. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 25893, November 9, 1992.)**

The petition was filed on April 14, 1992. Therefore, following the jurisprudence above-cited, petitioner's claim for refund or tax credit for income taxes paid prior to April 14, 1990 has prescribed. When petitioner filed its 1988 Corporate Annual Income Tax Return on April 17, 1989, petitioner has two years within which to file a claim for refund or tax credit counted from

April 17, 1989. It has up to April 17, 1991 to file a written claim for refund or tax credit with the respondent and with this Court to enforce by judicial action its entitlement to recover excess income tax payments. Since the petition was filed only on April 14, 1992, petitioner's right to recover by judicial action its claim for refund or tax credit for excess income tax payments made on 1988 has already prescribed.

We now go to the question of whether or not petitioner is in fact entitled to recover by way of refund or tax credit the reduced sum of P538,047.20 representing excess income tax payments for the years 1989 and 1990.

Petitioner, although it has taken painstaking efforts in presenting the various documentary exhibits to prove its case, nonetheless, was remiss in presenting one vital document, that is, the Corporate Annual Income Tax Return for the succeeding year - 1991. At this juncture, it is noteworthy to point that petitioner, in its 1990 Corporate Annual Income Tax Return, marked with an (x) the box showing its intention to apply the refundable amount as tax credit to the succeeding taxable year. Having formally opted to apply the amount of P750,475.00 in the succeeding year (1991), petitioner cannot now change course by choosing to claim for a refund or issuance of a tax credit certificate without presenting its 1991 Income Tax Return for us to verify whether or not the same has actually been applied for that year. Failure on its part to present the 1991 Income Tax Return would be fatal to petitioner's claim for refund or tax credit. This is in line with our ruling in the cases of **AF Holdings and Management**

Corporation v. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993; Philippine Bank of Communications v. Commissioner of Internal Revenue, CTA Case No. 4309, May 20, 1993; BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services, Inc.) v. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc., v. Commissioner of Internal Revenue, CTA Case No. 4694, December 24, 1993; Anscor Hagedorn Securities, Inc., v. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; and Pasig Land Corporation v. Commissioner of Internal Revenue, CTA Case No. 4773, May 30, 1995, where it was held that when the taxpayer has opted to apply the amount refundable as a tax credit for the succeeding year it is important to present as evidence the succeeding year's Income Tax Return for verification if the amount was credited against its income tax liability for that year. Failure on the part of the taxpayer to sustain his claim is fatal to its cause of action. Petitioner has the burden of proving that it is entitled to the refund sought for because taxes are presumed to have been collected in accordance with laws and regulations. [Caltex (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986.] Suffice it to state, we are more than certain in the conclusion that claims for refund are in the nature of tax exemptions and as such it shall be construed strictly against the taxpayer.

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED** for lack of merit. Accordingly, petitioner's claim for refund or tax credit is **DENIED**. No pronouncement as to cost.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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