REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL AND INVESMENT CORPORATION,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5798

Promulgated:
JUL 05 2000

x - x

DECISION

This is a Petition for Review seeking for the refund or the issuance of a tax credit certificate in the total amount of NINE HUNDRED FIFTY THOUSAND ONE HUNDRED NINETY SIX (P950,196.00) representing the alleged unutilized creditable income tax withheld at source for the calendar year ended December 31, 1996.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines.

As jointly stipulated by Petitioner and Respondent, the facts of the case are as follows:

1. Petitioner seasonably filed on April 15, 1997 with the Bureau of Internal Revenue (BIR) its Corporate Annual Income Tax Return for the calendar year 1996 reporting a net loss in the amount of P15,366,562.00;

2. Petitioner duly filed with the BIR its Corporate Annual Income Tax Return for calendar year 1997 on April 15, 1998 reporting a net loss in the amount of P6,669,678.00;

3. Petitioner filed its administrative claim for refund and/or tax credit of overpaid income taxes for calendar year 1996 with the BIR on March 16, 1999; and

4. Up to the filing of this Joint Stipulation of Facts, Respondent has not yet acted on the said application for refund. (see Joint Stipulation of Facts and Issues, CTA docket, pp. 57-58)

Petitioner avers that the amount of P950,196.00 which allegedly represents its creditable tax withheld on income payments for the year 1996 were not utilized since it incurred a net loss for that year amounting to P15,366,562.00 (Exhibit A-1), thus:

Gross Income	P213,954,952.00
Less: Deductions	229,321,514.00
Net Taxable Income	(15,366,562.00)
Tax Due	- N I L –
Less: Creditable Tax Withheld	950,196.00
*Tax Refundable (to be applied as Tax Credit to succeeding year)	P 950,196.00

For the following year (1997), Petitioner was not able to use the aforesaid amount as it again suffered a loss in its business operation in the amount of P6,669,678.00 (Exhibit N-1). Petitioner likewise ended taxable year 1998 at a net loss position (Exhibit P-1).

As the creditable withholding tax for 1996 remained unutilized, Petitioner filed a written claim for refund with the BIR on March 16, 1999 (Joint Stipulation of Facts and Issues, 1.03, CTA docket, p. 57) asking for the refund of P950,196.00.

The inaction of the Respondent and to prevent the prescription of action prompted Petitioner to elevate the matter before this Court on April 15, 1999 by way of Petition for Review.

In its Answer filed on May 6, 1999, Respondent raised the following Special and Affirmative Defenses, to wit:

4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

6. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable.

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95)** and such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**

The issue to be resolved in the case at bar thus centered on WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE OVERPAID INCOME TAX FOR CALENDAR YEAR ENDED DECEMBER 31, 1996 IN THE AMOUNT OF P950,196.00. (Joint Stipulation of Facts and Issues, CTA docket, p. 58).

Petitioner anchored its claim for refund of the aforementioned overpaid creditable withholding tax on Section 69 of the National Internal Revenue Code (Section 76 of the New Tax Code), which reads as follows:

> **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.

As can be ascertained from the documentary evidence submitted by Petitioner, the 1996 excess tax credits amounting to P950,196.00 shown per Petitioner's 1996 Annual Income Tax Return were not utilized since Petitioner incurred a net loss of P15,366,562.00 in 1996. In 1997, Petitioner's business operation likewise suffered a net loss. True to its allegation, the 1996 taxes sought to be carried over as prior year's excess credit in the 1997 income tax return remained unutilized (Exhibits N and N-4-a). It appears therefore that the amount claimed for refund by the Petitioner is in order, pursuant to the above-quoted provision of the Tax Code.

However, before a refund or credit of the tax withheld be given due course, it is imperative for the claimant to show compliance with the three basic requisites in order for the claim for refund be granted. Thus, as laid down by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** the following are the said requisites:

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 statement duly issued by the payor 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; Ayala Life Assurance, Inc. vs. CIR, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service, Inc. vs. CIR, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000].**

The first requisite calls for the strict compliance of the two-year prescriptive period as provided in Section 230 of the Tax Code (now Section 229 of the 1997 Tax Code). A careful perusal of the records of this case reveals that Petitioner observed said mandatory period. Counting from April 15, 1997, the date when the 1996 annual income tax return was filed, both Petitioner's administrative claim with the BIR and judicial claim with this Court, filed on March 17, 1999 and April 15, 1999, respectively, falls well within the two-year prescriptive period provided by law.

As to the second requisite, records show that Petitioner declared in its 1996 annual income tax return the income payments from which the excess income taxes were withheld. The total income of P18,913,062.98 as gathered from the certificates of creditable tax withheld at source which arose from Petitioner's rental of land and premises and consultancy services is included as part of the gross income tax return (Exhibits A and A-3; see also TSN, dated September 7, 1999, pp. 18-19).

Finally, Petitioner was able to comply with the third requirement in submitting the certificates of creditable tax withheld at source issued by various withholding agents for the year 1996 (Exhibits B to M). However, this Court noted that out of the total claim for refund in the amount of P950,196.00, only the amount of P945,653.09 was duly supported by certificates of final tax withheld at source, thus:

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
FAR TRAVEL, INC.	B	P 542,660.64	P 27,132.96
ANSCOR HAGEDORN	C	753,272.32	37,663.62
ANSCOR HAGEDORN	D	4,030,867.00	201,543.35
STOCK TRANSFER SERVICE, INC.	E	5,182,820.00	259,141.00

ASIANBANK CORP.	F	4,318,235.00	215,911.75
AB LEASING & FINANCE CORP.	G	3,615,968.00	180,798.40
ABOITIZ & CO., INC.	H	312,500.00	15,625.00
PHIL. AMERICAN LIFE INSURANCE CO.	I	33,170.33	1,658.52
PHIL. AMERICAN LIFE INSURANCE CO.	J	25,684.93	1,284.25
PHIL. AMERICAN LIFE INSURANCE CO.	K	28,180.20	1,409.01
PHIL. AMERICAN LIFE INSURANCE CO.	L	15,704.56	785.23
A. SORIANO CORP.	M	54,000.00	2,700.00
		P 18,913,062.98	P 945,653.09

In his memorandum dated April 28, 2000, Respondent contends that Petitioner's allegation of net loss for calendar year 1996 was not duly substantiated. He further asserts that the statements and certificates of tax withheld presented and offered by Petitioner as proof of withholding are not conclusive evidence of payment and remittance to the BIR.

We do not agree.

Petitioner need not show proof of loss incurred. Thus, as held by this Court:

> "Respondent's contention that a mere allegation of loss does not ipso facto merit a refund is unmeritorious. As stated, Respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence, the income tax return should be given credence and thus, coupled by the fact that Petitioner was able to present documents to substantiate its income tax return, provide sufficient proof of a loss sustained by Petitioner in the year." (citing **Citytrust Banking Corporation vs. CIR, CTA Case No. 4099, May 28, 1991**)

Furthermore, as can be gleaned from the parties' "Joint Stipulation of Facts and Issues", Respondent has recognized that Petitioner suffered a loss in its business operation for the year 1996. Thus, having entered in the said Joint Stipulation, it can no longer deny what has been expressly admitted.

Contrary to the Respondent's second allegation, the certificates of creditable tax withheld at source are sufficient proofs of the actual withholding of the income tax provided under Revenue Regulations 6-85 as amended. And pursuant to Sections 50 and 51 of the then Tax Code, the withholding of income taxes and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Thus, as held in the case of **San Miguel Properties, Inc. (formerly Monterey – San Miguel Properties, Inc., formerly Monterey Farms Corp. vs. CIR, CTA Case No. 5621, August 12, 1999, citing the case of CIR vs. Citytrust Banking Corp., CA, G.R. Sp. No. 26839, July 31, 1992):**

> "All that is required by law and/or implementing regulations to show proof of withholding is the presentation of the Statements of Tax Withheld at Source (BIR Form 1743.1), showing the income received and the amount of tax withheld therefrom and that the income was included to form part of Petitioner's gross income as stated in its income tax return. The reason for this is simple. The withholding agent is not within the control of the payee – taxpayer but is considered an agent of the Commissioner of Internal Revenue. The withholding agent merely holds the amount in trust for the government."

It is worth stressing at this point that in this Court's Resolution dated December 3, 1999, it denied admission of Exhibit O as it is missing from among the documents submitted. This document (Exhibit O) pertaining to the written claim for refund while not appended to Petitioner's Formal Offer of Evidence could still be considered by this

Court. Considering the circumstances obtaining in the case at bar, the existence of said written claim for refund is recognized by this Court for the following reasons:

1. Respondent admitted the existence of said document when it entered into the "Joint Stipulation of Facts and Issues" with the Petitioner on June 22, 1999 (see Joint Stipulation of Facts and Issues, par. 1.03, CTA docket, p. 57);

2. Said document is incorporated in the records of the case as Annex "O" (see CTA docket, p. 29; Ayala Life Assurance Inc. vs. CIR, CTA Case No. 5104, May 7, 1996);

3. Said document has been duly identified during the hearing before the Clerk of Court for marking and comparison with the original (see CTA docket, p. 63).

Thus, with all of the above findings, there is indeed a reason for Us to sustain Petitioner's claim for refund.

However, from the evidence presented and the corresponding computation made by this Court, We can only grant such amount that has been duly proven, which, in this case is P945,653.09.

WHEREFORE, in the light of the foregoing, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** A TAX CREDIT CERTIFICATE to Petitioner the reduced sum of P945,653.09 representing unutilized creditable income tax withheld at source for the year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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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