REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERF REALTY CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5967

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 20 2001

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DECISION

Before Us is a Petition for Review seeking the refund of P1,280,504.00 allegedly representing overpaid and unapplied creditable withholding tax on income for the taxable year 1997.

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is engaged in the business of leasing real properties. In 1997, it leased real properties to the Philippine American Life and General Insurance Company (PHILAMLIFE) and Read-Rite Philippines, Inc. (READ-RITE) which in turn, withheld the creditable income taxes from their rents.

On April 14, 1998, Petitioner filed its Annual Corporate Income Tax Return for the taxable year 1997 reflecting a net taxable income of P6,430,345.00 and an income tax due in the amount of P2,250,621.00 (Exhibit "A"). Likewise, Petitioner reported a total of P4,153,004.08 representing overpaid creditable income taxes which was credited to its tax due leaving an excess creditable withholding tax in the amount of P1,280,504.00.

On November 3, 1999, Petitioner filed an administrative claim for refund with the Appellate Division of the BIR National Office in the amount of P1,280,504.00 representing overpaid income tax for the taxable year 1997 (Exhibit U).

Due to the inaction of Respondent Bureau, Petitioner filed the instant Petition for Review on December 3, 1999.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

> "3. Assuming but not admitting that petitioner filed an application for tax credit/refund of unapplied withholding tax for the year 1997, the same is subject to administrative investigation and resolution, hence, petition is premature;
>
> 4. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;
>
> 5. Petitioner must show that it has complied with the provisions of Section 106 of the Tax Code, as implemented by Section 16 of Revenue Regulations No. 5-87;
>
> 6. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue)."

The sole issue for resolution is whether or not Petitioner is entitled to the refund of its excess creditable taxes for the year 1997 in the amount of P1,280,504.00.

In support of its claim, Petitioner offered the following documents:

1. 1997 Annual Corporate Income Tax Return (Exhibits A, A-13)

2. Various Certificates of Creditable Tax Withheld at Source (Exhibits B, C, D, E, F, G, and H)
3. Various Monthly Remittance Returns of Income Taxes Withheld (Exhibits I, J, K, L, M, N, O, P, Q, R, S, T, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF and GG)
4. Various Quarterly Income Tax Returns (Exhibits HH, II and JJ)
5. Letter-claim for refund (Exhibit U)

Respondent did not, however, present any controverting evidence.

We resolve to deny the instant Petition.

To be entitled to a refund, the following requirements must be complied with:

1) That the claim for refund was filed within the two (2) year period as prescribed under Section 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;

3) That the fact of withholding is established by a copy of a 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.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459].**

After a conscientious review of the records, this Court learned that Petitioner complied with requirement number 1. The administrative and judicial claims for refund were filed on November 3, 1999 and December 3, 1999, respectively, and when counted from the time Petitioner filed its Annual corporate Income Tax Return for 1997 on April 14, 1998, the said claims were filed within the two-year prescriptive period under Section 230 of the Tax Code (now Section 229).

Records also reveal that Petitioner presented Certificates of Creditable Withholding tax at Source reflecting creditable withholding taxes in the amount of P4,153,604.18 withheld from Petitioner's rental income of P83,072,076.81 (Exhibits B, C, D, E, and H). In addition, Petitioner submitted in evidence the Monthly Remittance Returns of its withholding agents to prove the fact of remittance of said taxes to the BIR. It is to be noted that while the Certificates of Creditable Withholding Tax at Source for 1997 reflected a total amount of P4,153,604.18 corresponding to the rental income of P83,072,076.81, Petitioner however is claiming only the amount of P3,531,125.00 pertaining to a rental income of only P70,813,079.00 (see Exhibits A-8). The amount of P3,531,125.00 less the income tax due of Petitioner of P2,250,621.00 leaves the refundable amount of P1,280,504.00.

The foregoing discussion point out Petitioner's compliance with the three (3) aforementioned requisites, however in spite of this fact, the Court cannot grant the claim for refund due to one peculiar flaw in the evidence presented. The Court noted that Petitioner did not indicate in its 1997 Annual Corporate Income Tax Return the option it has taken regarding its excess income taxes (see Exhibit A).

Section 69 (now 76) of the National Internal Revenue Code provides, viz:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> 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.

The aforequoted provision of the Tax Code clearly provides that 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. It is therefore incumbent upon the Petitioner corporation to signify in its Annual Corporate Income Tax Return its intention to either request for a refund of its excess creditable withholding taxes as an automatic tax credit or claim it in the succeeding taxable year. These remedies, however, are in the alternative, and the choice of one precludes the other.

Moreover, this Court likewise found out that Petitioner failed to submit its 1998 Annual Corporate Income Tax Return, a vital document, which may be favorably considered in determining the propriety of its claim.

Failure of Petitioner to signify its option on whether to refund or opt for an automatic tax credit and to present its 1998 Annual Corporate Income Tax Return, left the Court with no way to determine with certainty whether or not Petitioner has applied or credited the refundable amount sought for in its administrative and judicial claims for refund.

Following well-established precedents previously laid down in several cases decided by this Court, the presentation of Petitioner's 1998 Annual Income Tax Return is necessary in order that a verification may be made to ensure that it no longer carried over the 1997 excess income taxes being claimed for refund **(Filinvest Development Corporation vs. CIR, CTA Case No. 5603, dated August 13, 1999; AF Holdings and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993; Philippine Bank of Communications vs. Commissioner eof Internal Revenue, CTA Case No. 4309, May 20, 1993; BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4694, December 25, 1993; Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; and Pasig Land Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4773, May 30, 1995).**

Failure on the part of Petitioner to present its 1998 Annual Corporate Income Tax Return is fatal to its claim for refund as the Court cannot determine with certainty whether or not the aforesaid tax credits were actually utilized or applied against its 1998 income tax liability.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above 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