REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

VJ PROPERTIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5810

Promulgated:

MAR 0 7 2002

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DECISION

This is a claim for refund/tax credit in the amount of P1,151,127.15 representing the alleged unutilized excess creditable withholding taxes for taxable years 1995 and 1996.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine law, with principal office at Room 205, Don Pablo Building, 114 Amorsolo Street, Legaspi Village, Makati City. It is primarily engaged in the business of acquiring by purchase, lease or otherwise, and to own, develop, subdivide, sell, hold for investment or otherwise, real estate of all kinds, as stated in its Articles of Incorporation (Paragraphs 1 and 3, Joint Stipulation of Facts and Simplification of Issues, pages 395 and 396, CTA records).

On April 17, 1995, Petitioner filed its annual income tax return for the taxable year 1994 declaring nil income tax liability as it suffered a net loss of P231,956.54 and a refundable amount of P41,336.64 which is the total sum of P22,473.00 representing the prior year's (1993) excess tax credit and P18,863.64 pertaining to the creditable taxes withheld in 1994 detailed as follows:

Gross Income		P 345,454.56
Less: Deductions		577,411.10
Net Loss		P 231,956.54
Income Tax Due		none
Less: Tax Credits/Payments		
1.) Prior year's excess credit	P 22,473.00	
2.) Creditable Taxes Withheld during the year	18,863.64	41,336.64
Income Tax Refundable (see Exhibit A)		P 41,336.64

As reflected in the 1994 annual income tax return (Exhibit A), Petitioner opted to carry-over the excess amount of P41,336.64 to the succeeding year of 1995.

For the taxable year 1995, Petitioner filed its annual income tax return on April 15, 1996 (Exhibit E) but later amended the same on April 18, 1997. In the said amended return, Petitioner had a taxable income in the amount of P1,538,835.31 and an income tax due of P538,592.00 which was offset against the total tax credits of P1,184,665.54 leaving a refundable amount of P646,073.54 as of December 31, 1995 computed as follows:

Gross Income	P 4,393,515.60
Less: Deductions	2,854,680.29
Taxable Income	P 1,538,835.31

Income Tax Due		P 538,592.00
Less: Tax Credits/Payments		
1.) Prior year's excess credit	P 41,336.64	
2.) Creditable Taxes Withheld during the year	1,143,328.90	1,184,665.54
Income Tax Refundable		P 646,073.54

The annual income tax return of Petitioner for the taxable year 1995 showed that it opted to carry over the excess tax credits of P646,073.54 to the succeeding year 1996 but this did not materialize because Petitioner suffered a net loss in 1996 in the amount of P3,428,386.08 therefore there was no income tax liability against which the prior year's excess credits can be applied. The annual income tax return of 1996 (Exhibit H) also revealed that the creditable taxes for the said year (1996) in the amount of P505,053.61 were not utilized.

The instant refundable amount of P1,151,127.15 is the total of the prior year's excess credits of P646,073.54 and the creditable taxes withheld in the taxable year 1996 in the amount of P505,053.61 specified as follows:

Gross Income		P 4,562,173.58
Less: Deductions		7,990,559.66
Net Loss		P 3,428,386.08
Income Tax Due		none
Less: Tax Credits/Payments		
1.) Prior year's excess credit	P 646,073.54	
2.) Creditable Taxes Withheld during the year	505,053.61	1,151,127.15
Income Tax Refundable		P 1,151,127.15

On June 6, 1997, Petitioner filed an administrative claim for refund in the aforementioned amount of P1,151,127.15 representing the alleged unutilized tax credits for the taxable years 1995 and 1996 (Exhibit WW).

Due to the prolonged inaction of the Respondent on its claim for refund and fully aware of the two year prescriptive period, Petitioner filed a Petition for Review in this Court on April 15, 1999 which was later amended on May 10, 1999.

In the amended Petition for Review, the amount claimed was P1,151,136.55 but this was later changed to P1,151,127.15 in the Petitioner's Memorandum to accurately reflect the refundable amount which was reported in the 1996 amended income tax return.

On May 20, 1999, Respondent filed his Answer to the Petition and interposed the following Special and Affirmative Defenses, thus:

> "4. Petitioner's alleged claim for refund is still subject to administrative routinary investigation/examination by the respondent's Bureau;
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> 5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar comes within the scope of claims for refund. Well-entrenched in this jurisdiction is the rule that tax recovery or refund may encompass the following payments: (a) erroneously or illegally received or collected internal revenue taxes; (b) penalties imposed without authority [Section 204(c), Tax Code].
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> 6. Petitioner must prove that it is indeed entitled to a refund under the Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence.
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> 7. The total amount of One million one hundred fifty-one thousand one hundred thirty-six and 55/100 (P1,151,136.55) claimed by the petitioner as alleged refundable excess withholding tax credits was not properly documented;
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> 8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

> 9. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemptions must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466);
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> 10. Moreover, Petitioner must prove that it has complied with the governing rules with reference to tax recovery on refund, which are found in Sections 204 and 229 of the Tax Code as amended."

On February 15, 2001, Respondent filed an Omnibus Motion for Consolidation or to take Judicial Notice of the fact that an assessment was issued against Petitioner for deficiency taxes pertaining to the taxable years 1995 and 1996 which is also the subject of the instant claim for refund. Respondent moved to consolidate this present case with CTA Case No. 5970 which involves the said issue of assessment. Respondent argues that since the creditable withholding taxes subject of the present claim under CTA Case No. 5810 were credited in computing the alleged deficiency income taxes, Petitioner would no longer be entitled to the refund if it would be found liable for the assessed amount.

The Court denied the Motion to Consolidate the instant case with CTA Case No. 5970 but granted the Respondent's prayer to take judicial notice of the records of the latter case.

After having received the memoranda of both parties, this Court considered the case submitted for decision on August 21, 2001.

The issues which this Court has been called upon to resolve as jointly stipulated by the parties are as follows:

1. Whether the income payments upon which taxes were withheld at source were declared as part of the gross income in the income tax return of Petitioner.

2. Whether the said excess/unutilized creditable withholding taxes for the calendar year 1996 are substantiated by documentary evidence.

3. Whether the said excess/unutilized creditable withholding taxes for the calendar year 1996 were carried over or applied against any income tax liability of the Petitioner in 1997 or in any succeeding periods.

4. Whether the Petitioner is entitled to a refund of excess creditable withholding tax not applied to any tax liabilities of Petitioner for the calendar year 1996.

Simply put, the issue is whether or not Petitioner is entitled to a refund in the amount of P1,151,127.15 allegedly representing unutilized tax credits as of December 31, 1996.

As discussed earlier, the present refundable amount of P1,151,127.15 is the total sum of the 1995 excess tax credits of P646,073.54 and the unutilized creditable taxes withheld in 1996 of P505,053.61.

The 1995 excess tax credits in the amount of P646,073.54 was the result of Petitioner's application of the excess tax credits of P41,336.64 (carried over from its 1994 income tax return) to its income tax liability for the taxable year 1995 in the amount of P538,592.00. A closer look at the amount of P41,336.64 reveals that this represents the sum of the 1993 excess tax credits of P22,473.00 and creditable taxes withheld in 1994 in the amount of P18,863.64 (Section E of Exhibit A).

We can no longer allow the carry-over and application of the 1993 excess tax credits of P22,473.00 to the 1995 income tax liability of P538,582.00 pursuant to a clear mandate of the law embodied in Section 69 of the Tax Code of 1995, as amended. Section 69 of the Tax Code, as amended, limits the application of the excess tax credits of a given taxable year to the succeeding year only, thus:

> **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.

From this discussion, we can categorically state that only the 1994 creditable withholding taxes of P18,863.64 plus the creditable taxes withheld in 1995 of P1,143,328.90 can be utilized to pay off its 1995 income tax liability of P538,592.00 resulting to a lower excess tax credit of P623,600.54 pertaining to taxable year 1995. Since Petitioner suffered a net loss and had no income tax liability in 1996 (Exhibit H), the prior year's (1995) excess tax credit of P623,600.54 together with the reported creditable taxes withheld in 1996 of P505,053.61 in the total amount of P1,128,654.15 remained unutilized as of December 31, 1996 computed as follows:

Unutilized 1994 creditable taxes withheld	P 18,863.64
Add: 1995 creditable taxes withheld	1,143,328.90
Total tax credits as of 12/31/95	P 1,162,192.54
Less: 1995 income tax liability	538,592.00
1995 excess tax credits	P 623,600.54
Add: unutilized 1996 creditable taxes withheld	505,053.61
Excess tax credits as of 12/31/96	P 1,128,654.15

So out of the claimed excess tax credit of P1,151,127.15 for taxable years 1995 and 1996 only the amount of P1,128,654.15 may be the proper subject of a claim for refund.

Jurisprudence is replete with the doctrine that to be entitled to the refund of excess creditable withholding taxes, the Petitioner must prove compliance with the following three basic requirements, thus:

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. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459].

In addition, Petitioner must satisfactorily prove that the claimed amount of P1,128,654.15 was not carried over/applied to the succeeding year 1997.

We now discuss the first requirement.

It is worthy to note at the outset that the instant claim for refund covers the taxable years 1995 and 1996 and it has been well-settled that the two year prescriptive period under Section 204(3) [now Section 204(c)] in relation to Section 230 (now Section 229) starts to run from the date of filing of the annual income tax return. For taxable year 1995, Petitioner filed its annual ITR on April 15, 1996 and for taxable year 1996, the annual ITR was filed on April 15, 1997. Thus, Petitioner had until April 15, 1998 and April 15, 1999 within which to file claims for refund of its 1995 and 1996 excess tax credits, both in the administrative and judicial levels. Records disclose that Petitioner filed its claim for refund for its 1995 and 1996 excess tax credits on June 6, 1997 (Exhibit WW-1) and with this Court on April 15, 1999 (see original Petition for Review), hence the 1995 claim in the amount of P623,500.54 is already barred by prescription and only the 1996 claim in the amount of P505,053.61 was filed within the two year prescriptive period.

What is now left to be determined is Petitioner's compliance with the other two requirements insofar as the 1996 claim of P505,053.61 is concerned.

In compliance with the second requirement of proving the fact of withholding, Petitioner presented Certificates of Creditable Tax Withheld at Source issued by various withholding agents. However, the creditable taxes shown in the certificates amounted only to P480,690.00 which were withheld from Petitioner's sale of real properties amounting to P9,613,800.00 detailed as follows:

Exhibit	Period Covered	Withholding Agent	Gross Selling Price	Income Tax Withheld
II	Jan-Dec '96	Lawrence P. Umali	P 2,793,800.00	P 139,690.00
MM	Jan-Dec '96	Joseph Philip S. Cristobal	2,440,000.00	122,000.00
PP	Jan-Dec '96	Juan A. Perez-Rubio	2,040,000.00	102,000.00
CCC	Jan-Dec '96	Tita Garcia Briones	2,340,000.00	117,000.00
		Total:	P 9,613,800.00	P 480,690.00

The remittance of the above creditable withholding taxes of P480,690.00 to the BIR was also established through Petitioner's submission of the Certificate Authorizing Registration (Exhibit LL), Withholding Tax Remittance Returns (Exhibits GG, KK, OO & SS) and BIR Tax Clearance Certificates (Exhibits HH, RR & TT).

As to the issue of whether or not Petitioner properly declared the income in its ITR upon which the taxes were withheld, it becomes necessary to take judicial notice of the records of CTA Case No. 5970 because the controversy therein revolves around the alleged underdeclaration of income by herein Petitioner.

The alleged underdeclaration of income by Petitioner stemmed from the theory of the Respondent that the aggregate selling price from the sale of real properties in the amount of P9,613,800.00, should have been reported in its ITR. What was actually done by Petitioner was that out of the aggregate selling price of P9,613,800.00 indicated in the Deeds of Absolute Sale from which the creditable taxes of P480,690.00 were withheld, the amount of P873,981.82 was reported and paid as output tax for 1996 (which was computed by multiplying P9,613,800.00 x 1/11). The remaining amount of P8,739,818.18 was reported by Petitioner in its 1996 ITR as its gross income from sales of real property. Respondent declared that the aggregate contract price of P9,613,800.00 paid by the buyers is not inclusive of VAT and should have been fully declared as gross income by Petitioner in its 1996 ITR.

We do not agree with Respondent.

As can be seen in the 1996 Deeds of Absolute Sale (Exhibits JJ, NN, QQ & UU), the amount of P9,613,800.00 represents the aggregate gross selling price received by Petitioner from its sale of real properties in 1996. There is no specific provision in the 1996 Deeds of Absolute Sale that the said amount of P9,613,800.00 is exclusive of the 10% VAT due on the said sale of real properties. While it was specifically stated in the Deeds of Absolute Sale that "The seller shall pay the capital gains tax as well as the Value Added Tax and realty taxes for 1996", this does not mean that the 10% VAT was never passed on by Petitioner to its buyers of real properties or that the amount of P9,613,800.00 was not inclusive of VAT.

In Revenue Memorandum Circular No. 3-96, the BIR clarified thus:

Q-19 What is the basis of the VAT on taxable sales of real property?

A-19 For cash basis/deferred payment plan — The computation of the VAT by persons/entities engaged in the sale of real property

> in the course of trade or business shall be based on the gross selling price which is either selling price stated in the sales document or the zonal values of the real properties sold, whichever is higher. In the absence of zonal values the gross selling price shall refer to the market value as shown in the latest tax declaration or the consideration, whichever is higher.

Corollary thereto, Section 4.100-6 of Revenue Regulations No. 7-95, provides:

> **SECTION 4.100-6.** ***Computation of output tax.*** - The output tax on the sale of goods or properties during the month or quarter shall be computed by multiplying the total amount indicated in the invoice by 1/11. In taxable sales of real property where the zonal value/market value applies, output tax shall be computed by multiplying the zonal value or market value, as the case may be, by 1/11.

Based on the above, the tax base for computing the VAT on the sale of real properties is the selling price indicated in the sales document or the zonal value whichever is higher. As per the BIR examiner's report in CTA Case No. 5970 (CTA records, page 13) the zonal value of the real properties sold in 1996 equals the selling price. Since the 10% VAT is computed by multiplying the selling price by 1/11, then out of the total selling price of P9,613,800.00, the amount of P873,918.82 represents VAT while the remaining amount of P8,739,818.18 pertains to Petitioner's gross income. Hence, Petitioner proved that it declared the income related to the 1996 creditable withholding taxes of P480,690.00

As to whether or not the 1996 creditable withholding taxes of P480,690.00 were carried-over/applied to the succeeding year 1997, the answer is negative. As can be seen in its 1997 income tax return (Section E of Exhibit VV), Petitioner indicated no amount of prior year's excess credits. Thus, Petitioner could not have utilized/applied the 1996 creditable withholding taxes in 1997 or in the succeeding years.

In conclusion, Petitioner's claim for refund of excess tax credits for taxable year 1995 is denied due to prescription. For taxable year 1996, records show that only the amount of P480,690.00 was fully substantiated.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner, the sum of P480,690.00 representing its unutilized excess tax credits for taxable year 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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