REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST FAR EAST DEVELOPMENT CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5355

Promulgated:
JAN 08 1999

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to Four Million Five Hundred Ninety Four Thousand Five Hundred Seventy Eight Pesos (P4,594,578.00), representing unused creditable withholding taxes remitted in 1993.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of property management.

On April 15, 1994, Petitioner filed with the Bureau of Internal Revenue its Corporate Annual Income Tax Return for calendar year ended December 31, 1993, declaring a taxable income of P15,332,783.00 and an income tax due of P5,366,474.00 (Exh. "A"). On April 3, 1996, Petitioner filed an amended Corporate Annual Income Tax Return covering the same taxable year. This time, the amended return reflected the amount of P10,046,833.00

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as creditable withholding tax for 1993, resulting in excess creditable withholding tax amounting to P4,680,359.00 (Exh. "B").

Petitioner intended to apply the excess creditable withholding tax as credit for the following year 1994. However, its income tax liability for the said year was only P142,121.00. It even had a creditable tax withheld of P56,340.00. Consequently, Petitioner was not able to utilize the said amount as tax credit.

On April 3, 1996, Petitioner filed with the BIR a letter claim for the refund of the unused creditable taxes withheld for the year 1993 in the amount of P4,594,578.00, broken down as follows:

Prior Year's (1992) Excess Creditable Withholding Tax			P 463,485.00
Add: Tax Withheld in 1993			
A. From Rental of Real Property			
Withholding Agent	Amount of Income	Withholding Tax @ 5%	
Dona Properties Corporation	P15,601,869.00	P780,084.00	
Knitjoy Manufacturing, Inc.	1,179,540.96	58,815.00	
B. From Sale of Real Property			
	Zonal Value	Withholding Tax @ 5%	
Tribune Properties, Inc.	175,088,975.00	8,744,448.00	8,744,448.00

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			10,046,833.00
Less: 1993 Tax Liability			5,366,474.00
1993 Excess CWT			₱ 4,680,359.00
Add: Tax Withheld in 1994			
A. From Rental of Real Property			
Withholding Agent	Amount of Income	Withholding Tax @ 5%	
Knitjoy Manufacturing, Inc.	1,126,790.00	56,340.00	56,340.00
			4,736,699.00
Less: 1994 Income Tax Liability			142,121.00
Total Refundable CWT			₱ 4,594,578.00

As there was no immediate action on the part of herein Respondent, the instant petition was filed on April 12, 1996 (Exh. "C").

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

> 4. Petitioner's claim for refund and/or tax credit in the amount of P4,594,578.00 allegedly representing overpaid income tax for the year 1993 is yet pending administrative investigation and was not properly documented;
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> 5. Taxes paid are presumed to have been collected in accordance with law and regulations, hence, not refundable;
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> 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;

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> 7. It is incumbent upon the 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 claimants since they partake of the nature of an exemption from taxation. (Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968).

The sole issue to be resolved in this case is whether or not Petitioner is entitled to the refund of the amount of P4,594,578.00 representing overpaid creditable tax for the taxable year 1993..

Petitioner, in support of its case, presented the following evidence:

Exhibit	Description	Purpose
"A"	Corporation Annual Income Tax Return for the Year ended December 31, 1993 of the Petitioner.	To prove the filing of Petitioner's income tax return for the year 1993 and the results of its operations.
"B"	Corporation Annual Income Tax Return for the year ended December 31, 1993 of the Petitioner.	To prove the filing of Petitioner's **amended** income tax return for the year 1993 on April 3, 1996 and to prove the results of Petitioner's operations.
"C"	Letter dated March 27, 1996 signed by C.P. Noel of SGV & Co. addressed to the Bureau of Internal Revenue.	To prove the filing by Petitioner of its administrative claim for refund of excess income tax for the year 1993.

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"D", "E" & "K"	Certificates of Creditable Income Tax Withheld at Source for the year 1993 issued to the Petitioner.	To prove that creditable income tax was withheld from income payments to Petitioner on its rental/lease/transfer of real property.
"J"	Corporation Annual Income Tax Return of the Petitioner for the year ended December 31, 1994.	To prove the filing of Petitioner's income tax return for the year 1994 and the results of its operations and that the excess creditable income tax withheld of Petitioner for the year 1993 was not applied against any of its income tax liability for the year ended December 31, 1994.
"L"	Corporation Annual Income Tax Return for the year ended December 31, 1995 of the Petitioner.	To prove the filing of Petitioner's income tax return for the year 1995 and the results of its operations and to prove that Petitioner's excess creditable income tax for the year 1993 was not applied against any of its income tax liability for the year ended December 31, 1995.

Respondent, on her part, submitted the following exhibits as evidence:

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Exhibit	Particulars/Purpose
1	Letter of Authority No. 88888 dated June 18, 1996 issued by Revenue District Office No. 49-North Makati City. For the purpose of showing that the BIR designated a duly authorized personnel in evaluating the claim for refund subject of the instant case.
2	Letter of Authority No. 13665 dated July 6, 1994 issued by Revenue District Office No. 33, Intramuros, Manila. To show that another district office of the BIR likewise attempted to investigate/evaluate Petitioner's tax records relative to the same case apparently for the reason that it transferred address and/or filed two (2) separate returns.
3-a and 3-b	Memorandum report rendered by the investigating personnel of the BIR and duly noted by his group supervisor. To prove that as a result of an investigation conducted upon the books of accounts and other related accounting records of herein Petitioner, the claim should not be given due course.

After a careful scrutiny of the facts and evidence attendant to the case at bar, this Court finds that, indeed, Petitioner is entitled to the refund or issuance of a tax credit certificate but in a reduced amount.

Section 69 of the National Internal Revenue Code provides:

> Sec. 69. ***Final adjustment return.***-Every corporation liable to tax under Section 24 shall file a final adjustment return covering

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> 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 quarter of the succeeding taxable year. (Underscoring supplied)

Clearly then from the above-quoted provision, Petitioner may legally claim for the refund of the taxes withheld and remitted during the year 1993. Petitioner has likewise complied with the requirements set forth under Revenue Regulations 6-85 in claiming for the refund of excess creditable withholding taxes:

First, Petitioner filed the claim for refund within the two-year period prescribed under Sec. 230 of the National Internal Revenue Code.

Second, it was shown on the return that the income payments received has been declared as part of the gross income (Exhs. "B" and "J"); and

Lastly, the fact of withholding was established by copies of the Withholding Tax Statements duly issued by the payors to the payees showing the amount paid and the

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amount of tax withheld therefrom (Exhs. "D", "E" and "K").

Respondent alleged that the attempt of herein Petitioner to file a claim for tax refund is an indication of a fraudulent act. According to her, Petitioner's submission of two separate income tax returns (the first in Manila and the amended return in Makati) and Petitioner's knowledge of an existing and pending 1993 additional tax assessments, as well as knowledge of an on-going tax fraud case by the TFD, are overt acts of fraud.

These allegations remained as pure assertions, unsupported by any convincing evidence. The mere filing of an amended return at a place other than where the first return was filed does not by itself constitute fraud where it appears that the corporation has transferred its office from one place to another. Respondent likewise did not present as part of its evidence the report of Revenue District Office No. 33 regarding petitioner's additional donor's tax liabilities. Likewise, no proof was presented to substantiate information gathered from a third party that a sale of real property was grossly undervalued. Briefly stated, We cannot rely on mere hearsay and speculations to impute the serious charge of fraud against the Petitioner.

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 P4,538,238.00, computed as follows:

1993 Excess CWT	P4,680,359.00
Less: 1994 Income Tax Liability	142,121.00
Total Amount of Refundable Claim	P4,538,238.00

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 P4,538,238.00 representing unutilized creditable income tax withheld at source for the year 1993.

No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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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

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