Republic Of The Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

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SUCAT LAND CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6676

Members:

ACOSTA, *Chairman* (On Leave)
BAUTISTA, *Acting Chairman* and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 2 9 2004 [signature]

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DECISION

CASANOVA, C., *J*.:

This case seeks for the refund or issuance of a tax credit certificate allegedly representing overpaid income taxes for the taxable year ended December 31, 2000 in the amount of **TWO MILLION FIVE THOUSAND SEVEN HUNDRED THIRTY SEVEN PESOS (P2,005,737.00)**.

The undisputed facts as culled from the records of the case are as follows:

Petitioner Sucat Land Corporation is a domestic corporation duly organized and existing under and by virtue of Philippine Laws, with principal address at the 17th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. Its primary purpose is to acquire by purchase, lease, donation or otherwise, and to own, use,

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improve, develop, subdivide, sell, mortgage, exchange, lease, develop, and hold for investments or otherwise, real and personal properties of all kinds (*pars 1 & 3, Joint Stipulation of Facts).*

On January 1, 1996, a Contract of Lease for a period of twenty five (25) years was executed between petitioner, as lessor, and MSF Tire and Rubber, Inc. ("MSF"), as lessee, over a piece of land with an area of 2,000 sq. m., situated in Muntinlupa, Metro Manila. The Contract provided that the lessee MSF shall pay a monthly rental of Seventy-Two pesos per square meter (P72.00/sq.m.) on the following payment arrangement"

Upon the execution of the Contract of Lease	1 year advance rental plus 4 years security deposit totaling P11,491,200.00
1st anniversary of the Contract of Lease	4 years advance rental totaling P9,192,960.00
2nd anniversary of the Contract of Lease	4 years advance rental totaling P9,192,960.00
3rd anniversary of the Contract of Lease	4 years advance rental totaling P9,192,960.00
4th anniversary of the Contract of Lease	3 years advance rental totaling P6,894,720.00
5th-15th anniversary of the Contract of Lease	Apply advance rental annually
16th-19th anniversary of the Contract of Lease	Apply advance security deposit annually
From the 20th anniversary of the Contract of Lease	Annual rental payment of P2,298,240.00 on each anniversary date until the 24th anniversary of the Contract of Lease

Under the said contract, it was agreed upon that the payment of the rentals was to be net of the required withholding tax on rentals, which was to be for the account of the petitioner-lessor *(Exhibit A).* Thus, for the calendar year 1996, petitioner declared

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as part of its rental income the amount of P2,089,309.00 *(Exhibit L)*, while for each of the calendar years 1997, 1998 and 1999, petitioner declared the amount of P8,357,236.00 as part of its rental income for the said periods *(Exhibits K, G & F)*. Likewise, for the calendar year 2000, petitioner declared the amount of P6,267,927.00, which was already net of the 10% value-added tax, as part of its rental income for the same year, and paid the amount of P10,179,857.00 as income tax, computed as follows:

Total Gross Income		P44,426,203.00
Less: Deductions		12,614,151.00
Taxable Income		P31,812,052.00
Tax Due (32%)		P10,179,857.00
Less: Taxes paid in 2000		
Tax Payment for the First 3 quarters	P 3,777,769.00	
Creditable tax for First 3 quarters	2,323,280.00	P 6,101,049.00
Total Amount Payable		P 4,078,808.00

However, on February 1, 2001, a letter was sent by MSF, the lessee, to petitioner, informing it that it was terminating the lease agreement dated January 1, 1996, effective August 1, 2001 *(Exhibit B)*. On June 21, 2002, a Deed of Cancellation of Lease was subsequently executed by both parties confirming the cancellation of the Contract of Lease for the real properly subject of the lease agreement *(Exhibit C)*. The said deed took effect on October 31, 2001 *(Exhibit M & N)*. Thus, as a consequence of the cancellation of the Contract of Lease, petitioner refunded to MSF, the lessee, the advance rental payments in the total amount of Twenty Six Million Four Hundred Thirty Six Thousand Nine Hundred Pesos and 62/100 (P26,436,900.62) allegedly representing the partial return of the unapplied advance lease rentals and security deposit paid by MSF on the subject Contract of Lease, and which was likewise allegedly inclusive of the P6,267,927.00 advance rentals received by petitioner for the calendar year 2000.

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In view of the amount refunded by petitioner to MSF, on April 14, 2003, petitioner filed with the Bureau of Internal Revenue Revenue District Office No. 50, a formal letter requesting for a refund or the issuance of a tax credit certificate covering the allegedly overpaid income tax for the calendar year ended December 31, 2000, in accordance with Section 229 in relation to Section 204, of the 1997 Tax Code, computed as follows: *(par. 10, Joint Stipulation of Facts)*

Gross Income per ITR		P44,426,203.00
Less: Advance rentals returned to MSF		6,267,927.00
Gross Income Adjusted		P38,158,276.00
Less: Deductions from gross income		12,614,151.00
Taxable Income		P25,544,125.00
Tax Due (32%)		P 8,174,120.00
Less: Taxes paid in 2000		
Tax Payment for the First 3 quarters	P 3,777,769.00	
Creditable tax for First 3 quarters	2,323,280.00	
Tax Paid, year end	4,078,808.00	
Total Tax Paid		P10,179,857.00
Overpaid Income Tax		P 2,005,737.00

On the next day, April 15, 2003, petitioner filed this instant Petition for Review with this Court.

On June 18, 2003, respondent filed his Answer raising the following as his Special and Affirmative Defenses, to wit:

> 4. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Petitioner's claim for refund/tax credit in the aggregate amount of P2,005,737.00 allegedly representing Petitioner's overpaid income taxes for the year ended December 31, 2000 was not fully substantiated;
>
> 6. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended;

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7. Claims for refund are construed strictly against the claimant for the same partakes of the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121);

8. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

Both parties having submitted their respective memoranda, this case was deemed submitted for decision on November 5, 2004.

The issues as stipulated by the parties are as follows:

1. Whether or not petitioner is entitled to a claim for refund or issuance of a tax credit of the overpaid income tax for the calendar year ended December 31, 2000 in the amount of P2,005,737.00;

2. Whether or not said overpaid income taxes are substantiated by documentary evidence;

3. Whether or not the overpaid income tax was carried over in succeeding period.

It is petitioner's allegation that it is entitled to a claim for refund or issuance of a tax credit certificate pursuant to Section 229 in relation to Section 204 of the 1997 Tax Code. It is undisputed that petitioner received advance rentals which were all net of the value-added tax, as withheld by MSF, the lessee, under the schedule of payment agreed upon by the parties. Petitioner avers that it had consistently filed and paid its Annual Income Tax Returns for the taxable years 1996 to 2000, which included the rental income payments received from MSF. Likewise, petitioner contends that it has adduced sufficient evidence to prove its claim for refund or issuance of a tax credit certificate for its overpaid income taxes for the calendar year ended December 31, 2000 through the presentation of testimonial evidence on the due execution of the Contract of Lease and of the reports on advance rental payments received from MSF, the lessee *(TSN, October 1, 2003, pages 12-15).*

Petitioner also avers that due to the termination by the lessee, MSF, of the Contract of Lease, effective October 31, 2001, it was constrained to refund the advance rental payments already made. Thus, the total amount of P26,436,900.00 allegedly representing the advance rentals and security deposits was refunded to MSF Tire and Rubber , Inc. A table showing the breakdown of the total amount of refund of unrealized advance rental income was submitted by petitioner as part of its testimonial evidence (*Exhibit P*). It is further offered that, based on the table, the rental income declared by the petitioner in its Annual Income Tax Return for the calendar year ended December 31, 2000, in the amount of P6,267,927.00, forms part of the total amount refunded to the lessee MSF Tire and Rubber, Inc. Accordingly, petitioner maintains that it had excess or made an overpayment on its income tax for the calendar year ended December 31, 2000.

On the other hand, it is the argument of respondent that petitioner is not entitled to a claim for refund or issuance of a tax credit certificate for the reason that there was no overpayment to speak of. A closer look at the 2000 Income Tax Return *(Exhibit D)* presented by the petitioner clearly shows that there was no overpayment. In addition, respondent argues, if indeed there was a rescission of the contract of lease which resulted to the reimbursement to the lessee of the advance rentals and thus a reduction of petitioner's gross income, petitioner should have amended its 2000 Annual Income Tax Return to show the adjusted gross income. Failure to do so leaves the petitioner

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with no cause of action to file for a claim for refund or issuance of a tax credit certificate.

This Court agrees with the respondent and rules to deny petitioner's claim.

Section 229 of the 1997 Tax Code provides:

> **Section 229. 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 excessively** 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 filed after the expiration of two (2) 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. *(Emphasis supplied)*

It is clear from the above-mentioned provision that, despite its title, Section 229 aforequoted does not refer only to tax erroneously or illegally collected, but it refers also to:

1. any national internal revenue tax erroneously or illegally assessed or collected;
2. any penalty claimed to have been collected without authority;
3. any sum alleged to have been **excessive** or in any manner wrongfully collected.

Therefore, overpaid income taxes fall under this provision for although they are legally collected by virtue of the withholding tax system and the requirement for quarterly income tax payments, they are nonetheless "excessive", for they are more than what should have been collected or paid (*Citytrust Banking Corp vs. CIR, CTA Case No. 4099, May 28, 1991*). Notwithstanding that petitioner obviously did not have any overpayment declared for the calendar year ended December 31, 2000, there was still an excess or an overpayment to speak of after the fact of reimbursement made in the year 2001, which was after the termination of the Contract of Lease. Clearly then, the overpayment cannot be made to appear on the year that it was not yet considered as such, but rather, the overpayment which resulted after the supervening event, that is, the rescission of the lease contract, evidently falls under the category of "excessive" tax payments, thus, may be subject to a claim for refund.

Based on the facts presented, it appears mathematically that petitioner had overpaid its income tax for the calendar year ended December 31, 2000. When the subject Contract of Lease between petitioner and MSF Tire and Rubber, Inc., was terminated in the middle of the duration of the lease, and petitioner having already declared and paid as part of its income the advance rental payments received from the lessee, MSF Tire and Rubber Inc., there was an overpayment or an excess payment on the part of the petitioner. And considering that the provisions of Section 229 of the 1997 Tax Code entitle taxpayers having excess tax payments to claim for a refund or issuance of a tax credit certificate, petitioner appears to be llegally entitled to claim for a refund of its excess tax payments. However, it is still vital that petitioner substantiate its claim.

The unrealized advance rental that was deducted from the total gross income declared in petitioner's 2000 Annual Income Tax Return *(Exhibit D)* was computed as follows:

Advance Rental Income		**Financial Statements**		**Amount Recognized as Other Income**	**Amount Refunded to MSF**
YR Rec'd	Amount	Period Recognized as Income	Amount Recognized as Rent Income		
1996	2,089,309.00	1996	2,089,309.00		
1997		1997			

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	8,357,236.00		2,089,309.00		
		1998	2,089,309.00		
		1999	2,089,309.00		
		2000	2,089,309.00		
1998	8,357,236.00	Jan-Oct 2001	1,741,091.00	3,997,368.00	2,618,777.00
1999	8,357,236.00				8,357,236.00
2000	6,267,927.00				**6,267,927.00**
Refunded Rent					17,243,940.00
Refunded Security Deposit					9,192,960.00
TOTAL REFUND					**26,436,900.00**

Applying the unrealized rental income for the calendar year ended December 31, 2000, petitioner came up with the amount of P2,005,737.00 as overpaid income tax for the year 2000, computed as follows: *(Exhibit Q)*

Gross Income per ITR		P44,426,203.00
Less: Advance rentals returned to MSF		6,267,927.00
Gross Income Adjusted		P38,158,276.00
Less: Deductions from gross income		12,614,151.00
Taxable Income		P25,544,125.00
Tax Due (32%)		P 8,174,120.00
Less: Taxes paid in 2000		
Tax Payment for the First 3 quarters	P 3,777,769.00	
Creditable tax for First 3 quarters	2,323,280.00	
Tax Paid, year end	4,078,808.00	
Total Tax Paid		P10,179,857.00
Overpaid Income Tax		P 2,005,737.00

It bears emphasis that mere tables and data are not enough to substantiate a claim for refund. In claims for tax refunds, it is fundamental that the claimant not only showed that the income received was declared as part of the gross income, but the fact of withholding must likewise be satisfactorily established. It is well settled that claims for tax refunds partake of the nature of an exemption from taxation and thus are strictly construed against the claimant *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*. It is petitioner which has the burden of proof to establish its right to refund and produce sufficient evidence to prove its point. It is unfortunate then, that although petitioner is legally entitled to claim for a refund/tax credit, it manifestly failed to adduce evidence to substantiate the same.

Based on the records of the case, nothing was presented or offered in evidence by petitioner to prove or support the alleged quarterly income tax payments made for the 1st up to the 3rd Quarters of the taxable year 2000 amounting to P3,777,769.00. Moreover, the full amount of creditable taxes withheld for the same first three quarters of the calendar year ended December 31, 2000 of P2,323,280.00 was not properly substantiated by petitioner as no Certificates of Creditable Taxes Withheld at Source for the said period were offered in evidence. These documents are necessary to prove whether or not the said taxes were indeed withheld and paid to the Bureau of Internal Revenue. Proof of withholding can be properly established by the copies of statements duly issued by the various payors to petitioner. Failure on the part of the petitioner to present these necessary documents is fatal to its claim.

As regards the last issue, petitioner failed to present in evidence its 2001 Annual Income Tax Return. Thus, a verification of whether or not there was a carry-over of the alleged overpayment could not be done. Anyway, it is no longer necessary for petitioner to submit said 2001 income tax return because as pointed out by the petitioner, there really was no excess tax payment that could be carried over to the succeeding quarter. As plainly shown in its 2000 income tax return for petitioner it had additional tax due for the taxable year 2000. In fact, petitioner paid the amount of P4,078,808.00 *(Exhibit D-5)* as additional tax payment for the same period as evidenced by a tax debit memo *(page 107, CTA records)*.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

LOVELL R. BAUTISTA
Acting Chairman