REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RETRO SYSTEMS, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5354

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: NOV 03 1997

x - x

DECISION

This case involves a judicial action for the refund of the sum of P1,156,257.23, representing overpaid income tax resulting from excess payment of creditable withholding taxes for the calendar years ended December 31, 1993 and December 31, 1994.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the business as agent, broker, or representative for the purpose of purchasing, selling, disposing or otherwise dealing in any goods, wares, merchandise, and services of any kind (Exhs. A and A-1, pp. 29 to 40, CTA records).

For the calendar year 1993, petitioner filed its Corporation Annual Income Tax Return on March 28, 1994, reflecting a refundable amount of P880,503.00 (Exhs. B, B-1, and B-2, pp. 41 to 43, CTA records). The details of which are as follows:

Gross income		
Schedule 2	P17,548,890.00	
Schedule 3	1,357,174.00	P18,906,064.00
Less deductions		19,505,044.00
Net loss		P 598,980.00
Tax due		P NIL
Less tax credits		880,503.00
Refundable		P 880,503.00

Out of the amount of P880,503.00, petitioner alleges that the sum of P877,158.98 represents creditable withholding tax payment for the year 1993.

Likewise, for the calendar year 1994, petitioner's Corporation Annual Income Tax Return which was filed on April 10, 1995, reflected a refundable amount of P1,214,259.00 (Exhs. H, H-1, and H-2, pp. 58 to 60, CTA records), computed as follows:

Gross income		
Schedule 2	P 7,208,065.00	
Schedule 3	2,802,133.00	P10,010,198.00
Less deductions		15,403,560.00
Net loss		P 5,393,362.00
Tax due		P NIL
Less tax credits		1,214,259.00
Refundable		P 1,214,259.00

Petitioner alleges that out of the amount of P1,214,259.00, P279,098.25 represents creditable withholding tax payment for the year 1994.

On March 9, 1995, petitioner filed a letter claim for refund with the Bureau of Internal Revenue seeking for the refund of the amount of P1,214,259.00, representing unused creditable withholding tax at source (Exhs. K, K-1, and K-2, p. 72, CTA records).[1]

Since respondent has neither granted nor acted upon the claim for refund, petitioner is left with no recourse but to file the instant petition for review on April 12, 1996 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Respondent, in her Answer, raised the following Special and Affirmative defenses:

> 4. Petitioner's claim for refund or issuance of tax credit certificate is yet pending administrative investigation or evaluation;

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[1] It should be noted that there is a discrepancy between the amount judicially claimed and that which was claimed with the Bureau of Internal Revenue. But petitioner herein only limited its judicial claim for refund for the calendar year 1993 and 1994 in the total amount of P1,156,257.23.

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

6. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to said action;

7. It is incumbent upon Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended;

8. Well-settled is the rule that claims for refund are construed strictly against claimant since they partake of the nature of exemptions from taxation. (Resins, Inc. vs. **Auditor General, 25 SCRA 754, 1968).**

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of ₱1,156,257.23, representing alleged overpaid creditable withholding tax for the calendar years 1993 and 1994.

Petitioner cites as legal bases Sections 51(f), 69 and 204(c) of the Tax Code, as amended.

For easy reference pertinent portions of Sections 51(f), 69 and 204(c) of the Tax Code, as amended, are hereby quoted as follows:

"Sec. 51. ***Returns and Payments of taxes withheld at source.*** - xxx

(f) Income of Recipient. - Income upon which any creditable tax is required to be withheld at source under Section 53 shall be included in the return of its recipient but <u>any excess of the amount of tax so withheld over the tax due on his return shall be refunded</u> to him subject to the provisions of section 295; xxx

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. <u>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</u> either:

(a) Pay the excess tax still due, or

(b) <u>Be refunded the excess amount paid</u>, 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. xxx

Sec. 204. ***<u>Authority of the Commissioner to</u> compromise, abate, and <u>refund/credit taxes</u>.*** - The Commissioner may -

(1) xxx

(2) xxx

(3) Credit or <u>refund taxes erroneously</u> or illegally <u>received</u>, 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. <u>No credit or refund of taxes or penalties shall be allowed unless</u>

<u>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</u>." (Underlining supplied)

To further support its entitlement to the claim for refund, petitioner presented the following documents as evidence:

a. The Articles of Incorporation (Exhs. A and A-1);

b. The 1993, 1994 and 1995 final income tax returns together with their corresponding financial statements and auditors' report (Exhs. B, B-1, B-2, H, H-1, H-2, and L);

c. The various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. C, C-1, D, D-1, E, E-1, F, F-1, G, I, I-1, and J); and

d. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. K and K-1).

The foregoing evidence were all admitted by the Court in a Resolution, dated January 7, 1997.

Respondent, on the other hand, was considered by the Court to have waived her right to present evidence in view of her consistent failure to present evidence on the scheduled hearings of this case (Resolution, June 17, 1997, p. 91, CTA records).

This case was submitted for decision sans the memorandum of the respondent.

The issue presented before us is nothing new. In fact this Court has already laid down three basic requirements, for a taxpayer to comply with, in order to be entitled to the refund of excess creditable withholding tax at source. These are:

> 1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 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. Reg. 6-85; see Citytrust Finance Corporation vs. The 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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].

A circumspect study of the records and evidence of the case revealed that petitioner qualifiedly met the requirements mentioned above.

As regards requirement number one, the claim for refund of overpaid income tax arising from the excess payment of withholding tax at source should be filed, both in the administrative and judicial level, within the two-year prescriptive period from the date of payment of the tax as provided under Section 230 of the Tax Code. A verification of the judicial claim for refund of petitioner for the calendar year 1993 disclosed that it only filed the instant action on April 12, 1996 whereas the date of payment of the tax is construed to be on March 28, 1994, the date when the annual income tax return of petitioner was filed (Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. Mo. 105208, May 29, 1995; Commissioner of Internal Revenue v. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of

Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989). Hence, the 1993 claim for refund of excess payment in the amount of P880,503.00 has already prescribed for being filed out of time. With respect to the 1994 overpaid creditable withholding tax in the amount of P279,098.25, the filing of the claim for refund within the 2-year period was satisfied. The filing of administrative claim for refund with the BIR was done on March 9, 1995 (Exh. K) and the petition for review with this Court on April 12, 1996. The counting of two-year period commences to run on April 10, 1995, the time when the petitioner filed its final income tax return for year 1994.

Going now to the second requirement, petitioner undoubtedly showed that the income upon which the creditable withholding taxes for 1994 were paid were included in its gross income. This is evidently shown in Schedule 2, Section C of the 1994 annual income tax return of petitioner (Exh. H).

Lastly, the certificates of creditable withholding tax at source (BIR Form 1743.1) for the year 1994 sufficiently established the amount of creditable withholding tax in the amount of P279,098.25 (Exhs. I, I-1 and J). Furthermore, these creditable withholding taxes for the year 1994 were evidently not utilized by petitioner in the year 1995 as shown by the 1995 Corporation Annual Income Tax Return (Exh. L) due to its cessation of business operations during the year. Thus, the unutilized creditable withholding tax for 1994 can now be validly refunded to petitioner pursuant to Section 69 of the Tax Code.

WHEREFORE, in view of the foregoing, the petition for review is partially meritorious. The claim for refund of petitioner for the calendar year 1993 is DENIED for being filed out of time. While the claim for refund for excess creditable withholding tax for the calendar year 1994 is hereby GRANTED. Respondent is ordered to **REFUND** in favor of petitioner the sum of P279,098.25.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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