REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE INSTITUTE OF PURE AND APPLIED CHEMISTRY,
Petitioner,

- versus -

C.T.A. CASE NO. 5504

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 08 1999

x - x

DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on April 14, 1997 seeking for a refund of the sum of TWO HUNDRED FORTY FOUR THOUSAND ONE HUNDRED AND THIRTY SIX PESOS (₱244, 136.00) or in the alternative, the issuance of a Tax Credit Certificate for the said amount, representing allegedly overpaid creditable withholding tax for calendar year ending December 31, 1994.

The factual backdrop of this case is undisputed.

Petitioner is a non-stock, non-profit corporation organized and existing under and by virtue of the laws of the Philippines. It is a corporation created mainly for the purpose of fostering and promoting the advancement of science, including but not limited to the development of industrial chemistry in the Philippines through the organization, establishment and maintenance of an institute of research.

In 1994, Petitioner sold a piece of land to Tan Yan Kee Foundation, Inc. for the amount of ₱165,000,000.00. As withholding agent, Tax Yan Kee Foundation, Inc. allegedly withheld and remitted the amount of ₱12,375,000.00 in accordance with BIR Revenue Regulations No. 6-85, as amended.

On April 17, 1995, Petitioner filed with the Bureau of Internal Revenue its Annual Information/Tax Return of Exempt Organization for the calendar year ended December 31, 1994 reflecting a taxable net income of ₱34,659,611.00 and a tax due of ₱12,130,864.00 (Exhibit "E").

Subsequently, Petitioner filed with the Bureau of Internal Revenue on March 12, 1996, an application for the refund of ₱244,136.00 representing its alleged unutilized creditable withholding tax for the taxable year 1994, computed as follows:

Income from sale of land	₱33,907,611.00
Income from rent	752,000.00
Taxable Net Income	34,659,611.00
Amount of Tax Due	12,130,864.00
Less: Creditable Withholding Tax	12,375,000.00
Amount Refundable	₱ 244,136.00

Concluding that Respondent would no longer act on its application for refund, Petitioner, pursuant to Section 230 of the Tax Code (now Section 229 of the NIRC of 1997), filed the instant Petition for Review with this Court, otherwise, it would be barred by the two-year mandatory period of prescription within which to file a judicial claim for refund of its excess creditable tax payments.

Assailing the validity of Petitioner's claim, Respondent filed its Answer to the petition for Review on May 20, 1997 and interposed the following Special and Affirmative Defenses, to wit:

6. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by the respondent's Bureau;

7. The amount of tax sought by the petitioner to be refunded/credited was paid pursuant to law and BIR implementing rules and regulations, hence the same is not refundable. Petitioner must prove that the said income tax was actually paid, remitted and received by the respondent's Bureau, and that, the income from which the amount of tax was paid, were declared and included in its gross income during the year under review;

8. Petitioner's allegations that it overpaid its income tax for the year under review does not ipso facto warrant the refund. Petitioner must prove that it is indeed entitled to a refund under the Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence;

9. Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable years;

10. Claims for tax refund are construed strictly against the claimant as it partakes the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund;

11. Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

Upon admission of the memorandum of both parties, this case was thereafter considered submitted for decision as of February 19, 1999.

The sole issue posed for consideration by this Court is whether or not Petitioner is entitled to the issuance of a Tax Credit Certificate or refund of the amount of ₱244,136.00.

Petitioner's position is focused mainly on its compliance with the provisions of Section 51(a), (b), (c), and (d) of the National Internal Revenue Code, as amended, and the thrust of Our decision in the case of **Citytrust Finance Corporation vs. Commissioner of Internal Revenue (CTA Case Nos. 4143 and 4046, dated November 11, 1991 and February 24, 1993)**, where We laid down the requirements before a refund of creditable withholding tax may be granted, *viz:*

1.) that the claim for refund 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 204 of the Tax Code;

2.) it must be shown on the return of the recipient 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 a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Upon the other hand, the main thesis of the Respondent as it appears to Us from his memorandum is that Petitioner's claim for refund must be denied on the ground that it failed to submit for verification and investigation the originals of the Certificate of Creditable Withholding Tax at Source and the Monthly Remittance Return of Income Taxes Withheld including documents, receipts, etc. substantiating all entries specially those pertaining to the income earned by the foundation in order to determine the net taxable income for the calendar year 1994. In other words, Respondent is of the view that an outright denial of Petitioner's claim is warranted for failure of the latter to substantiate.

The Court has deliberated on the arguments of the parties in their respective pleadings and finds for the Petitioner.

It is apt to observe at this juncture that in a long line of decisions, the settled rule which is deeply imbedded in Our jurisprudence is that the grant of refund of excess creditable taxes withheld at source is dependent upon taxpayer's compliance with the following requirements, to wit:

1.) That it was shown on the return of the recipient that the income payment received was declared as part of the gross income;

2.) 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 of income paid and the amount of the tax withheld therefrom (*Ibid.*);

3.) That the taxpayer filed its claim for refund within the two-year period prescribed under Section 230 of the Tax Code.

(Section 10, Revenue Regulations 6-85; see **Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissionber of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**).

A sedulous review of the evidence adduced reveals that Petitioner's cause is replete with facts established by overwhelming evidence that it has substantially complied with the above mentioned requirements and to which the Respondent failed to present any convincing refutation.

In compliance with the first requisite, petitioner filed its Annual Information/Income Tax Return of Exempt Organization for the calendar year 1994 where it declared income payments in the amount of ₱33,907,611.00, the amount from which the creditable income tax was withheld at source, as part of its gross income (Exhibits E, E-3).

As regards the second requirement, while it is true that the Petitioner failed to submit its Certificate of Creditable Withholding Tax, it nonetheless presented for purposes of proving the fact of withholding the Monthly Remittance Return of Income Taxes Withheld (Exhibit H) filed by Tan Yan Kee Foundation, Inc. showing the amount of income paid and the amount of the tax withheld therefrom and which correctness and authenticity was duly testified to by the custodian of the original, Ms. Flordeliza Patanao during the hearing held on March 18, 1998. And We quote, thus:

DIRECT EXAMINATION OF MISS PATANAO BY ATTY. MOLINA

"Q. Miss /witness, Do you know the Petitioner in this case?

A. Yes, sir.

Q. Why do you know the Petitioner?

A. Because in 1994 the Tan Yan Kee Foundation which I am a representative purchased a lot from them.

Q. You purchased a lot from Philippine Institute of Pure and Applied Chemistry, What did you do as purchaser?

A. We withheld and remitted the tax.

Q. What is your basis in saying that you withheld and remitted the tax?

A. The monthly remittance return.

Q. If I shown (sic) you a copy of the return, would you be able to identify the same.

A. Yes, Sir.

Q. I am showing to you this BIR Form No. 1743 W which was previously provisionally identified and marked as Exhibit H for the Petitioner. Is this the copy you are referring to?

A. Yes, Sir.

Thus, We reject Respondent's stance that non-presentation of the Certificate of Creditable Withholding Tax would automatically result in the denial of petitioner's prayer for tax refund, especially in the light of the circumstances surrounding this case when the Respondent failed to controvert the declarations made by the Petitioner in its tax return which are for all intents and purposes presumed to be made in good faith it being executed under penalties of perjury.

Finally, Petitioner fully complied with the third requirement. As borne out by the records, the Petitioner filed its Annual Information/Income Tax Return of Exempt Organization on April 17, 1995 with the Bureau of Internal Revenue while its claim for refund was filed with the said Bureau on March 12, 1996 and the instant Petition for Review with this Court on April 14, 1997, all dates well within the two-year prescriptive period provided under Section 230 of the Tax Code.

Having convinced this Court that it is entitled to the amount claimed for refund, We are inclined to extend the relief sought for by the Petitioner.

IN VIEW OF ALL THE FOREGOING, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of the herein Petitioner in the amount of TWO HUNDRED FORTY FOUR THOUSAND ONE HUNDRED AND THIRTY SIX PESOS (₱244,136.00), without pronouncement as to costs.

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