:1B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PLANTERS PRODUCTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5036

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 09 1996

x - x

DECISION

Petitioner seeks the refund or credit of excess creditable withholding taxes on rental income which was not applied there being no income tax liability allegedly for the year ending December 31, 1991. Petitioner filed a claim for credit or refund in the amount of P696,264.80.

Petitioner, Planters Products, Inc., is a domestic corporation duly engaged in the business of manufacturing and selling fertilizers and agricultural chemical products.

For the year 1991, petitioner received rental income from the lease of its properties. On April 30, 1992, petitioner filed its Income Tax Return together with its Audited Financial Statements for the calendar year ending December 31, 1991.

showing a loss of P11,849,519.00 and a NIL income tax liability. Having incurred a loss in its business operations, petitioner was not able to apply the taxes withheld by its lessees on the leased properties. Thus, petitioner's income tax return reflected a refundable amount of P579,306.00, shown as follows:

Gross Income	P 98,240,209.00
Less: Deductions	110,089,728.00
Net Loss	P 11,849,519.00
Tax Due	NIL
Less: Creditable Tax Withheld (Expanded Withholding)	P 579,306.00
TOTAL AMOUNT REFUNDABLE	P 579,306.00 *

*** TO BE APPLIED AS TAX CREDIT TO SUCCEEDING TAXABLE YEAR.**

On April 8, 1993, petitioner filed with the respondent a letter-claim for refund amounting to P696,264.80 representing income tax withheld at source for the year 1991. A follow-up letter was filed on August 12, 1993 reiterating the same claim. On September 17, 1993, petitioner wrote another letter to respondent following up the status of its claim for refund.

After having exhausted all administrative remedies and considering that there was no response from the respondent, petitioner brought the instant petition before this Court to enforce its claim for refund or tax credit.

Respondent contended that the claim for refund is still being investigated by the Bureau of Internal Revenue. It is the policy of the Bureau to verify the accuracy of the returns filed and to check whether or not taxes were actually remitted to the Bureau. The burden of proof lies with petitioner since claims for refund are in the nature of a tax exemption and are therefore strictly construed against the claimant. Taxes paid are presumed to have been collected in accordance with law and regulations. In this case, petitioner failed to file the Certificate of Creditable Withholding Taxes together with its Income Tax Return for the year 1991.

The issue is whether or not petitioner is entitled to claim for tax credit or refund the amount of P696,264.80 as excess income tax paid for the year 1991 comprising of creditable withholding taxes.

Petitioner presented in evidence the following documents, to wit:

1. 1991 Income Tax Return with the attached Audited Financial Statements (Exhs. U, U-1 to U-12, inclusive);

2. Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743-1) for the year 1991, showing the income received and the tax withheld therefrom by the following withholding agents:

Withholding Agents:	Tax Withheld:
a. Belmont Agricorp. (Exh. A);	P 210.00
b. Limay Bulk Handling Terminal, Inc. (Exh. B);	526,808.21
c. Ener-Vet., Inc. Phils. (Exh. C);	254.00
d. Hemisphere-Leo Burnett, Inc. (Exh. D)	52,749.84

Withholding Agents:	Tax Withheld:
e. Consumer's Grocery & General Merchandise (Exh. E)	1,035.00
f. Jose U. Estorco (PICO Phil.) (Exh. F)	473.00
g. Cejar-Young Optical Clinic (Exh. G)	507.00
h. Fertiphil Corporation (Exh. H)	2,254.20
i. Agro-Masters, Inc. (Exh. I)	265.89
j. Philprocom (Exh. J)	1,250.00
k. Norsk Hydro (Phils.), Inc. (Exh. K)	25,812.26
l. Sugar Regulatory Administration (Exh. L)	15,982.75
m. Teletrade Corporation (Exh. M)	28,852.33
n. Movers & Baggers Services, Inc. (Exh. N)	16,356.60
o. Parafert Corporation (Exh. O)	6,250.00
p. Philippine Amusement & Gaming Corporation (Exh. P)	6,937.89
q. Int'l. Bulk Commodities Handling & Trading Corp. (Exh. Q)	70.98
r. Manila Broadcasting Company - DYEZ (Exh. R)	2,100.00
s. Onyx Agro-Ind., Integ. Corp. (Exh. S)	3,657.50
t. Orient Pacific Properties & Management Corp. (Exh. T)	4,077.75
TOTAL	P695,905.20 *

* Petitioner is claiming for the credit or refund of P696,264.80.

3. Letters claim for refund dated February 4, 1993, received by the BIR on February 8, 1993 (Exh. V), August 11, 1993, received by the BIR on August 12, 1993 (Exh. W), and September 16, 1993, received by the BIR on September 17, 1993 (Exh. X).

Counsel for respondent waived his right to present any evidence. Both counsel for petitioner and respondent agreed to submit this case for decision based on the pleadings and the evidence presented by petitioner sans the filing of memoranda.

After a careful examination of the Income Tax Return of petitioner for the year 1991, it appears that petitioner opted to carry over the excess income tax paid (by way of the creditable withholding tax) to the next succeeding taxable year. If petitioner has actually credited the refundable amount indicated in its 1991 Income Tax Return to its 1992 income tax liability then the petition should be denied for there is no way from which the petition can be premised. However, if the refund claimed was not credited to the succeeding taxable year for one reason or another then the claim for refund or tax credit can be granted provided there is a clear showing that the refundable amount was not applied to the succeeding year.

Petitioner failed to present in evidence its 1992 Income Tax Return. Hence, we are faced with a blank wall on this regard. Since the burden of proof lies with the taxpayer-petitioner claiming for a refund or credit, it is incumbent upon petitioner to prove that the refundable amount was not actually credited to its income tax liability for 1992.

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

Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc., v. Commissioner of Internal Revenue, CTA Case No. 4694, December 24, 1993; Anscor Hagedorn Securities, Inc., v. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; and Pasig Land Corporation v. 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 (Phil.) Inc. v. 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. v. Auditor General, L-17888, Oct. 29, 1968, 25 SCRA 754.)** Claims for refund are construed strictly against claimants since a claim for refund partakes of the nature of an exemption from taxation. **(Commissioner of Internal Revenue v. Ledesma, 31 SCRA 95.)**

Upon the facts on record, there is no scintilla of proof to support that petitioner did not actually credit the amount refundable to the next taxable year as clearly indicated in its 1991 Income Tax Return. Petitioner failed to show satisfactorily the fact under which it bases its claim. We are therefore unable to find for the petitioner's entitlement as a matter of fact.

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED** for lack of merit. Accordingly, petitioner's claim for refund or tax credit is **DENIED** without special pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

on leave
MANUEL K. GRUBA
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