REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST PACIFIC DAVIES
PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4792

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated :
MAR 02 1995

x - x

DECISION

This is a case for the refund of alleged unapplied tax credits of overpaid quarterly income tax and unutilized creditable withholding tax as of December 31, 1990 in the total amount of P1,171,555.00.

Petitioner is a domestic corporation doing business in the Philippines as a Real Estate Broker.

The facts of the case as narrated by the Petitioner in its Petition for Review practically remain undisputed as Respondent, although denied some of them, did not do anything to refute the same. A substantial portion thereof is hereby quoted, thusly:

> On May 26, 1989, July 31, 1989 and November 29, 1989 respectively, the Petitioner filed its quarterly income tax returns for the first, second and third quarters of the calendar year ending December 31, 1989 with

Revenue District 32-A West Makati, showing quarterly income tax payments in the total amount of P337,340.. (A copy of the quarterly income tax return, CB Confirmation Receipt and BIR Payment Order for the quarter ending March 31, 1989 are attached hereto and made an integral parts hereof, as Annexes "A", "A-1" and "A-2", respectively. A copy of the quarterly income tax return, CB Confirmation Receipt and BIR Payment Order for the quarter ending June 30, 1989 are attached hereto and made integral parts hereof, as Annexes "B", "B-1" and "B-2" respectively. A copy of the quarterly income tax return, CB Confirmation Receipt and BIR Payment Order for the quarter ending September 30, 1989 are attached hereto and made an integral parts hereof, as Annexes "C", "C-1" and "C-2", respectively).

On April 15, 1990, Petitioner filed its final income tax return for the calendar year ending December 31, 1989 with Revenue District 32-A West Makati showing the total quarterly income tax payments of P337,340, total creditable withholding tax payments of P723,347 and a net income tax due amounting to P113,072. (A copy of the return is attached herewith and made an integral part hereof as Annex "D").

Deficiency income tax incurred by Petitioner for the calendar year ending December 31, 1988 in the amount of P20,964 was added to the said income tax due for the taxable year 1989.

At the end of the taxable year 1989, the total amount to be applied as tax credit for the succeeding taxable year 1990 was P926,651.

On April 15, 1991, Petitioner filed its final income tax return for the calendar year ending December 31, 1990 with Revenue District 32-A West Makati, showing a net loss of P3,601,445 and total creditable withholding tax payments of P224,904. A copy of the return is attached herewith and made an integral part hereof as Annex "E".

Due to the net loss position of the operations of Petitioner during the taxable year 1990, Petitioner was not able to utilize its creditable withholding taxes in the total amount of P224,904, nor was it able to carry over the total tax credits incurred for the taxable year 1989.

Due to an expected net loss position of the taxable year 1991, Petitioner was not able to carry over the unutilized creditable withholding taxes for the taxable year 1990.

On February 26, 1992, which is within two (2) years after the payment of the above taxes, and pursuant to Section 204(3) of the National Internal Revenue Code (Tax Code), Petitioner filed a claim for refund of the unapplied tax credits for overpaid quarterly income tax and unutilized creditable withholding tax as of December 31, 1990 in the total amount of P1,171,555 with the Bureau of Internal Revenue through the Appellate Division of the BIR National Office, Diliman, Quezon City (A copy of which is attached herewith and made as integral part hereof as Annex "F"). (ibid.)

Such claim for refund was never acted by herein Respondent.

Hence, this appeal.

Is the Petitioner entitled to the refund claimed?

We answer in the affirmative.

Section 69 of the National Internal Revenue Code provides, thus:

<u>Final Adjustment Return</u>. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year, the corporation shall either:
>
> a. Pay the excess 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, <u>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</u>. (Underscoring supplied)

And since the refundable amount shown on its final adjustment return for taxable year 1989 <u>was not applied or utilized in the succeeding taxable years 1990 and 1991 the Petitioner having experienced tax loss positions, the automatic carry-over was therefore, impracticable. Hence, a refund or tax credit in the amount of P1,171,555.00 is in order</u>, computed as follows:

<u>1989</u>

Net income per Final Income Tax Return			P 323,063
Tax Rate			35%
Income Tax Due			113,072
Add:	1988 Deficiency Income Tax		20,964
Less:	Quarterly Payments:		
	1st Quarter	P111,048	
	2nd Quarter	176,106	
	3rd Quarter	50,186	337,340

Less:	Creditable Tax Withheld	P 723,347
	Total Amount to be Applied as Tax Credit for Succeeding Year	(P 926,651)

1990

Net Loss per Final Income Tax Return		(P 3,601,445)
Income Tax Due		0
Less:	Creditable Tax Withheld	224,904
Less:	1989 Unapplied Tax Credit	926,651
Total Net Income Tax Refundable		**(P 1,171,555)**

In Petitioner's 1990 Income Tax Return (Exh. C), however, We could readily see that the refundable amount should have been P1,192,519.00, whereas, the amount prayed for was only P1,171,555.00 or a difference of P20,964.00. Such difference was, however, explained by Petitioner's witness, Mr. Edgar Suzon, its Financial Comptroller when he testified, thus:

> Q. Mr. Witness, per your 1990 ITR, your tax refundable is P1,192,519.00. However, in this letter claim for refund filed by your tax counsel, your total net income tax refundable being claimed is only P1,171,555.00. There is a difference of P20,954.00. Could you please explain the difference?
>
> A. Well, the P20 thousand represent the deficiency tax of 1988 which was computed in 1989 so there resulted a difference of P20 thousand.

Q. Was this deficiency ever reflected in you final statement?

A. Yes, Actually we have a reconciliation or the tax due which this P20 thousand reflects, or which it is reflected.

(T.S.N. November 26, 1992 Hearing pp.14-15)

Accordingly, a tax credit in the amount of P1,171,555.00 should therefore, be granted.

This case is one of the classic example of cases which reached this Court but should have been settled in the administrative level. Had it been settled in the administrative level, the Bureau of Internal Revenue should have saved a lot in terms of manpower, time, effort and financial resources, instead of keeping the money which in the first place, it did not own. This goes without saying that this Court has also spent its own resources which could have been used more productively. Verily, it is very lamentable to note that cases which the Respondent cannot defend or is not interested in defending, including the case at bar, have reached to this level only to contribute to the already clogged dockets of this Court. Counsel in the case did not make any comments nor make any remarks on Petitioner's exhibits and/or cross-examine its witnesses. Neither, did they even attempt to present contrary evidence and they seldom attended hearings if they do.

This is, probably because, they were only forced to defend an obviously losing case. Hence, it may not be too much to emphasize that the Respondent should see to it that only cases which can be defended reach this Court. Otherwise, it should be settled administratively.

Without any evidence on the part of the Respondent to refute Petitioner's evidences, neither any comments or remarks thereto, nor cross-examination on Petitioner's witness, We have no more recourse left but to grant Petitioner's claim for refund.

WHEREFORE, in all the foregoing, this Court hereby **ORDERS** the Respondent to **ISSUE A TAX CREDIT CERTIFICATE** to the Petitioner for the sum of P1,171,555.00 representing overpaid quarterly income tax and unutilized creditable withholding tax as of December 31, 1990.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

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