REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SAN MIGUEL PROPERTIES, INC. (Formerly: Monterey - San Miguel Properties, Inc., Formerly: Monterey Farms Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 5621

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 06 1999

x - x

DECISION

This case involves a judicial action for the refund or in the alternative for the issuance of tax credit certificate in the sum of P15,867,650.00, representing overpaid income tax arising from excess payment of creditable withholding taxes at source for the calendar year ended December 31, 1995.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the farming business which includes breeding of swine and cattle with principal office located at PCPD Building, Sitio Sto. Nino de Bonifacio, Western Bicutan, Taguig, Metro Manila.

For the calendar year ended December 31, 1995, petitioner filed its Corporation Annual Income Tax Return on April 15, 1996, reflecting a net operating loss in the amount of P38,689,173.00 but with a refundable income tax payment in the sum of

P41,646,577.00, arising from its prior year's excess credit and the 1995 various creditable withholding taxes at source, detailed as follows:

Net loss		P38,689,173.00
Tax Due		P nil
Less: Tax Credits/Payments		
a) Prior year's excess credit	P 25,778,927.00	
b) Quarterly payments	-	
c) Creditable Tax Withheld	15,867,650.00	41,646,577.00
Amount Refundable		P41,646,577.00

Petitioner indicated in the aforementioned return its intention of applying the refundable income tax as tax credit to the succeeding taxable year 1996. However, the intended application became nugatory due to the fact that in the calendar year 1996, petitioner suffered another net loss from its operations in the amount of P11,217,466.00 leaving no income tax liability from which the said overpayment could be applied (Exh. C-14).

On March 19, 1998, petitioner filed a letter claim for refund with the Appellate Division of the Bureau of Internal Revenue seeking the refund of overpaid income tax in amount of P16,523,357.77, representing the excess income tax payment for the calendar year 1995 (Exh. C-26).

The inaction of the Respondent on the aforementioned claim compelled the petitioner to file the instant petition for review on April 14, 1998, in order to toll the running of the two-year prescriptive period mandated by Section 230 of the Tax Code, as amended.

During trial, Petitioner formally offered in evidence the following documents in order to support its claim for refund:

1. Report of findings from the commissioned independent certified public accountant (Exhs. A and AA);

2. Petitioner's annual income tax returns for the calendar years 1994, 1995, 1996, and 1997 together with their corresponding audited financial statements and auditors' reports (Exhs. C-1 to C-25);

3. The various certificates of creditable withholding tax at source (Exh. BB); and

4. The letter claim for refund (Exh. C-26).

The above documents were properly identified by Petitioner's witness and were all admitted by the Court in a Resolution, dated October 30, 1998.

Respondent on his part elects not to present controverting evidence. This case was eventually submitted for decision after both parties presented their respective memoranda.

The issues now confronting Us are as follows:

1) whether or not petitioner is entitled to the claim for refund of alleged overpaid income tax for the period covered by the claim; and if in the affirmative;

2) whether or not petitioner has presented sufficient evidence to substantiate the said claim for refund.

We answer both questions in favor of Petitioner.

The legal basis of Petitioner in claiming for the refund of overpaid income tax is Section 69 of the Tax Code, as amended, to quote:

> **Section 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:
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> (a) Pay the excess 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 (Underlining supplied).

It is apparent from the evidence on record that petitioner incurred successive net operating losses from its business undertakings for the calendar years 1994, 1995, 1996 and 1997. The 1995 income tax payments arising from creditable withholding taxes at source remain unapplied during the years, hence, petitioner appears to be legally entitled to the refund sought. However, petitioner must still prove its entitlement to the refund by substantial evidence.

Section 230 of the Tax Code, as amended, provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code, as amended, is hereby quoted as follows:

> **Section 230.** ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: **Provided, however,** that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid (Underlining supplied).

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following three requisites:

> 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 Revenue Code;
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> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
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> 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. **(Sec. 10, Rev. Regs. 6-85; Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993)**.

The records establish that petitioner's claim for refund was timely filed within the two-year period from the date of payment of the tax. The letter request for refund was filed with the respondent on March 19, 1998, while the instant case was instituted on April 14, 1998 (Exh. C-26). The two-year period commences on April 15, 1996, the date when petitioner filed its final income tax return for calendar year 1995 **(Commissioner of Internal Revenue vs. TMX Sales, Inc. et al., G.R. No. 837736, January 15, 1992)**. The income upon which the creditable withholding taxes in question were withheld were included as part of the gross income reflected under Schedule 1, 3, and 5 of Section C of petitioner's 1995 income tax return (Exhs. C-8 to C-13). Lastly, the total amount of P15,867,650.00 is duly supported by Certificates of Creditable Income Tax Withheld at Source and was attested by the commissioned independent certified public accountant (Exhs. AA. A. B. and BB).

Respondent, on the other hand, contends that petitioner is no longer entitled to the claim for refund because a mere allegation of net loss in the corporate annual income tax returns does not *ipso facto* merit a tax refund. He further reasons that there is no evidence to show that deductions claimed against petitioner's gross income are allowable deductions under the Tax Code.

We find the foregoing arguments of respondent without merit.

It should be pointed out that the annual income tax returns of petitioner were prepared and signed under the penalties of perjury. In fact these income tax returns were examined by independent CPAs, as required under Section 232 of the Tax Code, wherein the auditors expressed an unqualified opinion on the assets, liabilities and stockholder's equity as well as the revenues and expenses of petitioner for the calendar years 1994, 1995, 1996, and 1997 (Exhs. C-7, C-12, C-19, and C-25). Moreover, petitioner is not required to show detailed proof of the truthfulness of each and every item in the income tax return because this function belongs to the Commissioner of Internal Revenue as mandated by the Tax Code which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return (**Citibank, N.A., vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997**).

Respondent also avers that there is no sufficient proof that the taxes withheld by the payor were remitted to the BIR and that petitioner failed to prove that the taxes withheld went to the coffers of the government.

We find this contention of the respondent without merit. 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 (**Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA-GR SP No. 26839, July 31, 1992**).

Thus, it is significant to note that the presentation of payment orders, confirmation receipts or in the alternative the admission of withholding agents is not at all required under the law and regulations. The BIR Form 1743.1 having been signed under the penalties of perjury can be taken on its face (**Filipinas Management & Leasing Services Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4146, dated March 11, 1994**).

WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a TAX CREDIT CERTIFICATE in favor of the petitioner the amount of P15,867,650.00 representing overpaid income tax.

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