REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILINVEST DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5603

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated

AUG 13 1999

x - x

DECISION

Before Us for consideration is a Petition for Review filed by the herein petitioner on April 7, 1998 seeking for a refund, or, in the alternative, the issuance of a Tax Credit Certificate for the amount of THREE MILLION ONE HINDRED SEVENTY THREE THOUSAND EIGHT HUNDRED AND SIXTY EIGHT PESOS (P3,173,868.00), representing allegedly overpaid creditable withholding tax at source.

The facts of this case may be summarized as follows:

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with principal office located at 173 P. Gomez Street, San Juan, Metro Manila.

Records show that on April 15, 1996, Petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return for the taxable year ended December 31, 1995 reflecting a net loss of P151,741,762.00 and an unutilized creditable tax payment of

157

P1,606,763.00 (Exhibit B). The latter amount represents the sum of prior year's excess credit of P1,004,236.00 and the 1995 creditable tax withheld of P602,527.00.

For taxable year 1996, Petitioner filed its Annual Income Tax Return on April 15, 1997, reflecting a total creditable tax payment of P4,178,134.00, which is the sum of its prior year's excess credit of P1,606,793.00 and 1996 creditable taxes withheld of P2,571,341.00 (Exh. C). Likewise, petitioner indicated in its return a net loss of P190,695,061.00. Since Petitioner incurred net losses in 1996, the said creditable tax payments in the amount of P4,178,134.00 remained unutilized as of 1996.

On November 11, 1997, Petitioner filed with the Respondent an administrative claim for refund or tax credit (Annex A) for the aforesaid creditable income taxes withheld at source. Since the respondent has not acted upon petitioner's letter-request for refund, Petitioner elevated its case to this Court on April 7, 1998 via Petition for Review praying for a refund of a lesser amount of P3,173,868.00 representing its 1995 and 1996 overpaid creditable withholding taxes and disregarding the amount of P1,004,236.00 representing the 1994 creditable tax withheld which, at its inception, was erroneously carried over beyond 1995.

In Answer to the Petition for Review, Respondent interposed the following Special and Affirmative Defenses, to wit:

6. That the instant petition has already prescribed;

7. That in an action for refund, the taxpayer has the burden to prove that the taxes paid were erroneously or illegally collected and its failure to do so is fatal to the action;

8. That claims for tax refunds are strictly construed against the taxpayer; and

9. That the Petitioner has no cause of action.

On September 4, 1998, in support of its claim for refund, Petitioner formally offered the following exhibits which were all admitted by this Court, absent any objection from the Respondent, subject, however, to our final evaluation of their materiality, relevancy and probative value to the issues involved in this case, to wit:

1) Exhibit A - letter claim for refund filed with the Bureau of Internal Revenue;

2) Exhibit B - Corporate/Annual Income Tax Return of the Petitioner corresponding to the year ended December 31, 1995;

3) Exhibit C - Corporate/Annual Income Tax Return of the Petitioner corresponding to the year ended December 31, 1996;

4) Exhibit D to V - Certificates of Income Tax Withheld at Source.

In a resolution promulgated on June 4, 1999, this case is deemed submitted for decision sans the memorandum of the Respondent.

The sole issue posed for Our consideration is whether or not the Petitioner was able to establish through presentation of testimonial and documentary evidence its entitlement to a refund of the amount of P3,173,868.00.

In its memorandum, Petitioner relied on the following provisions of law to buttress its stance:

> **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 10(a) of Revenue Regulations No. 12-94:

"**Section 10(a)** - Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact that the withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee, showing the amount paid and the amount of tax withheld therefrom."

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 excessive 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 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 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.

Likewise, Petitioner cited the decision of this Court in the case of **F. Jacinto Group, Inc. vs. Commissioner of Internal Revenue (CTA Case No. 4971, April 5, 1995)** where We laid down the requirements which a taxpayer must be able to comply with before a claim for refund would be sustained and which requirements were affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** thus:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the National Internal Revenue Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient; and

3) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

In the process of going over the records of this case, this Court found out that Petitioner failed to submit a vital document, which to Our mind, if only presented would have been considered in favor of the Petitioner. Petitioner failed to present in evidence its 1997 income tax return. A careful examination of Petitioner's 1996 income tax return would readily reveal that it opted to carry over the excess income tax paid to the succeeding year. In the absence of the 1997 income tax return of the Petitioner, there is no way by which this Court would be able to determine with particular certainty whether or not it applied or credited the refundable amount sought for in its 1997 tax liability if there be any.

Following well-established precedents previously laid down in the cases of **AF Holdings and Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993; Philippine Bank of Communications vs. Commissioner of Internal Revenue, CTA Case No. 4309, May 20, 1993; BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI**

Family Savings Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4694, December 25, 1993; Anscor Hagedorn Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; and Pasig Land Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4773, May 30, 1995, when the taxpayer has opted to apply the amount refundable as a tax credit for the succeeding year it is important to present as evidence the succeeding year's Income Tax Return for verification if the amount was credited against its income tax liability for that year. Failure on the part of the taxpayer to sustain his claim is fatal to its cause of action. Petitioner has the burden of proving that it is entitled to the refund sought for because taxes are presumed to have been collected in accordance with laws and regulations **[Caltex (Phils.) Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986].** It is hardly necessary to add that a refund partakes of the nature of an exemption and the same cannot be allowed unless granted in the most explicit and categorical language **(Resins, Inc. vs. Auditor General, L-17888, October 29, 1968, 25 SCRA 754).**

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DISMISSED** due to insufficiency of evidence.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

162

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

163