REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIANBANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5628

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 04 1999

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DECISION

Whether or not Petitioner is entitled to a refund of P90,544.37, allegedly representing unused creditable withholding taxes for the year ended December 31, 1995 is the sole focus of this petition for review.

Petitioner is a domestic corporation with principal office at AsianBank Centre, Tordesillas Street, corner Sen Gil J. Puyat Avenue, Makati City.

For the year ended December 31, 1995, Petitioner incurred a net loss in the amount of P13,428,310.00 (Exh. A). Petitioner's withholding agents remitted to the Bureau of Internal Revenue (BIR) creditable taxes withheld on income payments in the total amount of P90,544.37 (Exh. A-4).

Petitioner, declared a net loss in the amount of P349,866.00 (Exh. D-5) for taxable year 1996. On April

16, 1998, Petitioner filed its corporate annual income tax return for taxable year 1997 (Exh. F) reflecting a net loss in the sum of P16,163,420.00 (Exh. F-5).

By virtue of its net loss position in the year 1995, Petitioner contends that it had no income tax liability. Hence, the creditable taxes withheld and remitted to the BIR by its withholding agents should be refunded. Accordingly, a letter-claim for refund was filed with the Respondent's Bureau on March 20, 1998.

Alleging inaction on the part of the Respondent and considering that the period allowed by law to file a judicial claim for refund was about to lapse, this Petition for Review was filed on April 15, 1998.

Respondent, by way of Special and Affirmative Defenses, avers:

> 1) Petitioner's claim for refund of unused withholding taxes for the year 1995 allegedly filed with BIR's Appellate Division on March 20, 1998, has not yet been referred to BIR Revenue Region No. 8, Makati City. Processing of the claim will commence immediately upon receipt of the said letter-claim;
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> 2) The alleged withholding taxes remitted are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 3) It is incumbent upon the petitioner to show that it has complied with the provisions

of Section 204 in relation to Section 230 (now 229) of the Tax Code;

4) In an action for tax refund/credit, the burden of proof is on taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax credit; and

5) Well-settled is the rule that claim for refund are construed strictly against claimants since it partakes of the nature of an exemption from taxation.

To bolster its claim, herein Petitioner submitted the corporate annual income tax returns for the years 1995, 1996 and 1997 together with its respective audited financial statements; certificates of creditable taxes withheld at source and the letter-claim for refund. Respondent, on the other hand, was declared to have waived his right to present evidence due to his failure to appear for two consecutive hearings despite the final warning given (CTA Rec., p. 146).

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

We answer in the affirmative.

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

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:
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> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> 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. Since Petitioner incurred losses in 1995 and 1996 and even in 1997, it appears that the amount of creditable withheld taxes of P90,544.37 for the year ended December 31, 1995 was unutilized and unapplied in the succeeding year of 1996 and therefore refundable. However, Petitioner must prove with substantial evidence that the requirements of the law and regulations have been complied with. Section 51 of the Tax Code requires that:

> SEC. 51. Returns and Payments of Taxes Withheld at Source.-(a) xxx xxx xxx
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> (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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> (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;

Corollary thereto, Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, mandates 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 provide, to wit:

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.

We have ruled in numerous cases that the grant of refund when creditable withholding tax is in excess of the amount of the tax due, depends on three factors, *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 dictionary. (**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; **Columbian Motors South Super Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 5345, August 28, 1998; **Mermac, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 5510, September 2, 1998; **Smithkline Beecham Research Limited Philippine Branch vs. Commissioner of Internal Revenue**, CTA Case No. 5506, September 15, 1998).

As evinced by the records of this case, both the administrative and judicial claims for refund were filed within the two-year prescriptive period. It can also be noted that for the year ended December 31, 1995, Petitioner declared as part of its gross income the income payments sought to be refunded. Finally, Petitioner submitted the corresponding certificates of creditable income taxes withheld at source evidencing the fact of withholding (Exhs. B, C). In other words, herein Petitioner has fully substantiated its case.

WHEREFORE, in view of all the foregoing, the claim for refund of Petitioner is hereby granted. Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of P90,544.37 representing unutilized creditable taxes for the year ended December 31, 1995.

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