REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAJA DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4788

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 30 1994

x - x

DECISION

This is a claim for the refund of P124,402.40 representing alleged excess withholding tax payments for taxable year 1989.

Petitioner, a corporation engaged in the renting out of real properties, filed its income tax return for 1989 reflecting a tax due to be paid by it in the amount of P195,091.00. From this tax due was deducted or applied prior year's tax credit amounting to P75,959.00 leaving a tax due balance of P119,132.00. However, there is a 5% creditable tax withheld from the petitioner for the year 1989 amounted to P243,534.40. Hence, according to Petitioner, this resulted to an excess payment of income taxes in the amount of P124,402.40.

Respondent, on the other hand, argued in her Memorandum that the amount of P75,959.00 representing

Petitioner's prior year (1988) excess tax credit "were actually and in fact withholding taxes, withheld in 1984, 1985, 1986, 1987 and 1988 (Exhs. "F" to "K-3", inclusive, Petitioner). Such being the case, any claim for tax credit therefor has already prescribed the instant petition having been filed only on April 14, 1992, or more than two (2) years from the date of payment thereof..." (Memorandum for the Respondent, p. 4).

Although the Respondent is correct in claiming that prescription has already set in, pursuant to Sec. 230 of the NIRC, it is only true as far as the years prior to 1988 are concerned. The excess creditable withholding taxes for 1988 were validly carried over or applied to 1989 income tax liability pursuant to Sec. 69 of the NIRC which provides thus:

> **Sec. 69. Final adjustment return.** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering 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:
>
> (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 for a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return <u>may be credited against the estimated quarterly income tax liabilities</u>

<u>for the taxable quarters of the succeeding taxable year.</u> (see also **Paseo Realty and Development Corp. v. Commissioner of Internal Revenue**, CTA Case No. 4528, April 30, 1993.)

Hence, from the evidences presented by the Petitioner, Exhs. "J-1", "K", "K-1", "K-2" and "K-3" are already considered prescribed as these certificates pertain to creditable withholding taxes prior to 1988. Exhibit K-4 is also not considered in Our succeeding computation since said document is not a Certificate of Creditable Withholding Tax At Source by the withholding agent but merely an affidavit of Petitioner's own accounting manager which could therefore be considered self-serving.

Respondent contended that the excess creditable withholding taxes in the amount of P124,402.40 for the year 1989 were no longer refundable. For said taxes were already applied by petitioner in its first and second quarter income tax liabilities.

However, the quarterly income tax payments for the first and second quarters of 1990 in the amounts of P78,492.00 and P18,866.00 (Exhs. "2", "2-a", "3", "3-a", Respondent; Exhs. "T", and "U", Petitioner) should only be considered as mere installments of the annual income tax due. "These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. This is reinforced by Section 87 (now Section 69) which provides for the filing of adjustment returns and final payment of income tax." **(Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736, January 15, 1992)** Respondent should be reminded that "where the tax is payable by the taxpayer in quarterly installments, the final payment is the last quarter payment at the end of the tax year when it is finally ascertainable that the taxpayer either made profits or suffered losses in its operations". **(Commissioner of Internal Revenue v. TMX Sales, Inc., et al.,** supra)

In the instant case, petitioner suffered a net loss from operation in the year 1990 in the amount of P322,348.43 (Exh. "5", Respondent; Exh. "R", Petitioner). It therefore follows that petitioner has no income tax liability. Thus, its creditable withholding taxes for the year 1989 cannot be utilized in 1990. Further, petitioner cannot apply the excess payments in 1989 more than the year 1990 for it will run counter with the provision of law. (Paseo Realty and Development Corp. v. Commissioner of Internal Revenue, **supra**)

Thus, the claim for refund/tax credit is hereby GRANTED but on a reduced amount of P111,502.40, computed as follows:

Tax Due for 1989 (see Exh. "A")			P195,091.00
Less: Prior year tax credit (1988)			
		Amount of	
Withholding Agent	Exh.	Tax Withheld	
National Bookstore, Inc.	F	P 31,800.00	
Yasaka (Manila) Industry, Inc.	G	13,122.00	
Carmelo & Bauermann Printing Corp.	H	12,162.00	
Prime Inc.	I	4,400.00	
Resins Incorporated	J	1,800.00	63,284.00
Remaining tax liability for 1989			P131,807.00
Less: Creditable Withholding Taxes for 1989			
		Amount of	
Withholding Agent	Exh.	Tax Withheld	
Crown Cards Corporation	L	P130,380.00	
Yasaka (Manila) Industry, Inc.	M	53,800.20	
Carmelo & Bauermann Printing Corp.	N	49,864.20	
Prime Inc.	O	5,240.00	
Resins Incorporated	P	1,800.00	
Teresita Roxas	Q	2,225.00	243,309.40
Total Amount Refundable			(P111,502.40)

In all the foregoing, the Respondent is hereby ORDERED to REFUND the Petitioner or issue a tax credit on its behalf for the amount of P111,502.40 representing excess income tax payment.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals