REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION,
Petitioner,

-versus -

C.T.A. CASE NO. 4134

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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11/11/91

D E C I S I O N

This case filed by petitioner involves the refund of excess withholding tax payments, in the amount of P138,216,12 and P31,569.84 for the calendar years ending December 31, 1984 and December 31, 1985, respectively or a total of P169,785.96.

Petitioner, Citytrust Finance Corporation (formerly Investors Finance Corporation) is engaged primarily in the financing and leasing business, with principal office at Makati, Metro Manila. Petitioner in the course of its business operations has derived rental as well as interest income from various clients and tenants. As alleged by petitioner for taxable year 1984, it incurred a net loss of P1,641,993.00 which after applying prior year's excess tax credit in the amount of

P343,392.00 and with a withholding tax credit of P86,207.00, would give a refundable amount of P429,599.00. On May 11, 1989 it filed an amended Corporated Annual Income Tax Return to reflect additional creditable withholding tax in the amount of P52,009.12 giving rise to a total withholding tax of P138,216.12 for the year 1984 or total refundable amount of P481,608.00.

During the taxable year 1985, petitioner likewise alleges that it incurred a net loss of P5,021,975.00 which after applying the prior year's tax credit of P429,599.00 and withholding tax credit of P20,260.00 gave rise to refundable amount of P449,859.00. However, after the corresponding income tax return was filed, petitioner received additional Certificate of Creditable Income Tax Withheld at Source in the amount of P11,309.84. Hence, it filed an amended return on May 11, 1989 giving rise to a net overpayment for the year ending 1985 in the amount of P513,177.96.

Inasmuch as the amount of P343,392.00 as reflected in the 1984 Annual Income Tax Return representing prior year's excess tax credit is subject of a separate claim for refund, the instant claim in the total amount of P169,785.96 represents only the creditable withholding tax at source reflected in the amended 1984 and 1985 annual income tax return of petitioner. Petitioner filed a claim for refund with respondent in its letter dated February 3, 1987. However, to this date respondent has not acted on said claim for refund, hence this instant petition for review.

Respondent on his part denies all material allegations of the petitioner pertaining to its claim, alleging lack of information or knowledge sufficient to form a belief as to the truth of the claim. He admits some uncontestible facts such as to the existence of the petitioner, the filing of the claim for refund but also alleges that the instant petition for review was filed out of time from the date of payment. He further alleges that it is incumbent upon the petitioner to prove compliance with the provisions of Sections 292 and 295 of the Tax Code of 1977. He further alleges that the amounts sought to be refunded were paid in accordance with law and that claim for refund are strictly construed against the claimants.

When petitioner presented its formal offer of evidence, respondent admitted most of the evidences but objected to all the Certificates of Withholding Taxes issued by withholding agent for being self-serving and of no probative value. Respondent did not present any evidence, testimonial or documentary, to refute said claim for refund but instead submitted the case for decision on the bases of records and pleadings.

This Court has gone over the various exhibits and found out that of the total claim of P169,785.96 for taxable years 1984 and 1985, petitioner was able to support with documentary evidences the total amount of P144,861.66 only. For taxable years 1984 and 1985, Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1), Statement of Tax Withheld at Source (BIR Form 1743) and Certification of withholding taxes from the withholding agents were presented by the petitioner as Exhibits C, C-1 to C-26 to prove withholding of creditable taxes in the total amounts of P137,428.62 and P7,433.04, respectively.

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The only serious objection respondent has over this claim for refund is the fact that the various exhibits presented were not duly verified by respondent's revenue enforcement officers, hence, self-serving. On this point and for a better understanding of the requirement of the law, it is important to quote the provisions of law and revenue regulations applicable in the instant case.

The applicable provisions are Sections 54(a) (b) (c) (d) (e) and (f) of the National Internal Revenue Code, as amended (now Section 51), quoted hereunder:

> (a) Quarterly returns and payment of taxes withheld. - Taxes deducted and withheld under Section fifty-three shall be covered by a return and paid to the Revenue District Officer, Collection Agent, or duly authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. <u>The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the Government until paid to the collecting officers.</u> The Commissioner of Internal Revenue may, with the approval of the Minister of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the Government. <u>The return for final withholding tax shall be filed and the payment made within 25 days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.</u> (As amended by Batas Pambansa Blg. 41) (Underscoring supplied.)
>
> (b) Penalties for failure to render returns; for rendering false or fraudulent returns; for non-payment of taxes withheld. - <u>The surcharges prescribed in Section seventy-three of this Title in case of failure to render returns, for filing false or fraudulent returns and for failure to pay tax shall apply to failure to file returns</u> or pay

the tax required under this Section. In case the taxes deducted and withheld are not paid within the time prescribed, there shall be added to the amount of the unpaid tax a surcharge of twenty-five per centum per annum plus interest at the rate of twenty per cent per annum from the date the same became due until paid. If the withholding agent is the government or any of its agencies, political subdivisions or instrumentalities, or is a government owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the surcharge and interest imposed herein. (As amended by PD No. 1773.) (Underscoring supplied.)

(c) Statement of income payments made and taxes withheld. - Every withholding agent required to deduct and withhold taxes under Section fifty-three shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, 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, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. (As amended by Batas Pambansa Blg. 41.) (Underscoring supplied.)

(d) Annual returns. - Every withholding agent required to deduct and withhold taxes under Section fifty-three shall submit to the Commissioner of Internal Revenue a reconciliation statement of quarterly payments and list of payees and income payments. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. This return, if made and filed in accordance with regulations approved by the Minister of Finance, shall be sufficient compliance with the requirements of Section seventy-seven of this Title in respect to the income payments. (*Ibid.*)

The Commissioner may, by regulations, grant to any withholding agent a reasonable extension of time to furnish and submit the return required in this subsection. (*Ibid.*)

(e) Surcharge and interest for failure to deduct and withhold. - If the withholding agent, in violation of the provisions of the preceding section and implementing regulatioons thereunder; fails to deduct and withhold the amount of tax required under said section and regulations, he shall be liable to pay in addition to the tax required to be deducted and withheld, a surcharge of fifty per centum if the failure is due to willful neglect or with intent to defraud the Government, or twenty-five per centum if the failure is due to such causes, plus interest at the rate of fourteen per centum per annum from the time the tax is required to be withheld until the date of assessment. (*Ibid.*)

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

> at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 51. (As amended by Batas Pambansa Blg. 41.) (Underscoring supplied.)

In accordance with the said provisions of law, the taxes deducted and withheld by the withholding agent as required of him under Section 53 of the Tax Code shall be held in trust as a special fund for the government. The withholding agent is required to file the corresponding withholding tax return and pay to the BIR the withheld taxes on a quarterly basis. For failure to render a return or for rendering false or fraudulent return and for non-payment of taxes withheld, the corresponding surcharges and penalties shall be imposed against the withholding agent in addition to holding him personally liable for the surcharge and interest. The withholding agent is required to file an annual return to reconcile the quarterly payments. Pursuant to Section 54(c), the withholding agent is required to "furnish each recipient, in respect to his or its receipts during the calendar quarter or year, 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 statement which the petitioner in the case at bar has produced during the hearing and properly marked exhibits A, C, C-1 to C-26, E, E-1 to E-2. In accordance with subsection (F) of Section 54, the income upon which any creditable tax is required to be withheld at source shall be included in the income tax return of the recipient but any excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 295. If the income tax collected at source is less than the tax due on his return, the difference shall be paid to the BIR in accordance with Section 51.

Please note that the aforequoted provisions of law dealt mostly on the obligation and responsibility of the withholding agent to collect and to remit the taxes withheld by him. Pending actual remittance he is to treat the taxes as a trust fund for the government. On a quarterly and annual basis he is under obligation to account for all the taxes withheld by him from various taxpayer by filing the corresponding withholding tax returns and paying the taxes to the BIR. 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, the 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. Under Section 10 of the regulations, quoted hereunder:

> "Sec. 10. "Claims for tax credit or refund of income tax deducted and withheld on income payments shall be <u>given due course only when it is shown on the return that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of statement duly issued by the payor to the payee</u> (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom." (Underscoring supplied)

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 counsels of the respondent in this case and in 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 penalties of perjury. An analysis of the provisions of law involved will show that the grant of tax refund when the creditable withholding tax is in excess of the amount of the tax due, depends on three factors: (1) that the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax as required under Section 295 of the Tax Code (now Section 204), (2) it must be shown on the return of the recipeint that the income payment received was declared as part of the gross income, and (3) the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. The first two requirements are embodied in Section 54(f) of the Tax Code while the last is a requirement under Section 54(c).

To these requirements, petitioner has complied with requirement number one (1) when it filed subject claim for refund dated Feb. 3, 1987 with the Appellate Division of the BIR on Feb. 18, 1987 (Exh. "F"). It likewise substantially complied with requirement number three (3) when petitioner submitted Statements of Tax Withheld at Source (BIR Form 1743), Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743.1), and other certifications showing the taxes withheld from petitioner by various withholding agents. However, petitioner failed to comply with the second requirement. It failed to present documentary evidence to show that for the taxable years 1984 and 1985, petitioner included in its income tax return the particular income from which the various creditable taxes were withheld. We have examined Exhibits "B", "D" & "G" pertaining to the annual income tax returns and the amended income tax returns of the petitioner for taxable years 1984 and 1985, nothing were shown that the particular income subject of the withholding taxes were in fact included in the total gross income declared. Those annual returns were presented to prove merely the total gross income declared, the total deductions claimed and the resulting net loss incurred while the amended returns were presented to show only the refundable amount and the additional withholding tax credit. This requirement of the law is fair and just, if the taxpayer is claiming tax credit from those withholding taxes it is but equitable that he should likewise prove that he has included in his income tax return the particular income from which the taxes are withheld.

As discussed above, the law and the implementing regulations have provided minimal requirements in order that an excess tax credit withheld could be refunded to the taxpayer. The provisions of the law pertaining to withholding of tax at source have devoted extensively its discussions on the obligation of the withholding tax agent. In fact, this Court has in numerous cases dismissed the allegations of the counsels of the respondent that the other requirements such as presentation of the withholding tax returns, the official receipts of the payments of the withholing tax and verifications by revenue enforcement officer have to be presented before actual refund should be granted. To mention a few, this was the stand of this Court in the cases of The Philippine American Life Insurance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4018, Sept. 16, 1991; A. Soriano Corporation vs. Commisioner of Internal Revenue, CTA Case No. 4201, August 7, 1991; Commonwealth Pacific Consultants Ltd. vs. Commissioner of Internal Revenue, CTA Case No. 2953, August 15, 1982; & Ateneo de Manila vs. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989.

Therefore, failure on the part of the petitioner to show that the income from which the withholding tax has been withheld is included in the gross income declared is fatal to its claim for refund. This notwithstanding the success on the part of the petitioner to prove that there have been excess creditable withholding taxes applied against its 1984 and 1985 income tax returns showing net loss.

WHEREFORE, in view of all the foregoing, petiitoner's claim for refund is here denied.

SO ORDERED.

Quezon City, Metro Manila, November 11, 1991.

ERNESTO D. ACOSTA
Associate Judge

WE CONCUR:

ALEX Z. REYES
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals