REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROBERTO T. VILLANUEVA, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5267

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 20 1999

x - x

DECISION

This case involves a claim for refund/tax credit in the amount of P1,670,141.56, allegedly representing excess and unutilized creditable income taxes withheld at source for the fiscal year ended March 31, 1993.

Petitioner is a domestic corporation (investment holding company) engaged in the business of investment and management (TSN, Oct. 4, 1995, pp. 6 & 36).

For the fiscal year ended March 31, 1993, Petitioner filed its corporate annual income tax return (Exh. A) with the Bureau of Internal Revenue (BIR) on July 15, 1993 (Exh. A-12) declaring a net loss of P36,806,515.00 (Exh. A-13) and excess creditable withheld taxes of P1,670,142.00 (Exh. A-14).

On July 15, 1994 (Exh. J-10), Petitioner filed its corporate annual income tax return (Exh. J) reporting a net loss in the amount of P21,070,528.00 (Exh. J-11) and excess tax credits in the sum of P2,555,569.00.

Consequently, Petitioner filed a written claim for refund (Exh. I) in the amount of P1,670,141.56 on July 14, 1995 (Exh. I-1) comprising Petitioner's unutilized and unapplied creditable taxes withheld at source for the fiscal year ended March 31, 1993, as follows:

	Income Payment	Withholding Tax
Consultancy fees	P 6,372,831.20	P 318,641.56
Rent Income	1,080,000.00	54,000.00
Gain on Sale of Investment	25,950,000.00	1,297,500.00
Total		P1,670,141.56

Petitioner filed the instant Petition for Review on July 15, 1995, that is, the day after it filed its administrative claim for refund.

Petitioner, in support of its case, presented documentary as well as testimonial evidence.

Respondent, by way of special and affirmative defenses, states:

> 1) Petitioner's claim for tax refund is still undergoing administrative routinary investigation/examination by respondent's Bureau;
>
> 2) The alleged creditable withholding taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, the same is not refundable.
>
> 3) Petitioner's allegation that it sustained losses during the year under review does not <u>ipso facto</u> warrant the refund;
>
> 4) Petitioner must likewise prove that the alleged creditable withholding taxes were neither automatically applied as tax credit against its tax liability for the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s;

> 5) Claims for tax refund are construed strictly against claimant as it partakes of the nature of an exemption from tax and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund.

As part of its evidence, Respondent presented the Revenue Officer who conducted the investigation on Petitioner's claim and the concomitant documents relating to said investigation.

The only issue to be resolved in the case is whether or not Petitioner has fully substantiated its claim to be entitled to the refund sought.

Section 69 of the 1993 Tax Code, as amended, provides, thus:

> **SEC. 69.** ***Final Adjustment Return.*** - 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 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, 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.

Based on the above provision of law, excess creditable withheld taxes can only be carried forward to the taxable quarters of the succeeding taxable year. Inasmuch as herein Petitioner incurred losses both in 1993 and 1994, it appears that the amount of creditable withheld taxes of P1,670,141.56 for the fiscal year ended March 31, 1993 was unutilized and unapplied in the succeeding fiscal year ended March 31, 1994 and, therefore, refundable. However, compliance with certain statutory requirements must also be complied with. Section 51 of the Tax Code requires that:

> **SEC. 51. Returns and Payments of Taxes Withheld at Source.** - (a) xxx xxx xxx
>
> (b) *Statement of income payments made and taxes withheld.* - Every withholding agent required to deduct and withhold taxes under Section 50 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later that March 1 of the following year in the case of individual payee for creditable withholding taxes. x x x
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> x x x x x x x x x
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> (d) *Income of the recipient.* - Income upon which any creditable tax is required to be withheld at source under Section 50 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204;

Corollarily, Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, provides that:

> **Section 10.** ***Claim for Tax Credit or Refund.*** -
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Sections 70(b) and 230 of the Tax Code, also provides:

> **SEC. 70.** (a) x x x
>
> (b) *Time of filing the income tax return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be.
>
> **SEC. 230.** ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however*, That the Commissioner may, even without a written claim therefor, Refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

This Court in several cases ruled that the grant of refund, when creditable withholding tax is in excess of the amount of the tax due, depends on three conditions, *viz*:

> (1) that the claim for refund is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of tax as required under Section 230 of the Tax Code;
>
> (2) it must be shown on the return of the recipient that income payment received was declared as part of the gross income; and
>
> (3) the fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (**Citytrust Finance Corporation vs. The Commissioner of Internal Revenue**, CTA Case No. 4134, November 11, 1991; **Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue**, CTA Case No. 4046, February 24, 1993; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5323, August 25, 1997).

As disclosed by the records of this case, Petitioner has complied with the first requirement. It filed its corporate annual income tax return on July 15, 1994 and the administrative claim for refund was filed with the

Bureau of Internal Revenue on July 14, 1995. The instant petition was filed the day following, that is, on July 15, 1995. It can also be noted that for the fiscal year ended March 31, 1992, Petitioner declared as part of its gross income the income payments from which the taxes sought to be refunded were withheld. Lastly, Petitioner submitted the corresponding certificates of creditable income taxes withheld at source evidencing the fact of withholding (Exhs. B, C, D).

However, an examination of Exhibit 2 did not lead us to the same conclusion. The Revenue Officer who conducted the investigation found out that the VAT and withholding taxes were correctly reported by the Petitioner. In fact, he stated that the Petitioner is entitled to the issuance of the Tax Credit Certificate in the amount of P1,670,141.56, subject only to the verification as to the correctness of the remittances made by the withholding agents. Said verification, as testified to by the Respondent's witness resulted to an unsupported amount of P76,500.00. But a re-examination of the documents on record will prove otherwise. Petitioner submitted the confirmation receipt (Exh. G) and payment order (Exh. H) to support its claim that the P22,500.00 withholding tax was indeed remitted to the BIR. Petitioner also submitted documents to prove that its withholding agent, AG & P, withheld and remitted to the Bureau the amount of P54,000.00 for the period involved in this case (BIR. rec., folder 1, p. 5; folder 2, pp. 6-10). In other words, the P76,500.00 was indeed substantiated.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of the Petitioner in the amount of P1,670,141.56, representing excess and unutilized creditable taxes for fiscal year ended March 31, 1993.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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