REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5775

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 03 2000

x - x

DECISION

This is a Petition for Review seeking for the refund or the issuance of a tax credit certificate in the total amount of FIVE HUNDRED FORTY THOUSAND SIX HUNDRED SEVENTY NINE PESOS (P540,679.00) representing the alleged unutilized creditable income tax withheld at source for the calendar year ended December 31, 1996.

The facts of the case as adduced from the "Joint Stipulation of Facts and Issues" signed by the counsels of both parties are as follows:

1. Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It is engaged in financing activities with office address located at Far East Bank Center, Sen. Gil J. Puyat Avenue, Makati City. It can be served with legal processes through the undersigned counsels at their office at 6760 Ayala Avenue, Makati

City. (This is paragraph 1 of the Petition for Review and admitted in the Respondent's Answer)

2. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to decide, approve and grant refunds or tax credit of erroneously paid or excess payments of internal revenue taxes. He may be served with summons and other legal processes at his office at the 4th Floor, BIR National Office Building, Diliman, Quezon City. (This is paragraph 2 of the Petition for Review and admitted in the Respondent's Answer)

3. On April 15, 1997, Petitioner filed its Corporate Annual Income Tax Return for calendar year ended December 31, 1996.

4. On April 14, 1998, Petitioner filed its Corporate Annual Income Tax Return for calendar year ended December 31, 1997.

5. On April 15, 1999, Petitioner filed its Corporate Annual Income Tax Return for calendar year ended December 31, 1998.

6. The creditable withholding taxes for calendar year 1996 pertains to taxes withheld at source from the income payment of management fees reported under the attached Section C Schedule 2 of the 1996 Corporate Annual Income Tax Return.

7. In the 1996 Corporate Annual Income Tax Return, the Petitioner indicated its decision to apply the excess/unutilized creditable withholding taxes in the amount of P540,679.00 as tax credit to the next year.

8. The said amount of P540,679.00 representing the excess/unutilized creditable withholding taxes for 1996 was carried over to the succeeding taxable year, 1997.

9. Since the Petitioner reported a taxable loss in 1997, the said creditable withholding taxes carried over from 1996, remained unutilized.

10. The Petitioner reported in its 1997 Corporate Annual Income Tax Return its decision to apply for refund of a portion of its accumulated unutilized creditable withholding taxes as of December 31, 1997 in the amount of P540,679.00.

11. On June 25, 1998, Petitioner filed with the Office of the Commissioner of Internal Revenue its application for refund for calendar year 1996 in the amount of P540,679.00

12. On March 11, 1999, the Petitioner filed its amended application for refund for calendar year 1996 with BIR Revenue District Office No. 49 (North Makati).

13. The administrative claim for refund as well as the judicial claim for refund were filed within the two-year prescriptive period prescribed under Section 299 of the Tax Code, as amended.

14. That to date, the Respondent has not approved the administrative claim for refund.

Such inaction of the Respondent on Petitioner's claim for refund prompted the Petitioner to elevate the matter before this Court by way of Petition for Review on April 12, 1998.

Respondent for its part filed an answer to the instant Petition for Review and raised the following Special and Affirmative Defenses, to wit:

> "5. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
>
> 6. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (Manila Electric Cp. vs. CIR, 67 SCRA 351);
>
> 7. Taxes are presumed to have been paid and collected in accordance with law."

(Respondent's Answer, CTA docket, pp. 20-21)

In its Memorandum, Petitioner alleged that during the course of the trial, it sufficiently proved by testimonial and documentary evidence that it is indeed entitled to the amount claimed for. Submission of its Annual Income Tax Return (Exh. A) would reveal the following pertinent data:

Gross Income		P 87,051,478.00
Less: Allowable Deductions		117,663,532.00
Taxable Income		(P 30,612,054.00)
Tax Due		---
Less: Tax Credits/Payments	P493,998.00	
Creditable Tax Withheld	540,679.00	(1,034,677.00)
Total Amount Payable/(Refundable)		(P 1,034,677.00)

Petitioner averred that out of the Accumulated tax credits/Payments on the amount of P1,034,677.00 (Exh. A-5), a portion amounting to P540,679.00 pertains to the excess creditable withholding taxes for the calendar year ended December 31, 1996. Since Petitioner suffered a loss during said period, Petitioner opted to apply the said creditable tax withheld of P540,679.00 as credit to next year (Exh. A-2). However, Petitioner again incurred a net loss in its business operation for the succeeding year 1997 (Exh. B-1) thus, said amount of P540,679.00 allegedly remained unutilized.

The issues presented before this Court, as agreed upon by both parties in the "Joint Stipulation of Facts and Issues" are as follows:

"1. Whether or not the Petitioner has excess or unutilized creditable withholding tax as of December 31, 1996 which is a proper object of a claim for refund pursuant to Section 69 (now Section 76) of the National Internal Revenue Code, as amended.

2. Whether or not the said creditable withholding taxes of Petitioner for the year ended December 31, 1996 were withheld and remitted to the Bureau of Internal Revenue as evidence by proper documentary evidence;

3. Whether or not the income payments from which the said creditable withholding taxes were withheld, were reported as part of the gross income of the Petitioner for year ended December 30, 1996;

4. Whether or not said excess/unutilized creditable withholding taxes as of December 31, 1996 were not applied as tax credit against Petitioner's tax liability for the succeeding taxable year."

In brief, the main issue to be resolved in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE OVERPAID INCOME TAX FOR CALENDAR YEAR ENDED DECEMBER 31, 1996 IN THE AMOUNT OF P540,679.00.

Sections 69 and 230 of the Old Tax Code, (now Sections 76 and 229 of the National Internal Revenue Code of 1997), provides:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the 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.
>
> **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 excessively 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 (2) 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

As can be ascertained from Petitioner's 1996 Annual Income Tax Return, the excess tax credits in 1996 amounting to P540,679.00 were not utilized since Petitioner incurred a net loss of P30,612,054.00. Thus, inferring from the above quoted provision (Section 69 of the old Tax Code), it authorized either the refund or credit of the said excess tax paid depending on the option of the taxpayer. In the instant case, Petitioner opted to apply or to carry over said amount to the succeeding year 1997. And since it likewise suffered a loss in 1997, it appears therefore that the amount claimed for refund by the Petitioner is in order considering the fact that it was not carried forward to the taxable year 1998. True enough, Section E of Petitioner's Corporate Income Tax Return for Calendar year ended 1998 (Exh. C) showed that there was no prior year's excess credits from 1996.

Thus, in a long line of cases decided by the Court a quo, a refund of excess creditable income tax shall be granted, if there is compliance with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85. The said requirements are as follows:

> 1) That Petitioner filed a claim for refund within the two (2) year prescriptive period as provided under Section 230 (now Section 229) of the Tax Code;
>
> 2) That the income upon which the taxes were withheld were included in the return of the recipient;
>
> 3) That the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (Ayala Life Assurance, Inc. vs. CIR, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service, Inc. vs. CIR, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000).

These decisions by the Court were sustained by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1999.**

The records would reveal that Petitioner has complied with all the above requirements of the law.

First, the two-year prescriptive period in filing claims for refund was duly observed by the Petitioner. A perusal of the pertinent documents shows that Petitioner filed its annual income tax return for 1996 on April 15, 1997 (Exh. A-4). The administrative claim for refund was filed on March 11, 1999 (Exh. E-1) and the Petition for Review was filed on April 12, 1999. Thus, counting from April 15, 1997, the date when the annual income tax return was filed, both Petitioner's administrative claim with the BIR and the judicial claim with this Court, falls well within the two-year mandatory period prescribed by law.

Secondly, Schedule 2 of Section C of Petitioner's income tax return for calendar year ended December 31, 1996 (Exh. A) shows that the management fees upon which the creditable taxes were withheld were included in the said return as part of gross income (Exh. A-6). Thus, the total income of P10,813,594.00 as gathered from the certificates of creditable tax withheld at source which arose from Petitioner's professional/management fee is included as part of the gross income of P87,051,478.00.

And finally, Petitioner was able to prove the fact of withholding by presenting the Certificates of Creditable Tax Withheld at Source (BIR Form Nos. 1473-75) duly issued by various income payors/withholding agents showing the amount paid and the amount of tax withheld therefrom. This Court noted that the total amount claimed for refund was duly supported by certificates of final tax withheld at source, thus:

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
Makati Insurance Co., Inc.	F	P 500,000.00	P 25,000.00
FEB Insurance Brokers, Inc.	G	5,309,451.00	265,472.55
Aboitiz & Co., Inc.	H	750,000.00	37,500.00

FEB Stock Brokers, Inc.	I	3,821,961.60	191,098.08
First Far East Dev. Corp.	J	432,181.40	21,609.07
TOTALS		P 10,813,594.00	P 540,679.70

These certificates of creditable tax withheld at source are sufficient proof of the actual withholding of the income tax and remittance to the coffers of the government. As held in the case of **San Miguel Properties, Inc. (formerly Monterey – San Miguel Properties, Inc., formerly Monterey Farms Corp.) vs. CIR, CTA Case No. 5621, August 12, 1999, citing the case of CIR vs. Citytrust Banking Corp., CA, G.R. Sp No. 26839, July 31, 1992:**

> "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."

Considering the evidence presented and the corresponding computation made by this Court, Petitioner's claim for refund is hereby sustained.

WHEREFORE, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** A TAX CREDIT CERTIFICATE to Petitioner the full amount of P540,679.00 representing the unutilized creditable income tax withheld at source for the calendar year ended December 31, 1996.

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 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