REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CMG LIFE INSURANCE CO., INC. (Formerly JARDINE CMG LIFE INSURANCE CO., INC.),
Petitioner,

- versus -

C.T.A. CASE NO. 5607

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 02 1999

x - x

DECISION

This is a petition seeking for the issuance of a tax credit certificate amounting to P898,121.00, representing unutilized 1995 and 1996 expanded withholding tax credits.

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippine laws, and is principally engaged in the business of life insurance.

On April 15, 1996, Petitioner filed its Corporation Annual Income Tax Return for the year ended December 31, 1995, reflecting a net loss of P18,800,494.00 (Exh. G). For the said year, however, several income tax payments arising from the rental income of the condominium units of Petitioner have already been withheld at source by various withholding agents totalling P176,435.00 (Exhibits V, W, X, Y, Z, AA and BB). Aside from this, Petitioner sold a condominium unit for P8,500,000.00, which sale was subjected to a 7.5% withholding tax of P637,500.00. Since Petitioner failed to apply the total amount withheld of P813,935.00 to any tax liability for that year, it intended to do so on the next taxable year.

For calendar year 1996, however, Petitioner again suffered a loss of P70,558,905.00 (Exh. K), thus, its P813,935.00 1995 tax credit remained unutilized. Likewise, during the said year, Petitioner's rental income was subjected to a total withholding tax of P84,186.00, which Petitioner then opted to refund together with its 1995 tax credit, or a total of P898,121.00.

On March 25, 1998, a letter-claim for the refund of the P898,121.00 was filed with the Bureau of Internal Revenue (Exh. C). Petitioner anchored its claim on Section 69 of the National Internal Revenue Code, to state:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 of that year the corporation shall either:
>
> (a) Pay the 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.

As there was no immediate action on the part of herein Respondent, the instant petition for review was elevated before this Court on April 8, 1998.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

6. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

7. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

The sole issue for determination is whether or not Petitioner has complied with all the requirements for a valid claim for refund so as to be entitled to the relief sought.

Petitioner, to bolster its claim, submitted the following documents:

Exh.	Description	Purpose
C	Claim for tax credit in the amount of P898,121.00 filed with the BIR	To show that Petitioner timely filed its claim for tax credit with Respon-dent's office.
D, E, F & G	1995 Quarterly & Annual Income Tax Returns of Petitioner showing the results of its operations	To prove that for taxable year 1995, Petitioner suf - fered losses and that it opted to carry over its tax credit of P813,935.00 to the succeeding year. To prove that its claim for tax credit was timely filed.
H, I, J & K	1996 Quarterly & Annual Income Tax Returns of Petitioner showing the results of its operations	To prove that for taxable year 1996, Petitioner suf-fered losses and that it opted to refund its tax credit for the year and the previous year
L, M, N & O	1997 Quarterly & Annual Income Tax Returns of Petitioner showing the results of its operations	To prove that Petitioner did not use its 1995 and 1996 tax credits
P, Q, R, T & U	Certified true copies of the Certifi-cates of Title (cancelled & new),	To prove that in 1995, Petitioner sold a condomi-

	and the Certificate Authorizing Registration, Deed of Absolute Sale re: sale by Petitioner of a condominium unit	nium unit for P8.5M and that the buyer withheld therefrom and paid 7.5% expanded withholding tax in the amount of P637,500.00
V, W, X, Y Z, AA, BB, CC, DD & EE	Certificates of Creditable Income Tax Withheld at Source	To prove the tax withheld by various tenants of Petitioner from rental income for the years 1995 and 1996

Respondent, on the other hand, was deemed to have waived his right to present evidence in view of the non-appearance of respondent's counsel since the initial hearing of this case. Respondent also failed to file his memorandum within the period given by the Court.

And so, after examining the evidence presented by the Petitioner, this Court rules in its favor.

To be entitled to a refund, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 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. That 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.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on March 25, 1998, as well as its Petition for Review filed with this Court on April 8, 1998 are both within the two year period from the date of payment of the tax.

Second, the income tax returns of Petitioner for 1995 and 1996 (Exhs. G & K) likewise revealed that the income upon which the taxes were withheld were included in said returns.

And third, the fact of withholding on the rental income was also established by Petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source (Exhs. V, W, X, Y Z, AA, BB, CC, DD & EE).

As to the withholding tax on the sale of the condominium unit made by Petitioner to Peter John Edwards, it was observed that the Authority to Accept Payment in the amount of P637,500.00 was not presented, however, Petitioner was able to establish the fact of withholding by the Certificate Authorizing Registration (Exh. R) issued by the Bureau of Internal Revenue itself and the Deed of Absolute Sale (Exh. T) as well as the cancelled Certificate of Title (Exh. Q) in the name of Petitioner and the new Certificate of Title issued in the name of the buyer (Exh. P).

Furthermore, records show that Petitioner was not able to apply its creditable taxes withheld for 1995 and 1996 against its tax liabilities for the said years as it ended up in both years in a net loss position and its 1997 Income Tax Return was likewise submitted by Petitioner to prove that during the said year, Petitioner also suffered losses and consequently was not able to utilize the amount sought to be refunded.

Finally, not a single piece of evidence was presented by Respondent to controvert Petitioner's claim, thereby, leaving this Court with no recourse but to decide the case solely on the basis of the evidence submitted by Petitioner which is more than adequate to grant the refund sought.

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **ISSUE** a TAX CREDIT CERTIFICATE in favor of Petitioner amounting to P898,121.00 representing unutilized 1995 and 1996 expanded withholding tax credits.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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