REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASEO REALTY AND DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4528

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

4/30/93

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D E C I S I O N

This case involves a claim for refund of overpaid creditable withholding tax for the calendar year ending December 31, 1988 in the amount of P59,510.00.

Petitioner, Paseo Realty and Development Corporation, is a domestic corporation engaged in the real estate business as lessor of real properties.

On April 14, 1989, petitioner filed with the Bureau of Internal Revenue its Income Tax Return for 1988 showing a refundable amount of P146,026.00, computed as follows:[1]

Income (Schedule 4 - Rentals/Leases)		P1,855,000.00
Less: Deductions		1,774,637.00
Net Income		P 80,363.00
Tax Due		P 28,127.00
Less:		
a) Prior year's excess credit (1987)	P81,403.00	
b) Qtrly. payments made this year	-	
c) Creditable tax withheld (expanded withholding) [Exh. E]	92,750.00	174,153.00
Total Amount Due/Refundable		**(P146,026.00)**

On December 12, 1990, petitioner filed a claim for refund dated December 7, 1990 with respondent's Legislative Ruling and Research Division asking for the refund of P59,510.00, representing alleged excess creditable withholding tax for 1988.[2] Without waiting for respondent's decision, petitioner filed on January 2, 1991 a petition for review.

Petitioner alleged that after applying its prior year's (1987) excess tax credit against its

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[1] Exh. A-3.

[2] Exh. I.

1988 and 1989 tax liabilities it still had a tax credit balance of P25,623.00, computed as follows:

1987 refundable amount (Exh. A-2)	P 81,403.00
1988 income tax liability (Exh. A-3)	(28,127.00)
1989 income tax liability (Exh. A, CTA Case No. 4693)	(27,653.00)
Claimed for refund for 1987	P 25,623.52

A suit for the recovery of this amount was filed with this Court and docketed as C.T.A. Case No. 4439. Proper disposition of this claim will be dealt with in that case.

For 1988 petitioner had a creditable withholding tax of P92,750.00. Petitioner alleged that it applied the amount of P92,750.00 against its estimated income tax liability for 1990 amounting to P33,240.00. The remaining unapplied sum of P59,510.00 (P92,750.00 less P33,240.00) is now being claimed for refund by way of this petition.

Upon these facts, respondent raised as special and affirmative defenses lack of cause of action on the ground that the 1988 Income Tax Return of petitioner is still under verification. Petitioner did not state when the taxes withheld were actually paid. The mere allegation of excess tax credit does not ipso facto merit the refund claimed. The burden is on the taxpayer to prove entitlement to the refund.

The sole issue raised in this petition is whether or not petitioner is entitled to the refund of P59,510.00, as excess creditable withholding tax paid for the year 1988.

Petitioner presented as evidence the following relevant and material documents to support its claim for refund for the year 1988, to wit:

Exhs.		Particulars
A-3	-	1988 Income Tax Return (BIR Form 1702) together with its attachments: 1. Audited financial statements; 2. Schedule of taxes and licenses; 3. Photocopy of first page of 1987 annual income tax return; and
E	-	Certificate of Creditable Income Tax Withheld at Source for 1988 (BIR Form 1743.1) issued by Citibank, N.A. showing the amount of income paid of P1,855,000.00 and the amount of tax withheld of P92,750.00.
I	-	Letter claim for refund dated December 7, 1990 filed with the respondent on December 12, 1990.

Respondent objected to the admission of Exhibit E on the ground that the best evidence of payment of the withholding tax is the Central Bank Confirmation Receipt and not the Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743.1).

When it was time for respondent to present his evidence, his counsel waived the presentation of evidence. Instead she submitted the case based on the records and pleadings available.

The arguments raised by respondent is nothing new. In fact, respondent has repeatedly raised these same arguments in all similar cases involving the same petitioner.

It is significant to note that the presentation of Confirmation Receipt is not at all required under the law and regulations. All that is required of petitioner in claiming for refund of excess creditable withholding taxes are:[3]

> "(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;

[3] 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.

(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."

Neither is it required of petitioner to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in its operations.[4] The best proof of withholding is the presentation of Statements of Creditable Withholding Tax. Their presentation will be sufficient to show that indeed the withholding agent withheld and remitted to the Bureau of Internal Revenue the amount indicated therein.

An examination of petitioner's 1988 Income Tax Return reveals that out of the total refundable

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[4] Sun Insurance Office Ltd. v. Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989.

amount of P146,026.00 petitioner opted to claim for refund the amount of P81,403.00 and to apply as a tax credit to the succeeding taxable year (1989) the amount of P64,623.00 (P92,750.00 less P28,127.00), as indicated in the cross marked on the appropriate box shown in item #10 of Section C thereof.

However, upon verification, this Court found that petitioner's 1989 Income Tax Return shows that it applied the whole amount of P146,026.00 to its 1989 income tax liability of P27,653.00. Details of the 1989 Income Tax Return are shown below as follows:[5]

Income (Sch. 4)		P1,855,000.00
Less: Deductions (Sch. E)		1,755,991.00
Net Income		P 79,009.00
Tax Due		P 27,653.00
Less:		
a) Prior year's excess credit	P146,026.00	
b) Quarterly payments	-	
c) Creditable tax withheld at source	54,104.00	200,130.00
Total Amount Due/Refundable		(P172,477.00)

It is noteworthy to point at this juncture that the declarations made by the taxpayer in his

[5] Exh. A of CTA Case No. 4693 "Paseo Realty Development Corp. v. Commissioner of Internal Revenue, p. 3, CTA record.

income tax return are for all intents and purposes made in good faith and are true and correct to the best of his knowledge and belief. In fact the VP-Treasurer and the Chairman/President, both representatives of the corporation signed under oath the income tax return of the corporation. Notice to the filer/taxpayer is printed just above the space provided for their signatures, to wit:

> "WE DECLARED UNDER THE PENALTIES OF PERJURY THAT THIS RETURN HAS BEEN MADE IN GOOD FAITH, VERIFIED BY US AND TO THE BEST OF OUR KNOWLEDGE AND BELIEF IS TRUE AND CORRECT PURSUANT TO THE PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND THE REGULATIONS ISSUED UNDER AUTHORITY THEREOF."

Sections 45(a) and 266 of the National Internal Revenue Code are clear on this matter. Thus, the law provides:

> "**Sec. 45. Corporation returns.** - (a) **Requirements.** - Every corporation, subject to the tax herein imposed, except foreign corporation not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president, vice-president or other principal officer, and shall be sworn to by such officer and by the treasurer or assistant treasurer.

> "**Sec. 266. Declaration under penalties or perjury.** - Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code."

By declaring that the amount of P81,403.00 is to be refunded and the amount of P64,623.00 is to be applied as tax credit to the succeeding taxable year (1989), petitioner should not have applied as a tax credit the whole refundable amount of P146,026.00 to the succeeding year. Instead, only the amount of P64,623.00 should have been applied as credit in its 1989 Income Tax Return. Since its 1989 income tax liability was only P27,653.00 the remainder amounting to P36,970.00, not having been utilized, is the amount that can be claimed for refund. The balance of P36,970.00 cannot be applied to its 1990 income tax liability. This is bolstered by Section 69 of the National Internal Revenue Code which provide in part:

> "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 <u>succeeding year</u>. (Underscoring supplied.)"

If the remaining balance of P36,970.00, representing excess creditable taxes paid in 1988, were to be applied to the 1990 income tax liability that would mean application for two successive years, that is, 1989 and 1990. To allow the application of excess taxes paid for two successive years would run counter to the specific provision of law above-mentioned. Consequently, petitioner is only entitled to the refund of P36,970.00, representing overpaid creditable withholding tax for 1988, and not P59,510.00 as claimed in this petition.

WHEREFORE, respondent is hereby ordered to **REFUND** in favor of petitioner the amount of P36,970.00, representing excess creditable withholding taxes paid for the year 1988.

No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, April 30, 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