REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 4212

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:

SEP 30 1994

x - x

DECISION

This is a claim for judicial refund or credit of an alleged overpaid creditable income tax in the amount of P24,541.41 for calendar year 1985.

The facts and the antecedents of this case are not in dispute.

Petitioner, BPI Family Savings Bank, Inc., is a domestic corporation duly organized and existing under the laws of the Philippines. For the year 1985, petitioner received rental income for leasing spaces from which its lessees, under the expanded withholding tax regulations, withheld the amount of P24,541.41, computed as follows:

Lessee	Rental Income	5% Withholding Tax
Prudential Life Plan, Inc.	P 49,500.00	P1,237.50
Isetann Department Store, Inc.	150,000.00	7,500.00
Philippine American Life Insurance, Co.	44,625.00	1,181.25
Doris Hao	51,255.00	2,562.75
Insular Life Assurance, Co.	57,750.00	2,887.50
Lifetime Marketing Corporation	6,400.00	80.00

Nepomuceno Enterprises	5,700.00	285.00
Maria S. Evangelista	10,200.00	510.00
Gul Plaza	20,325.27	1,016.25
Filinvest Finance and Leasing Corp.	7,000.00	350.00
National Bazaar Marketing Corp.	22,050.00	1,102.50
Ministry of Trade and Industry	30,050.00	1,500.00
Bank of the Philippine Islands	1,135.22	170.28
Sager Realty Company, Inc.	8,400.00	420.00
Charles Lee's Department Store	15,467.50	648.38
Lareina Pawnshop	21,000.00	1,050.00
Orion Radio and Electrical Supply	21,000.00	1,050.00
Pamana Philippines, Inc.	19,800.00	990.00
		P24,541.41

On October 17, 1986, petitioner filed its request for a tax credit in the total amount of P24,541.41.

For failure on the part of the respondent Commissioner of Internal Revenue to act on petitioner's request, the latter filed the instant petition before this Court on December 29, 1987 claiming that it "suffered a net loss of P4,206,932.00 for 1985; hence, the entire amount of P24,541.41 under creditable withholding should be refunded to it." (Petition for Review, p. 1; C.T.A. Records, p. 1).

Respondent, in answer to the petition, alleged among others as special and affirmative defenses that: 1) the petition states no cause of action as it does not allege the date when the tax sought to be refunded was paid; 2) this case does not involve illegally or erroneously collected taxes, petition for review therefore does not lie; and 3) there is no need to file a petition for review to preserve petitioner's right within the two-year period because a taxpayer may recover excess income tax paid within ten (10) years from date of payment under Article 1144 of the New Civil Code.

The main issue for consideration of this Court is whether or not the petitioner is entitled to a tax refund or credit in the amount of P24,541.41 representing overpaid income tax for the year 1985.

Before deciding on the main issue, it is best to discuss first the points raised by the respondent which this Court has soundly disposed in the recent cases of **Jardine Davies, Inc. vs. Commissioner of Internal Revenue** (C.T.A. Case Nos. 3839, 4013 and 4124; January 20, 1994).

Respondent alleged that the petition states no cause of action because it does not state the date 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 that 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 fifteenth day of the fourth month following the close of the calendar or fiscal period. This is the time when it can finally ascertained that the taxpayer either made profit or suffered a loss in its operations. (**Sun Insurance Office Ltd. vs. Acting Commissioner of Internal Revenue**, C.T.A. Case No. 3205, June 23, 1989; **Ateneo de Manila University vs. Commissioner of Internal Revenue**, C.T.A. Case No. 3213, July 28, 1989; **Asia Australia** Express **Ltd. vs. Commissioner of Internal Revenue,** C.T.A. Case No. 3976, October 18, 1989; and **Paseo Realty and Development Corp. vs. Commissioner of Internal Revenue,** C.T.A. Case No. 4528, April 30, 1993.)

Respondent also claimed that the petition involved herein does not cover erroneously or illegally collected tax pursuant to Section 292 of the Tax Code. In the case of **Citytrust Banking Corporation vs. Commissioner of Internal Revenue** (C.T.A. Case No. 4099, May 28, 1991), this Court ruled that:

> "Although the title of Section 230 of the Tax Code is 'Recovery of Tax Erroneously or Illegally Collected', the title alone is not controlling. By the tenor of Section 230, the two-year limit applies to actions to recover -
>
> 1. any national internal revenue tax erroneously or illegally assessed or collected;
>
> 2. any penalty claimed to have been collected without authority; or
>
> 3. any sum alleged to have been excessive or in any manner wrongfully collected."

In this particular case, the alleged overpaid income tax falls under item no. 3, for although it was legally collected by virtue of the withholding tax system, it was nonetheless alleged as "excessive".

As to the allegation that there is no need to file this petition to preserve the petitioner's right to tax refund or credit since it has ten (10) years from date of payment to recover excess income tax paid pursuant to Article 1144 of the New Civil Code, this Court in the same case of **Citytrust Banking Corporation** (supra), held:

> "At the very least then, the automatic tax credit provision acts like a claim for refund for the year of overpayment because it serves the same purpose which is to put the BIR on notice that the collection of the tax is being contested. But settled is the rule that even when a claim for refund or tax credit is pending with the Commissioner, when the two-year period from the date of payment is about to elapse the taxpayer need not await the Commissioner's decision and instead must file a petition for review in this Court pursuant to Section 230 of the Tax Code. To opine therefore that there is no need to file a petition for review to preserve the right to claim for a refund or tax credit is to go against the positive mandate of Sec. 230. xxx. Therefore, the taxpayer should still file a claim for a refund or tax credit and the corresponding petition for review within the periods required in case of overpayment of income tax reflected in its returns otherwise his right to claim for refund or tax credit will prescribe.
>
> xxx xxx xxx
>
> The Tax Code being a special law, its provisions prevail over those under the Civil Code. And since the overpayments arose out of the application of the provisions of the Tax Code, the provisions of the same on prescriptive periods should necessarily govern. xxx."

In the case of **Servicewide Specialist, Inc. vs. Commissioner of Internal Revenue and Court of Tax Appeals** (CA-G.R. SP No. 25893, February 14, 1992), the Court of Appeals held:

> "The ruling was subsequently clarified by this Court in a latter case, Commissioner of

> Internal Revenue vs. Insular Lumber Co., Dec. 11, 1967, 21 SCRA 1237. It was there held that Sections 306 and 309 of the Internal Revenue Code were intended to govern all kinds of refunds of internal revenue taxes - those taxes imposed and collected pursuant to the National Internal Revenue Code. In other words the prescriptive period of two (2) years therein provided is the one which should govern and not any other prescriptive period, such as that of ten (10) years provided for in Article 1144, paragraph (2), of the Civil Code. xxx xxx. 'In fine, when the tax sought to be refunded is illegally or erroneously collected, the period of prescription starts from the date the tax was paid; but when the tax is legally collected, the prescriptive period commences to run from the date of occurrence of supervening cause which gave rise to the right of refund. The ruling in Muller & Phipps is accordingly modified."

Going now to the main issue, Section 53(f) of the 1985 Tax Code, as amended, provides:

> "*Other cases of withholding tax at source.* - The Minister (Secretary) of Finance may upon the recommendation of the Commissioner of Internal Revenue, require also the withholding of a tax on the same items of income payable to persons (natural or juridical) residing in the Philippines by the same persons mentioned in paragraph (b)(1) of this section at the rate of not less than two and one-half *per centum* (2½%) but not more than thirty five *per centum* (35%) thereof which <u>shall be credited against the income tax liability of the taxpayer for the taxable year</u>." (Underscoring supplied)

The term "taxable year", as defined in Section 20(p) of the same Tax Code, means the calendar year or the fiscal year ending during such calendar year, upon the basis of which the net income is computed. "Taxable year" includes in the case of a return made for a fractional part of a year the period for which such return is made.

In claiming for a refund, petitioner offered as part of its evidence the income tax return "for the six months ending December 31, 1985". In the auditor's notes to financial statements, it was represented that the petitioner "was incorporated and started its commercial operations (only) on July 1, 1985". (C.T.A. Records, p. 61)

For the period of six months, petitioner suffered a net loss in the amount of P4,206,932.00 as indicated in its income tax return filed on April 15, 1986.

Respondent's denial of the claim is based on the argument that the evidence presented by the petitioner "is insufficient to prove that petitioner incurred a net loss." (Memorandum, p. 2; C.T.A. Records, p. 111)

As argued by the respondent:

> "The claim for refund is based on petitioner's allegation that it incurred a net loss and, therefore, it had no income tax liability for 1985. As claimed, the deductions (P321,174,079.00) exceeded its income (P316,967,147.00), hence, a net loss of P4,206,932.00 (Exh. "A").
>
> Deductions are a matter of legislative grace and a particular deduction shall be allowed only where there is a clear provision in the statute for the deduction claimed (**Tan Chiu vs. Collector of Internal Revenue,** C.T.A. Case No. 143, July 31, 1956).
>
> Here, in its income tax return, petitioner is claiming itemized deductions among which

> require proof that they are ordinary and necessary. Other than the return, there is no evidence, oral or documentary, to prove the deductions claimed, particularly the fact that the expenses are ordinary and necessary. Absent such evidence, the expenses are unallowable. Consequently, it cannot be said that the deductions are over and above the income resulting in a net loss. In other words, petitioner's evidence is insufficient to prove that it incurred a net loss.

This Court however rules for the petitioner. It is entitled to a tax refund or credit of overpaid creditable taxes withheld from its rental income.

If indeed the petitioner's itemized expenses can not be allowed as deductions from its gross income, as alleged by the respondent; then the latter should have issued an assessment against the former. More than seven years have passed and respondent did not even bother to contest the return filed by the petitioner. It is only at this very late hour that the respondent is questioning the validity of the deductions claimed by the petitioner to the prejudice of the latter. This practice of the respondent cannot be allowed as it would run counter to the basic tenets of equity, justice and fair play which this Court is tasked to uphold.

The question that left to be answered therefore is whether or not the petitioner has complied with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85 and in previous cases of **BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue,** C.T.A. Case No. 4325, March 17, 1994; **Citytrust Finance Corporation formerly Investors Finance Corporation vs. Commissioner of Internal Revenue,** C.T.A. Case No. 4046, February 24, 1993; **Citytrust Finance Corporation vs. The Commissioner of Internal Revenue,** C.T.A. Case No. 4143, November 11, 1991.

The requirements are as follows:

> 1. that petitioner filed a claim for refund within the two (2)-year period as prescribed by Section 292 (now 230) of NIRC;
>
> 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 the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom.

The return having been filed on April 15, 1986, petitioner had two years from that date to file a claim for a tax refund or credit. The records of this case show that petitioner filed its claim before the respondent on October 17, 1986 (Exhibit "C"; C.T.A. Records, p. 3), and this Petition before this Court on December 29, 1987 (C.T.A. Records, p. 1), well within the prescribed period.

In compliance with the second requirement, petitioner declared the rental income as part of its gross income in its income tax return. (Petition for Review; Exhibit "A"; C.T.A. Records, p. 47)

As to the third requirement, this Court finds that some of the exhibits were not duly accomplished by the petitioner's withholding agents to warrant their proper disposition or appreciation. From among the evidence presented by the petitioner, Exhibits "B", "B-2", "B-4", "B-5", "B-7", "B-8", "B-9", "B-10", "B-11", "B-12", "B-14", "B-15", "B-16", "B-17", "B-20", and "B-23" cannot be given consideration by this Court as the statements submitted did not clearly state some vital information of the withholding, like the complete name of the payee/petitioner, its correct tax account number, and the period of withholding. Exhibits "B-6" and "B-19" were denied since they were not in the prescribed form (BIR Form 1743.1), while Exhibit "B-18" was disallowed since it pertained to final tax withheld from interest income.

Tax refund partakes of the nature of a tax exemption and therefore cannot be allowed unless granted in the most explicit and categorical language. The grant of refund privileges must be strictly construed against the taxpayer. (**Insular Lumber Co. vs. Court of Tax Appeals**, 104 SCRA 710; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, 207 SCRA 549)

Thus the creditable withholding tax at source left to be refunded or credited in favor of the petitioner is computed as follows:

Lessee	Exhibit	Rental Income	5% W/Tax
Isetann Department Store, Inc.	B-1	P150,000.00	P7,500.00
Doris Hao	B-3	51,255.00	2,562.75
Filinvest Finance and Leasing Corp.	B-13	7,000.00	350.00
Lareina Pawnshop	B-21	21,000.00	1,050.00
Orion Radio and Electrical Supply	B-22	21,000.00	1,050.00
			P12,512.75

WHEREFORE, in view of all the foregoing circumstances, respondent is hereby **ORDERED** to issue a Tax Credit Certificate in the amount of P12,512.75 in favor of the petitioner. No pronouncement as to costs.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

This is to certify that the above decision was reached after due consultation among 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