REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILIPINAS MANAGEMENT & LEASING SERVICES CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4146

3/11/94

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - - - - x

D E C I S I O N

This is a claim for judicial refund or credit of an overpaid creditable withholding tax payments in the amount of P48,934.00 for calendar year 1984.

Petitioner is a domestic corporation engaged in providing computer services and is a subsidiary of the Bank of Philippine Islands (Tsn, August 20, 1992, pp. 8-9).

During the taxable year 1984, petitioner received service fees which were allegedly subjected to withholding taxes by various clients pursuant to Sec. 53 of the Tax Code, as amended.

On April 15, 1985, petitioner filed with the Bureau of Internal Revenue its 1984 Corporate Income Tax Return showing a net loss of ₱23,285.00 and a refundable amount of P217,732.00, representing previous (P168,798.00) and current (P48,934.00), computed as follows: (Exh. "A")

INCOME		
Services (Sch. 2)	P10,892,137.00	
Interests (Sch. 5)	61,417.00	
Other income (Sch. 6)	372,582.00	
Gain on sale of equipment (Sch. 8)	18,996.00	P11,345,132.00
LESS: DEDUCTIONS (Sec. E)		11,368,417.00
NET INCOME/(LOSS)		(P 23,285.00)
TAX DUE		none
LESS:		
a) Previous year's quarterly credits	P 171,264.00	
Less: Adjustment	2,466.00	
	P 168,798.00	
b) 1984 Creditable withholding taxes	48,934.00	217,732.00
TOTAL AMOUNT REFUNDABLE		P 217,732.00

Since petitioner suffered a net loss in its operation during the said year, it therefore had no income tax liability on which it can apply the excess creditable withholding taxes. Thus, it opted to refund the amount P217,732.00 by marking the appropriate box in the lower left portion of the income tax return "to be refunded".

On February 12, 1987, petitioner filed a letter claim for refund, received by the BIR on February 16, 1987, asking for the refund of P48,934.00, alleged excess creditable withholding taxes, for the year 1984. Since respondent has not acted on the said claim, petitioner on April 15, 1987 instituted the instant petition for review with this Court in accordance with the provision of Sec. 243 (now 230) of the National Internal Revenue Code.

In his Answer, respondent raised as special and affirmative defenses the following:

> 6. Petitioner's 1984 corporate income tax return (Annex "A") is still under audit and verification by respondent's Bureau;
>
> 7. The petition states no cause of action for failure to allege the date when the taxes in question were paid (Manufacturer's Bank and Trust Company as Trustee for Gen Trust Plans vs. Com. of Int. Rev., CTA CASE NO. 1659, Nov. 29, 1975);
>
> 8. The mere averment that petitioner suffered a net loss from its operations in the amount of P23,285.00 during the year involved does not *ipso facto* merit a refund;
>
> 9. Any amount claimed to have been withheld must be shown to have been paid to the Bureau of Internal Revenue;
>
> 10. It is incumbent upon the petitioner to show compliance with the provisions of Sections 292 and 295 (now Sections 243 and 246) of the National Internal Revenue Code of 1977, as amended;
>
> 11. The income tax withheld on service income payment allegedly withheld by various clients/payors of the petitioner assuming the same to be true, were collected in accordance with law and regulations; hence, not refundable;
>
> 12. Claims for tax refund are strictly construed against the claimants since they are in the nature of an exemption for taxation (Manila Electric

Co. vs. Com. of Int. Rev., G.R. No. L-29907, Oct. 22, 1975, 67 SCRA 351).

The sole issue raised in this petition is whether or not petitioner is entitled to the refund or credit of P48,934.00 representing excess creditable withholding taxes paid for the year 1984.

Petitioner in support of its claim, presented in evidence the Corporation/Partnership Annual Income Tax Return (Exh. "A"), the certificates of creditable income tax withheld at source - BIR Form 1743.1 (Exhs. "B", "B-1" to "B-8") and the claim for refund with the Bureau of Internal Revenue (Exh. "C").

Respondent objected to the admission of the above exhibits. However, when it was his time to present evidence, his counsel failed to gather the BIR records. What was presented in evidence were just letters and forms trying to retrieve the said document (Exhs. "1" to "8").

Respondent maintains, in his Memorandum, that petitioner's evidences are not sufficient to be entitled for a refund/credit. He said that under Sec. 54(c) of the National Internal Revenue Code, the withholding agents in the instant case are obliged to furnish herein petitioner a copy of: (1) certificate of creditable income tax withheld at source (BIR Form 1743.1); (2) Payment Order; and (3) Confirmation Receipt. Respondent would like to impress upon Us that the certificates (BIR Form 1743.1) presented by petitioner are self-serving unless accompanied by their corresponding payment orders and confirmation receipts or in the alternative admitted by the withholding agents.

However, such presentation of additional documents are not required by law and/or implementing revenue regulations.[1] The provision under Sec. 54(c) of the National Internal Revenue Code in connection with Sec. 6 of Revenue Regulations No. 13-78 simply direct every withholding agent to furnish each recipient a written statement (BIR Form 1743.1) showing the income or other payments made by the withholding agent and the amount of tax deducted and withheld therefrom.

For easy reference, Sec. 54(c) is herein quoted as follows:

---

[1]Commissioner of Internal Revenue v. The Philippine American Life Insurance Co. and The Court of Tax Appeals, CA - GR SP No. 26598, March 26, 1992; Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, C.T.A. Case No. 4046, *supra*; Ateneo de Manila v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989; and Commonwealth Pacific Consultants Ltd. v. Commissioner of Internal Revenue, CTA Case No. 2953, May 15, 1982.

> (c) Statement of income payments made and taxes withheld. - Every withholding agent required to deduct and withhold taxes under Section fifty-three shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a <u>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</u> (BIR Form 1743.1), 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 than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. (Underlining supplied)

Based on the above provision, the withholding agent is not required to furnish each recipient a copy of the payment order and confirmation receipt only the written statement. The BIR Form 1743.1 having been signed under the pain of perjury can be taken on its face and as an admission of the withholding agent.

Thus, it is significant to note that the presentation of payment orders, confirmation receipts or in the alternative the admission of the withholding agents are not at all required under the law and regulations.

Neither is it required of petitioner to show the date of payment of the tax withheld at source.

Such responsibility belongs to the withholding agent as the tax agent of the Commissioner. He is the one solely liable for payment and remittance of the same.

Respondent reiterated his stand that a mere allegation of a net loss does not *ipso facto* merit a refund. He stressed that petitioner failed to submit a summary of expenses for the year 1984 which is necessary in order to show the nature of its alleged loss in operation.

However, upon careful examination of the records of the case, particularly the income tax return (Exh. "A"), the Court found the itemized deductions totalling to P11,368,417.00, broken down as follows: (CTA Records, p. 67)

Representation and Entertainment	P 224,681.00
Salaries and Wages	3,455,401.00
SSS, Medicare and Employer's Compensation	60,407.00
Transportation/Travelling	420,384.00
Professional Fees	109,837.00
Office Supplies and Stationeries	171,526.00
Rentals and Electricity	3,289,544.00
Repairs and Maintenance	1,373,361.00
Security and Janitorial Services	218,838.00
Insurance	50,020.00
Taxes and Licenses	429,337.00
Amortization of Past Service Cost	4,682.00
Miscellaneous	19,207.00
Depreciation and Amortization	1,424,875.00
Contribution to Pension Trust	116,317.00
T O T A L	P11,368,417.00

In fact, the BIR Records Division attested that petitioner incurred no deficiency income tax for the years 1984 and 1985 which means that respondent either assessed or failed to assess petitioner's income tax return for the said years (Exh. "8", CTA Records, p. 112). Thus, rendering the contention of respondent with no leg to stand on.

It is noteworthy to state that respondent, during trial proper, never questioned the genuineness of petitioner's exhibits neither did his counsel cross-examine petitioner's witness.

Therefore, it is clear that petitioner was able to substantiate the three basic requirements set forth in claiming for a refund:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal 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.[2]

---

[2]Sec. 10, Rev. Regs. No. 13-78; see Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4143, Nov. 11, 1991; and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.

DECISION
C.T.A. CASE NO. 4146

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to REFUND OR CREDIT in favor of petitioner the amount of ₱48,934.00, representing excess creditable withholding taxes paid for the calendar year 1984.

No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, March 11, 1994.

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 VII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals