REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JARDINE PACIFIC FINANCE INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6081

Promulgated:
JUN 15 2001

x - x

DECISION

At bar is a judicial claim for refund filed by the Petitioner on April 14, 2000, seeking for the refund of the amount of P6,370,212.00, representing alleged excess quarterly income tax payments and creditable withholding taxes for the year 1997.

The antecedent facts and proceedings of this case may be summarized as follows:

Petitioner is a company organized and existing under and by virtue of the laws of the Philippines. It is engaged in the general financing and investment business.

On May 30, 1997, Petitioner filed its first quarterly income tax return for taxable year ending December 31, 1997, declaring therein a net taxable income in the amount of P8,757,875.59 and a tax due of P3,065,256.00 (Exhibit "A"). Since Petitioner allegedly had creditable withholding taxes for the first quarter of 1997 in the amount of P8,467.07, the latter amount was deducted from the original tax due of P3,065,256.00 and consequently, a tax payable in the amount of P3,056,788.96 was reflected in its first quarterly income tax return for 1997.

On August 29, 1997, Petitioner filed its income tax return for the second quarter of 1997 showing therein a net taxable income in the amount of P18,200,667.46 and an income tax due of P6,370,234.00. Petitioner then carried over its income tax credits/payments for the first quarter in the amount of P3,065,256.00, thus, resulting in Petitioner's tax liability for the second quarter in the amount of P3,304,978.00 (Exhibit "C").

For the third quarter of 1997, Petitioner declared in its quarterly income tax return, a net taxable income in the amount of P6,095,185.00 and a tax due of P2,133,315.00. After applying the previous income tax payments for the first and second quarters of 1997, Petitioner reflected in its income tax return an overpayment/refundable amount of P4,236,919.00 (Exhibit "D").

Allegedly, by reason of the region's financial crisis, Petitioner suffered losses at the end of taxable year 1997. Thus, in its 1997 amended annual income tax return filed on April 30, 1998, it reflected a net loss of P55,232,141.00 and an alleged refundable amount of P6,370,212.00 (Section A of Exhibit "F") consisting of its reported quarterly income taxes paid for the first and second quarters of 1997 in the amounts of P3,056,789.00 and P3,304,978.00 and creditable taxes withheld in the amount of P8,445.00 (Section E of Exhibit "F").

On April 13, 2000, Petitioner filed a claim for refund with the BIR in the amount of P6,370,212.00 anchored on the provisions of Sections 51 (now Section 58), 69 (now

Section 76) and 204 of the then Tax Code of 1997. The next day or on April 14, 2000, Petitioner filed an appeal to this Court reiterating its claim for refund filed with the BIR.

As earlier stated, Petitioner placed reliance on the following provisions of the National Internal Revenue Code, to wit:

Section 51. - Returns and Payment of Taxes Withheld at Source. –

(A) *Quarterly Returns and Payments of Taxes Withheld.* - x x x

(B) *Statement of income payments made and taxes withheld.* – x x x

(C) *Annual returns.* - x x x

(D) *Income of recipient.* - Income upon which any creditable tax is required to be withheld at the 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; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 49.

All taxes withheld pursuant to the provisions of this code and its implementing regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."

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.

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.

Section 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

x x x x x x x x x

(3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

On March 28, 2001, after the parties have submitted their respective memorandum, this case was considered submitted for decision.

Central to the dispute are the following issues:

1. Whether or not the Petitioner is entitled to the refund of the amount of P6,370,212.00 representing excess quarterly income tax payments and excess creditable withholding taxes for the taxable year ended December 31, 1997.

2. Whether or not the alleged excess quarterly income tax payments and excess creditable withholding taxes for the taxable year ended December 31, 1997 is substantiated by documentary evidence.

Anent the first issue, this Court intends to divide the discussion since excess quarterly income tax payments and excess creditable withholding taxes apparently refer to two separate and distinct claims.

With regard to the issue of whether or not Petitioner has excess income tax payments for taxable year 1996, it is necessary to prove, in the case at bar, that it was at a net loss position in taxable year 1997 and in the succeeding taxable years thereby creating a conclusive presumption that "prior years excess credits" were never utilized against any of its tax liabilities.

Sustainable is Petitioner's assertion that it has excess quarterly income tax payments for taxable year 1996 since Petitioner's amended 1997 annual income tax return shows that its business operations in the year 1997 resulted in a net loss of P55,232,141.00 (Exhibit "F"). Such being the case, it being at a net loss position in the said year, it follows that it has no income tax liability against which the amount of P6,370,212.00, which is now the subject of the claim, may be applied or credited. Thus, there is, indeed, merit in Petitioner's contention that the aforesaid amount should be refunded.

Be that as it may, a portion of the amount of P6,370,212.00, pertains to creditable withholding taxes and well-settled is the rule that refund of excess creditable withholding taxes depends upon the taxpayer's compliance with the following requirements, viz:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a 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.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Citibank, N.A. vs. CA, CIR, October 10, 1997, G.R. No. 107434].**

There being no dispute as regards the period of prescription, the same having been jointly stipulated upon by the parties, We now proceed to the second requisite.

To establish the fact of withholding of the amount of P8,445.00 creditable taxes, Petitioner presented in evidence a Certificate of Creditable Tax Withheld at Source issued by Renta Color Philippines, Inc. (Exhibit "B"). Thorough evaluation of the said certificate reveals, however, that the amount of P8,467.00 indicated therein pertains to creditable taxes withheld in 1996 which are not within the period covered by the instant petition. Conformably, We hold that the Certificate of Creditable Tax Withheld at Source issued by Renta Color Philippines, Inc. cannot be given weight as proof of withholding of the 1997 creditable taxes of P8,445.00.

In the same breath, considering that the Certificate of Creditable Tax Withheld at Source (Exhibit "B") presented by Petitioner covers creditable taxes withheld in 1996, consequently, the related income payments indicated therein are conclusively presumed to be not referring to the income declared by the Petitioner in its 1997 Income Tax

Return. Having been mooted by this, discussion of Petitioner's compliance with the third requirement is no longer necessary.

Proceeding now to the last issue, all evidence at hand offered and presented by the Petitioner during the hearings of this case, veer towards the direction that the reported income taxes paid for the first and second quarters of 1997 in the amounts of P3,056,789.00 and P3,304,978.00, respectively, were, indeed remitted to the government.

Machine validation on the lower portions of Petitioner's quarterly income tax returns for the first and second quarters of 1997 evidence the fact that Petitioner actually paid and remitted to the Bureau of Internal Revenue income taxes of P3,056,788.93 (Exhibit "A-2") and P3,304,978.00 (Exhibit "C-2"), respectively. The fact of remittance is further bolstered by the bank statements issued by Urban bank to Petitioner for the months of May and August 1997 where the said income tax payments were charged against Petitioner's account on May 30, 1997 (Exhibit "A-3-1") and on August 29, 1997 (Exhibit "C-3-1"). Parallel to this, the Certification from the Revenue Accounting Division of the BIR National Office, dated September 14, 2000 (Exhibit "J") signed by its Chief, Carmelita SJ Pascual ultimately proves that the amount of P6,361,766.96, indeed, went to the coffers of the government.

Having considered the disallowance made on the alleged overpaid creditable withholding tax, this Court grants the claim in the amount of P6,361,766.93.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE a TAX CREDIT CERTIFICATE** in the amount of P6,361,766.93 in favor of the Petitioner, representing excess quarterly income taxes paid for taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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