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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK AND TRUST COMPANY/FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4895

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 07 1996

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DECISION

This is a judicial action taken by petitioner in order to recover the amount of P357,813.00 representing overpaid income tax for the calendar year ending December 31, 1990.

Petitioner Far East Bank and Trust Company/FEB Investments, Inc. is a domestic banking corporation duly organized and existing under and by virtue of the laws of the Philippines.

On April 15, 1991, petitioner filed its 1990 annual income tax return reflecting an operating loss in the sum of P45,453,440.00, a nil income tax liability but with a refundable income tax payment in the amount of P486,338.00. This refundable income tax payment was due to petitioner's accumulated creditable withholding taxes as of that year.

Petitioner opted this overpayment to be applied as tax credit to succeeding taxable year by marking the appropriate box in the lower right portion of the return. Thus, in the succeeding calendar year 1991, petitioner out of total credit of P486,338.00 applied the sum of P128,525.00 to answer for the income tax liability for the year 1991 thereby reducing its refundable credit to P357,813.00.

Believing that it is entitled to the refund, petitioner on April 2, 1992, filed a letter-claim with the respondent requesting for the remaining amount of P357,813.00 representing excess income tax payment for the year 1990.

The inaction of respondent on the subject claim compelled petitioner to file the instant petition for review on December 29, 1992 in order to toll the running of the two-year prescriptive period allowed under Sec. 230 of the Tax Code, as amended.

Respondent answered that petitioner has failed to state any cause of action under Sec. 204 of the Tax Code. Tax refunds are construed strictly against the taxpayer as they are in the nature of tax exemption and that the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected. Moreover, the claim for refund is still under investigation.

To show that it is entitled to the refund sought, petitioner submitted various documents which, among others, consist of:

1. FEB Investments, Inc.'s income tax returns for the years 1990 and 1991 (Exhs. "F" to "F-8" and "H" to "H-4") together with the auditors' report as an attachment (Exhs. "F-10" and "H-5");

2. petitioner's financial statements (Exhs. "F-11" to "F-17" and "H-11" to "H-16");

3. various certificates of creditable withholding tax at source (Exhs. "G" to "G-8-a"); and

4. the letter-claim for refund with the respondent (Exh. "D").

For failure of respondent to comment on time, the Court admitted all the documentary exhibits offered by petitioner subject however to the Court's final appraisal and evaluation of their individual purpose, materiality, competency and probative value (Resolution, September 26, 1994, CTA rec. pp. 142 to 143). Respondent was also considered by the Court to have waived the presentation of her evidence (Resolution, May 5, 1995, CTA rec. p. 162).

Petitioner submitted its memorandum while respondent did not. Respondent may thus be considered as not questioning seriously petitioner's entitlement for the refund as it merely submitted its case based on the pleadings (**Dataprep [Phil.], Inc. v. Commissioner of Internal Revenue, CTA Case No. 3600, March 20, 1984**).

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund sought.

A perusal of the record and evidence of the case, revealed that the excess income tax payment of petitioner represents various creditable withholding taxes as of CY 1990 which was unapplied to CY 1991.

This Court, in its numerous decided cases of the same nature and issue, have already laid down three basic requirements for a taxpayer to comply with. To wit:

> (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;

(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. (Sec. 10, Rev. Regs. 6-85; **Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue v. Court of Tax Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994**).

It is clear from the record that petitioner met all the three requirements we herein set forth. However, in the course of examination it was revealed that petitioner included in the computation the creditable withholding taxes for the year 1989 (Exhs. "G", "G-3-a", "G-3-b" and "G-3-c") while the subject of the case only focus in 1990.

It may be well if petitioner has an income tax liability for 1990 so that the 1989 credit may be offsetted against it but there is none.

At this juncture, it is noteworthy to point out that Sec. 69 of the Tax Code allows only an automatic application/crediting of an excess payment in the succeeding year alone.

For easy reference, Sec. 69 is hereby quoted as follows:

> 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 net income 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)

Therefore, to allow petitioner to carry-over the 1989 payment to 1991 would run counter to the specific intendment of the law and jurisprudence (**Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993**).

In sum, petitioner is only entitled to a lesser amount computed hereunder:

Withholding Agent	Income Payment	Tax Withheld	Exh.
FEB Insurance Brokers, Inc.	P2,102,904.49	P105,145.22	G-1
Kuok Philippine Properties, Inc.	125,625.00	6,281.25	G-4
SM Fund, Inc. (Formerly Ayala Fund, Inc.)	100,000.00	5,000.00	G-5
Francisco Automotive Distribution, Inc.	275,000.00	13,750.00	G-6
Floro Cement Corporation	500,000.00	50,000.00	G-7
Marina Port Services, Inc.	101,953.13	10,195.31	G-8
Total	P3,205,482.62	P190,371.78	
Less: credit applied in 1991		128,525.00	
Total refundable amount		P 61,846.78	

WHEREFORE, in view of the foregoing, the instant petition for review is hereby granted. Respondent is hereby ordered to refund in favor of petitioner the sum of P61,846.78 representing overpaid income tax for the calendar year ended December 31, 1990.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate 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