**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**TIERRA INTERNATIONAL CONSTRUCTION CORPORATION,**
Petitioner,

- versus -

C.T.A. CASE NO. 5515

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:

OCT 06 1999

x - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - x

# DECISION

This is a petition for review filed by TIERRA INTERNATIONAL CONSTRUCTION CORPORATION against respondent, COMMISSIONER OF INTERNAL REVENUE, for the denial of the former's claim for refund in the amount of P3,500,961.00 allegedly representing its excess creditable withholding taxes for the years 1994 and 1995.

As represented, petitioner is a domestic corporation, engaged primarily in the business of undertaking overseas construction, repair, maintenance projects and operations, overseas general and specialty contracting and supply of labor for overseas projects and operations. It is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer and as a withholding agent under Certificate of Registration No. 94-490-000-428 dated June 17, 1994 with Taxpayer Identification No.

344

000-171-427-V. Its principal office address is at the 2nd Floor, Tierra Building, 1351 Angono St., Makati City.

In the years 1994 and 1995, petitioner claimed to have paid to respondent the total amount of P3,737,879.00 (Exh. DD), broken down below, representing the creditable tax withheld at source by Sunvar Realty Development Corporation (Exh. E) and the creditable withholding taxes from its sales of real property during that period, which it allegedly undertook to withhold and remit to the BIR (Exhs. C, D, F, G, I to CC), instead of leaving the withholding and remittance of the creditable tax to its buyers. Petitioner maintains that to avoid problems as far as withholding and payment of taxes are concerned, it undertook to withhold the creditable tax since most of its buyers were individuals who were not aware of the same (TSN, March 5, 1998, p. 7).

**For 1994**

| Name of Buyer | Income Payment | Amount of Tax Withheld | Exhibit |
|---|---|---|---|
| Atty. Alfredo Tadiar | ₱ 2,000,000.00 | ₱ 50,000.00 | F |
| Mr. Antonio Lu | 2,683,800.00 | 134,190.00 | G |
| Mr. & Mrs. Amado Tan | 4,700,000.00 | 117,500.00 | D |
| Mr. Stephen Sardool | 1,700,000.00 | 101,123.00 | C |
| Sunvar Realty Dev't. Corp. | 6,906,570.00 | 69,066.00 | E |
| TOTAL FOR 1994 | ₱17,990,370.00 | ₱471,879.00 | |

**For 1995**

| Name of Buyer | Income Payment | Amount of Tax Withheld | Exhibit |
|---|---|---|---|
| RIDGE II PROJECT | | | |
| Ms. Fe Neri | ₱ 3,200,000.00 | ₱ 160,000.00 | I |
| Mr. Alberto Robles | 3,100,000.00 | 155,000.00 | J |
| Mr. William Cruz | 3,100,000.00 | 155,000.00 | K |
| Mr. Nestor Noguera | 2,800,000.00 | 140,000.00 | L |
| Mr. Nestor Noguera | 2,800,000.00 | 140,000.00 | M |
| Mr. Emilio Neri | 2,900,000.00 | 145,000.00 | N |
| Mr. Pompeyo Crisologo | 3,200,000.00 | 160,000.00 | O |

349

| | | | |
|---|---|---|---|
| Mr. Voltaire Arzadon | 3,200,000.00 | 160,000.00 | P |
| Molten Steel/Jennifer Licaros | 2,500,000.00 | 125,000.00 | Q |
| Sps. Alberto/Angela Agra | 3,050,000.00 | 152,500.00 | R |
| Mr. Jose Antonio Gonzales | 2,900,000.00 | 145,000.00 | S |
| Sps. Benjamin/Lourdes Agunod | 3,470,000.00 | 173,500.00 | T |
| ESCALER PROJECT | | | |
| Mr. Angel Daproza | 3,300,000.00 | 165,000.00 | U |
| Mr. Nathaniel Gulay | 3,150,000.00 | 157,500.00 | V |
| Mr. Edilberto Javier | 3,450,000.00 | 172,500.00 | W |
| Mr. Stephen Relampagos | 4,000,000.00 | 200,000.00 | X |
| Ms. Cristina Rodriguez | 3,200,000.00 | 160,000.00 | Y |
| DCJ & Associates | 3,350,000.00 | 167,500.00 | Z |
| Mr. Arthur Aguila | 3,150,000.00 | 157,500.00 | AA |
| Mr. Horacio Paredes | 3,200,000.00 | 160,000.00 | BB |
| TIERRA SORIANO PROJECT | | | |
| Mr. Alistair Moncur/Pleutomaria | 2,300,000.00 | 115,000.00 | CC |
| TOTAL FOR 1995 | ₱ 65,320,000.00 | ₱ 3,266,000.00 | |
| **GRAND TOTAL** | ₱ 83,310,370.00 | ₱ 3,737,879.00 | |

On April 7, 1995, petitioner filed its Corporate Annual Income Tax Return (ITR) for the year 1994 with Traders Royal Bank-Telecom Branch (Exh. B). The said return shows a total gross income of P16,696,127.00, total deductions of P14,014,096.00, a net taxable income of P2,682,031.00, a tax due of P938,710.00, tax credit/payments of P1,407,474.00 (P935,594.00 carried over from the taxable year 1993 and P471,880.00 constituting the creditable tax withheld for 1994) and a refundable amount of P468,764.00, which it allegedly sought to be carried over to the succeeding taxable year 1995.

On April 12, 1996, petitioner likewise filed its ITR for the taxable year 1995 (Exh. H). It shows a total gross income of P11,323,413.00, total deductions of P10,655,408.00, a taxable income of P668,005.00, a tax due of P233,803.00, tax credit/payments of P3,734,764.00 [P468,764.00 carried over from the year 1994 and

350

P3,266,000.00, its alleged creditable withholding taxes for the year 1995 (Exh. DD)] and a refundable amount of P3,500,961.00, which is now the subject of the instant claim for refund.

Petitioner alleges that it did not carry over the amount of P3,500,961.00 representing the excess creditable withholding taxes for the taxable years 1994 and 1995 to the succeeding taxable year 1996 (p. 6, Memorandum), thus, it filed with the respondent on September 13, 1996, a written claim for a tax credit certificate corresponding to the aforesaid amount (Exh. EE).

On January 9, 1997, Revenue Officer II, Romeo U. Suiza, issued a report recommending the refund of only the amount of P1,927,500.00 (Exh. FF). Discontented with the said recommendation and since the statutory period of two years within which to file a claim for tax credit is about to lapse, petitioner, on April 15, 1997 filed with this court the instant petition for review.

After the Answer of Respondent was filed, or on November 21, 1997, Revenue Officer II, Romeo Suiza revoked its previous recommendation for the grant of P1,927,500.00, and instead denied the entire claim for refund of P3,500,951.00 representing petitioner's excess tax credit for the years 1994 and 1995 due to his findings that the said excess tax credits herein claimed to be refundable were already claimed by petitioner as tax credit in the taxable year of 1996 (Exh. 2).

On November 13, 1998, petitioner amended its Corporate Annual Income Tax Return for the year 1996, which showed a nil tax liability as it suffered a net loss for said year, to show that the amount being claimed for refund in this petition was no longer

351

carried over by petitioner to the succeeding year 1996 (Exh. HHH), TSN, January 25, 1999, pp. 6 and 7).

The issue under consideration is whether or not petitioner is entitled to a tax credit certificate in the amount of P3,500,961.00 allegedly representing its excess/unutilized creditable withholding taxes for the years 1994 and 1995.

It is the submission of the petitioner that it is entitled to the claimed tax credit, as it has complied with the three basic requirements in claiming excess creditable withholding taxes, provided by Section 10, Revenue Regulations No. 6-85 and jurisprudence on the matter, such as the case of **Citytrust Finance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991,** among others, to wit:

1) that it filed a claim for refund within the two-year period as prescribed under Section 230 of the Tax Code;

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

3) the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

As a usual token of a defense, respondent demurs that (1) the total amount of P3,500,961.00 claimed by petitioner as alleged excess payment of creditable taxes withheld on income earned from the sales of real property for the taxable years 1994 and 1995 was not properly documented, (2) taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable, (3) in an action

352

for tax refund/credit the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to the action, (4) it is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended, and (5) well-settled is the rule that claims for refund/credit are construed strictly against claimants since they partake of the nature of exemption from taxation. In the presentation of its evidence, he argued that the instant claim for refund must fail on the reason that the excess creditable withholding taxes for 1994 and 1995 were carried over by petitioner for the succeeding taxable year 1996.

After a circumspect study of the instant case and the evidence presented, the Court finds against herein petitioner's stance.

It is basic that any excess of the amount of tax so withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return shall be refundable to the taxpayer. This is clearly provided by Section 51(f) [now Section 58(d)] of the Tax Code, which states, to wit:

> **Section 51. *Returns and payment of taxes withheld at source.*** x x x
>
> *(f) Income of Recipient.* - Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) shall be included in the return of its recipient but the 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 (now 204); if the income tax collected at source is less than the tax due on the return, the difference shall be paid in accordance with the provisions of Section 50.

Thus, the issue before us is nothing new. As correctly pointed by petitioner, the grant of tax refund of creditable withholding taxes depends on three factors: (1) that the taxpayer filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code, (2) that it was shown on the return of the recipient that the income payment received was declared as part of gross income (Section 10, Revenue Regulations No. 6-85, ACCRA Investment Corporation vs. CA, 204 SCRA 957) and (3) 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 tax withheld therefrom (*ibid*).

These aforementioned requirements were again affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue**, 280 SCRA 459.

With regard to petitioner's claim for refund of its 1994 creditable withholding taxes, the Court finds that the same is already barred by prescription. Petitioner filed its final corporate income tax return for the calendar year 1994 with the respondent's Bureau on April 7, 1995 (Exh. B) while the instant petition for review with this Court only on April 15, 1997. It is well-settled that the two-year prescriptive period within which to claim a refund commences to run on the date of payment of the tax, that is, at the earliest on the date of filing of the adjusted final tax return **(CIR vs. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989, Res.).** The rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it is only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations **(ACCRA Investments Corporation vs. CIR, 204 SCRA 957).** In the case at bar, it is undisputed that petitioner filed its Corporate Annual Income Tax Return on April 7, 1995. On this date petitioner has already ascertained the results of its business operations for the year 1994. Hence, it is from this date, April 7, 1995, that the two-year prescriptive period commences to run. In other words, herein petitioner has until April 7, 1997 to judicially file the instant claim for refund with this Court, and since the action for refund was filed with this Court only on April 15, 1997, We hold that the right to bring the instant case with this Court has already prescribed.

With regard to petitioner's claim for refund of its creditable withholding taxes for the year 1995, the Court finds that petitioner has complied with requirement number one (1) when it filed its 1995 corporate annual income tax return with respondent on April 12, 1996 (Exh. H) and the instant petition for review with this Court on April 15, 1997. It likewise substantially complied with requirement number three (3) when petitioner submitted the Monthly Remittance Return of Income Taxes Withheld as evidence(Exhs. I to CC). However, petitioner failed to comply with the second requirement. It failed to present documentary evidence to show that for the taxable year 1995, petitioner included in its annual corporate income tax return the particular income from which the various creditable taxes were withheld. It appears that the total income for 1995 from which these creditable taxes were withheld amounted to P65,320,000.00 (Exhs. DD, MM to GGG) but the total gross sales reflected in the Corporate Annual Income Tax Return was only P40,650,000.00 (Exh. H). The requirement of the law is very vivid that 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.

The failure of petitioner to show to this Court that income from which the withholding tax has been withheld is fatal to its claim for refund, hence, the instant petition must fail.

**IN THE LIGHT OF ALL THE FOREGOING,** the instant petition for review is hereby **DISMISSED**, without pronouncement as to costs.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

(On leave)
**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

35