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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DHARMALA CAPITAL INVESTMENT AND TRUST COMPANY, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5352

Promulgated:
OCT 13 1997

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DECISION

This is a claim for refund or tax credit of alleged unutilized creditable income tax withheld at source for the year ended December 31, 1993 in the amount of P824,109.00.

Petitioner is a domestic corporation organized and existing under the laws of the Philippines. It operates primarily as an investment house and the income which it receives on interests on loans, trading gains, management. consultancy, syndication and professional fees are subject to withholding taxes.

For the taxable year ended December 31, 1993, petitioner declared a net loss in the amount of P1,045,317.00 as reflected in its Annual Income Tax Return (ITR), computed as follows:

Gross Income (for calendar year ended 1993):	
Interest on loans	P21,972,414.00
Trading gain	11,207,884.00
Management, syndication, consultancy and professional fees	40,217,743.00
Miscellaneous income	7,133.00
Gross Income	P73,405,174.00
LESS ALLOWABLE DEDUCTIONS	74,450,311.00
Net Loss for 1993	(P 1,045,137.00)
Tax due for 1993	NIL

which allegedly resulted in unutilized creditable income tax withheld at source amounting to P824,809.00. Said amount represents the creditable withholding taxes withheld on petitioner's income and remitted by its clients to the Bureau of Internal Revenue pursuant to Revenue Regulations No. 6-85, otherwise known as the Withholding Tax Regulations.

On July 12, 1994, petitioner filed its administrative claim for refund with the respondent's Bureau invoking paragraph (B), Sec. 69 and Sec. 204(3) of the Tax Code, which are quoted hereunder as follows:

> "Sec. 69. *Final adjustment return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar 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 income of that year the corporation shall either:
>
> (a) xxx ;

> (b) Be refunded the excess amount paid, as the case may be;
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> xxx xxx xxx
>
> Sec. 204. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* - The Commissioner may -
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> xxx xxx xxx
>
> (3) Credit or refund taxes erroneously or illegally received, 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. (As amended by PD 1773.)

As respondent has not acted on the claim for refund, petitioner filed the instant Petition for Review with this Court on April 12, 1996.

Respondent admits in her Answer the existence of the income tax return and the filing of a claim for refund but denies the correctness or veracity of the contents thereof as well as the applicability of the provisions of law cited by herein petitioner.

As Special and Affirmative Defenses, respondent stated, that:

> 5. Petitioner has not shown proof that it has incurred losses in the year 1993, mere

declaration of deduction in the return without being supported by records of pertinent papers proving that the claimed deductions were really paid or incurred during the year in question is insufficient;

6. The expenses claimed by petitioner in its 1993 return are not totally allowable, this even if granting, for the sake of argument, that the withholding tax payments for that year are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes;

7. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded was/were actually paid. (Manufacturer's Bank and Trust Co. as Trustee for Gen. Trust Plan vs. CIR, CTA Case No. 1659, Nov. 29, 1965);

8. The best evidence of payment and remittance of taxes withheld are the official receipts;

9. In claiming for refunds, it is incumbent upon petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95 [1970]; Manila Electric, Co. vs. CIR, 67 SCRA 35 [1975]);

11. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code;

12. Consequently, all told, petitioner is not entitled to the claim for refund herein sought to be refunded.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund or tax credit in the amount of P824,109.00 representing unutilized income tax withheld at source for the calendar year ended December 31, 1993.

Under Revenue Regulations 6-85 claims for tax credit or refund of income tax, deducted and withheld on income payments shall be given due course only when:

> 1) it is shown on the return that the income payment received has been declared as part of the gross income;
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> 2) the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom; and
>
> 3) the claim for refund is filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code.
>
> xxx xxx xxx

Thus, to prove its case, petitioner presented in evidence documents consisting of:

a. Corporate Annual Income Tax Return for the calendar year ended December 31, 1993 (Exhibit "A");

b. Certificates of Creditable Tax Withheld at Source from various withholding agents (Exhibits "B", "C", "D", "E", "F" and "I");

c. Letter claim for refund dated July 11, 1994 (Exhibit "G"); and

d. Corporate Annual Income Tax Return for the calendar year ended December 31, 1994 (Exh. "H").

On the other hand, respondent failed to present any controverting evidence. The arguments she raised are nothing new and have been repeatedly raised in similar cases.

She alleged in her Answer that mere declaration in the income tax return that it incurred losses in the year 1993 is insufficient. In the case of **Bank of the Philippines Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993** such controversy has already been settled.

> "Despite the reservation of respondent with respect to the veracity of the return still up to the time given for respondent to present her evidence and up until the submission of this case for decision nothing was shown during the hearing that the return was erroneous nor was there evidence presented that there exist any irregularity in the computation or preparation of the return which will taint their reliability or sufficiency and competency as proof of overpaid income tax for the year 1985. At the time the return was filed on April 14, 1986, respondent's examiners had all the time to examine and audit the return. Up to this time nothing was heard from the respondent disputing the correctness of the return for otherwise she would have, upon knowledge of any irregularity, issued an assessment for said year or at least notified

> this Court if there was any. It is within the competence of respondent to examine petitioner's financial statements and audit report as these are documents necessarily attached to the return filed by petitioner and formed part of the BIR records. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, in the absence of contrary evidence, the Income Tax Returns and the Confirmation Receipts of payment of the quarterly taxes should be given credence as proof of overpaid income tax for 1985 in the amount of ₱65,259.00."

This was exactly the same ruling laid by Us in the case of Citytrust **Banking Corporation v. Commissioner** of **Internal Revenue, CTA Case No. 4099, May 28, 1991:**

> "Respondent's contention that a mere allegation of loss in 1985 does not ipso facto merit a refund, is likewise 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 returns should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by petitioner in 1985."

Respondent likewise argued that the petition states no cause of action since it did not allege the date(s) when the taxes were paid. Again, this Court has ruled in the case entitled **Jardine Davies, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3839, 4013 and 4124, dated January 20, 1994,** thus:

> "Respondent further contends that the petitions state no cause of action because they do not allege the date(s) when the taxes were paid. Time and again this Court has ruled that "petitioner is not required to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in its operations. (Sun Insurance Office Ltd. v. Acting CIR, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. CIR, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989; and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993)

Finally, respondent contended that the best evidence of payment and remittance of taxes withheld are the official receipts. In the case of **Commissioner of Internal Revenue v. Citytrust Banking Corporation, CA-G.R. SP No. 26839, July 31, 1992**, the Court of Appeals affirmed *in toto* our decision in the case of **Citytrust Banking Corporation** v. **Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991**, and added:

> "Of greater significance also is the respondent Tax Court's observation that the remittance of tax withheld made by the withholding agents could have been easily verified by petitioner, considering that it is within their competence to know, to check and verify the regularity of performance of his subordinates. It underscored the fact that the

remittance of withholding taxes by producing the confirmation receipt is not required by law and regulation as the withholding agent is not within the control of the payee taxpayer but are the tax agent of the Commissioner of Internal Revenue. It is on this account that the taxes deducted and withheld are considered special fund in trust for the government until paid to the Bureau of Internal Revenue. The withholding agent merely hold the amount in trust for the government (Resolution of the Court of Tax Appeals, December 3, 1991, Rollo, p. 96)."

Thus, in the light of all the foregoing, this Court is convinced that petitioner was able to prove its entitlement to the refund. Petitioner's 1993 Income Tax Return showed a gross income of P73,405,174.00. Out of the total creditable withholding taxes claimed by petitioner amounting to P824,109.00, it was, however, able to prove by the presentation of documentary evidence only the sum of P814,825.00 summarized as follows:

Exh.	Nature of Income	Amount	Tax Withheld	Withholding Tax Rate
B	Prof/Talent Fees to Juridical Persons	P 250,000.00	P 12,500.00	(5%)
C	Prof/Talent Fees to Juridical Persons	75,000.00	3,750.00	(5%)
D	Mg't. & Technical Consultants	495,000.00	24,750.00	(5%)
E	Prof/Talent Fees to Juridical Persons	227,500.00	11,375.00	(5%)
	Mg't. Fee	1,368,000.00	68,400.00	(5%)
F	Mg't. Fee	1,506,054.00	75,300.00	(5%)

I Pay't to Customs, Real Estate, Ins. & Com'l. Brokers, & Agents of Prof. Entertainers	12,375,000.00	618,750.00	(5%)
T O T A L	P16,296,554.00	P814,825.00	(5%)

WHEREFORE, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** to petitioner the reduced sum of P814,825.00 representing unutilized creditable income tax withheld at source for the year 1993.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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
Court of Tax Appeals