REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SHIMIZU PHILIPPINE CONTRACTORS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5399

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 03 1999

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P9,763,173.00 allegedly representing unutilized creditable withholding tax at source for fiscal year ended March 31, 1994.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under the laws of the Philippines and is engaged in the business of providing services for the construction of buildings, production plants and warehouses with principal office at 5th Floor, King's Court 1 Building, 2129 Pasong Tamo Street, Makati City.

It appears from the records that on July 15, 1994, Petitioner filed with the Bureau of Internal Revenue its Tentative Corporate Annual Income Tax Return for the fiscal year ended march 31, 1994 (Annex A of the Petition, p.6, CTA records). Thereafter, on August 10, 1994, Petitioner filed its Amended Income Tax Return (Exhibit "A") reflecting a refundable amount of P13,621,392.00 which was computed as follows:

Tax Due		P 8,154,244.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credit	P12,012,463.00	
b. Creditable Tax Withheld	9,763,173.00	21,775,636.00
Total Refundable Tax		(P13,631,392.00)

Petitioner alleges that it was not able to utilize its creditable withholding of P9,763,173.00 against its P8,154,244 tax due, thus this amount was forwarded as tax credit to the succeeding fiscal year.

For the following fiscal year (1994-1995), Petitioner filed its annual income tax return (Exh. "U") showing a taxable loss of P12,458,327.00 with a refundable amount of P26,050,578.00 which was computed as follows:

Gross Income		P 3,745,565.00
Deductions		16,203,892.00
Taxable Loss		(12,458,327.00)
Tax Due		- o -
Less: Prior Year's Excess Credit(FY 1994)	P 9,763,173.00	
Creditable Tax Withheld(FY 1995)	16,287,405.00	26,050,578.00
Total Refundable Tax		(P26,050,578.00)

On July 12, 1996, Petitioner filed with the Bureau of Internal Revenue an administrative claim for refund in the amount of P9,763,173.00 allegedly representing unutilized creditable income taxes for fiscal year ended March 31, 1994 (Exh. "W"). On the same day, petitioner filed a petition for review in this Court reiterating its claim for refund.

Respondent in his Answer, asserted the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 6. Petitioner has not shown proof that it has incurred losses in the year 1994, mere declaration of deductions in the return without being supported by records of pertinent papers proving that the claimed deductions were really paid or incurred during that year in question is insufficient.
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> 7. The expenses claimed by Petitioner in its 1994 and 1995 tax returns are not totally allowable, thus, even if granting, for the sake of argument, that the withholding tax payments for both years are correct and accurate, the same are insufficient to cover the payment of its deficiency taxes;
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> 8. The petition states no cause of action as it does not allege the dates when the tax/es sought to be refunded was/were actually paid;
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> 9. The best evidence of payment and remittance of taxes withheld are the official receipts;
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> 10. In claiming for refunds, it is incumbent upon Petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund.
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> 11. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes.

The only issue to be resolved in this case is whether or not Petitioner has substantiated its claim for refund or tax credit in the amount of P9,763,173.00 representing unutilized creditable income tax for the fiscal year ended March 31, 1994.

In support of its case, Petitioner presented in evidence various documents which, among others, consist of the following:

a. Shimizu Philippine Contractors's Annual Income Tax Returns for fiscal years 1993, 1994, 1995 and 1996 (Exhs. X, A, U, and V) together with its corresponding auditor's report as an attachment.

b. Various Certificates of Creditable Income Tax Withheld at Source [BIR Forms No. 1743-1750] (Exhs. B to T)

c. Administrative Claim for Refund (Exh. W)

d. Schedule of Shimizu's Income Payment and Amount of Tax Withheld (Exh. Z)

On the other hand, Respondent submits as evidence the Referral Letter No. 277-20 dated July 16, 1996 to prove that petitioner's claim for refund for fiscal year ending March 31, 1994 in the amount of P9,763,173.00 was referred to Revenue Officer Ma. Carmencita Valenzuela and Group Supervisor Benjamin de la Paz, for investigation and report (Exh. 1). He likewise presented a Memorandum dated November 6, 1997 to show the report of investigation or findings of the Revenue Officer concerned regarding the subject claim for refund of Petitioner where it was recommended that the claim for refund be denied because proof of actual remittance has not been established (Exh. "2").

After a careful scrutiny of all the evidence presented before Us, We hold affirmatively in favor of the Petitioner.

This Court, in a long line of cases of similar nature and issue, has already laid down three (3) basic requirements for the granting of a claim for refund of excess withholding tax payments, to wit:

> 1. That the claim for refund is filed within the two (2) year period prescribed under Sections 204 and 230 of the Tax 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 the 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. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in CA-G.R. SP No. 28239, March 14, 1994; 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 CA-G.R. SP No. 31104, April 18, 1994; and Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993, affirmed by the Court of Appeals in CA-G.R. SP No. 32927, February 28, 1994)**

Petitioner satisfactorily complied with the first requirement when it filed its administrative claim for refund with the Bureau of Internal Revenue on July 12, 1996 and a petition for review in this Court on the same date. The administrative as well as the judicial claims for refund were filed within the two year prescriptive period required under Sections 204 and 230 of the Tax Code since the taxes sought to be refunded were considered paid on July 15, 1994, the date the Corporate Annual Income Tax return for fiscal year ended March 31, 1994 was filed (**Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4596, January 6, 1995**).

The second requirement was also met by the Petitioner when it offered in evidence its Corporate Annual Income Tax Return for 1994 (Exh. "A") showing as part of its gross income all the income subject to withholding taxes. It was duly testified to by petitioner's witness Mr. Kyohei Koyama (during the hearing held on April 23, 1997).

With regard to the third requirement, the fact of withholding was established by a copy of the statements duly issued by the withholding agents to the Petitioner as payee showing the amount paid and the amount of tax withheld therefrom. The proof of withholding was well established by the presentation of numerous Certificates of Creditable Income Tax Withheld at source (BIR Form 1743-1750) showing that the amount subject of the claim was in fact withheld by the withholding agents and remitted to the BIR (Exhs. "B" to "T") for the fiscal years 1993 to 1994.

As regards the contention of the Respondent that Petitioner has not shown proof of the loss incurred, We find this without basis in fact and in law. Suffice it to state that in the case of **Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case NO. 4099**, May 28, 1993, it has already been settled to wit:

> "Respondent's contention that a mere allegation of loss does not Ipso facto merit a refund is unmeritorious. As stated, Respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did Respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence the income tax return should be given credence and thus, coupled by the fact that Petitioner was able to present documents to substantiate its income tax returns, provided sufficient proof of a loss sustained by Petitioner in the year (see also Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4257, December 30, 1993)"

We also find the allegation of Respondent with respect to the failure of petitioner to present official receipts to prove the fact of payment of taxes to be without merit. As we already held in the case of **Citytrust Finance Corporation vs. CIR, CTA Case No. 4134**; November 11, 1991):

> "As proof of withholding, the withholding agent is required to furnish the recipient of the income a written statement showing the income or other payments made by the withholding agent during such quarter or year and the amount of the tax deducted and withheld therefrom. This is the same requirement provided under Revenue Regulation No. 6-85, Revised and Consolidated Expanded Withholding Tax Regulations, implementing regulations issued by the Secretary of Finance upon recommendation by the Commissioner of Internal Revenue. Under Section 6 of the said regulation the aforementioned written statement of withholding is called BIR Form 1743.1. The only other requirement as provided under Section 7 is that this statement is verified under the penalties of perjury."
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> The law and the implementing regulations provide no other requirements such as the production of the quarterly and annual returns and the corresponding Central bank confirmation receipts or any other proof of actual remittance as commonly raised by the counsels of the Respondent in this case and in the other similar cases. Neither does the law require that the statement of withholding taxes be verified by the respondent's revenue enforcement officers. All that is required is for the withholding agent to issue it under the penalties of perjury.

Clearly, the presentation of the Certificates of Creditable Income Tax Withheld at Source issued by the withholding agents without proof of actual remittance of the taxes withheld to the Bureau of Internal Revenue is sufficient to establish the validity of petitioner's claim for refund. The best proof of withholding is the presentation of the statements of Creditable Withholding Tax. Their presentation will be sufficient to show that indeed the withholding agent withheld and remitted to the BIR the amount indicated therein.

The matter about the unutilized creditable withholding tax was likewise substantiated by petitioner's presentation of its 1995 and 1996 Annual Income Tax Return.

Entirely, from the evidence presented, petitioner has proven its claim for refund/tax credit but in a reduced amount.

An analysis of the evidence presented by the petitioner, particularly the certificates of Creditable Income Tax Withheld, reveal that only the amount of P9,591,867.90 was properly substantiated. A total amount of P171,305.88 was not supported by the corresponding certificates of Creditable Income Tax Withheld which are considered as vital evidentiary requirements before a claim for creditable withholding tax can be granted. The details of the refundable amount of P9,591,867.911 are shown below, thus:

Withholding Agent	Amount of Income	Tax Withheld	Exhibit
Philippine Diamonds Hotel and Resort, Inc.	P133,597,080.00	P1,335,970.80	B, B-5
Honda Parts Manufacturing Corporation	68,427,154.00	684,271.54	C, C-5
Honda Cars Philippines, Inc.	14,825,056.00	148,250.56	D, D-5
Enjay Hotels, Inc.	172,793,333.18	1,727,933.32	E, E-5
Ayala Land, Inc.	379,558,239.00	3,795,582.39	F, F-5
Davao Insular Hotel Co. Inc.	56,653,002.19	566,530.01	G, G-5
Ebara Benguet, Inc.	14,138,322.00	141,383.22	H, H-5
Honda Cars, Phils. Inc.	5,347,680.00	53,476.80	J, J-5
Ayala Land, Inc.	79,144,992.00	791,449.92	K, K-5

Manila Peninsula Hotel, Inc.	123,700.00	1,237.00	L, L-5
Rohm Electronics Phils., Inc.	34,578,156.00	345,781.56	M
Total Refundable Tax		P9,591,867.12	

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE TAX CREDIT CERTIFICATE** in favor of Shimizu Philippine Contractors, Inc. the total amount of P9,591,867.12 representing unutilized creditable withholding tax at source for fiscal year ended March 31, 1994.

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