Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

PASEO REALTY and DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4693

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x -- x

7/29/93

D E C I S I O N

This case involves a claim for refund of overpaid creditable withholding tax for the calendar year ending December 31, 1989 in the amount of P54,104.00 which tax accrued up to July, 1989.

Petitioner, is a domestic corporation and a subsidiary of the Bank of the Philippine Islands, which is engaged in the real estate business as lessor of real properties. Its income consists of an annual rental of P1,855,000.00 from Citibank, which leases the land of petitioner (tsn, June 19, 1992, pp.11-12).

Petitioner filed with the Bureau of Internal Revenue its Income Tax Return for 1989 showing a refundable amount of ₱172,477.00 representing current ₱54,140.00 and prior year's ₱146,026.00 creditable taxes withheld, computed as follows:

Income (Schedule 4 - Rentals/Leases)		₱ 1,855,000.00
Less : Deductions		1,775,991.00
Net Income		₱ 79,009.00
Tax Due		₱ 27,653.00
Less :		
a.) Prior year's excess credit (1 9 8 8)	₱ 146,026.00	
b.) Qtrly. payments made this year		
c.) Creditable tax withheld (expanded withholding) [Exhibit A]	54,104.00	200,130.00
Total Amount Due/Refundable		**172,477.00**

Thus, the return of petitioner for 1989 (Exh. A) shows a gross income of ₱1,855,000.00, total deductions of ₱1,775,991.00, a net income of ₱79,009.00. **[This income tax due of ₱27,653.00 for calendar year 1989 was charged against petitioner's tax credit of ₱81,403.00 for calendar year 1987, as explained in C.T.A. Case No. 4439.]**

Petitioner applied the ₱146,026.00 prior year excess credit against its 1989 and 1990 tax liabilities leaving a refundable creditable tax of ₱85,315.00, the claim for refund of which is now pending with this Honorable Court.

In the same return (Exh.A), petitioner showed a creditable tax withheld at source of P54,104.00, which is the amount claimed in this case. Its tenant, Citibank, had withheld a 5%, or P92,750.00 on rental of P1,855,000.00 (Exh.B), but petitioner claimed only P54,104.00 because, as explained by witness Reynaldo Acejo, that was the amount of the tax accrued up to July 1989 (P92,750/12 = P7,729.16 x 7 months = P54,104.16) and thereafter the taxpayer shifted to a cash basis.

On November 14, 1991, petitioner filed a claim for refund dated Nov. 13, 1991 with respondent's Legislative Ruling and Research Division asking for the refund of P54,104.00 representing alleged excess creditable withholding tax for January to July, 1989. Without waiting for respondent's decision, petitioner filed on December 27, 1991 a petition for review.

Upon these facts, respondent raised as special and affirmative defenses lack of cause of action as it does not allege the dates when the taxes sought to be refunded were paid. Petitioner's claim for refund in the amount of P54,104.00 is still under investigation by the respondent. The taxes claimed are deemed to have been paid and collected in accordance with law, and existing pertinent rules and regulations. Claims for refund are construed strictly against claimant for the same partake of the nature of exemption from taxation. Therefore, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, it shall be fatal to its claim for refund. The petition contains no allegation that it is entitled to the refund or the deductions claimed. Petitioner's contention that it has available tax credit, for the current and prior year, is gratuitous and does not ipso facto warrant the refund. In a claim for refund, it is incumbent upon petitioner to show that it has complied with the provision of Section 230 in relation to Section 204 of the Tax Code.

The sole issue raised in this petition is whether or not petitioner is entitled to the refund of P54,104.00, as excess creditable withholding tax paid for January to July, 1989.

Petitioner presented as evidence the following relevant and material documents to support its claim for refund for the period, January to July, to wit:

Exhs.		Particulars
A	-	1989 Income Tax Return (BIR Form 1702) together with its attachments: 1. Audited financial statements; 2. Schedule of taxes and licenses; 3. Photocopy of first page of 1988 annual income tax return.
B	-	Certificate of Creditable Income Tax Withheld at source for 1989 (BIR Form 1743.1) issued by Citibank, N.A. showing the amount of income paid of P1,855,000.00 and the amount of tax withheld of P92,750.00.
C	-	Letter claim for refund dated November 13, 1991 filed with respondent on November 14, 1991.

Respondent raised no objection to the admission of the Exhibits presented by petitioner. When it was time for respondent to present his evidence, his counsel waived the presentation of evidence due to the absence of the BIR records. Instead she submitted the case for decision based on the records and pleadings available.

The arguments raised by respondent are not new. In fact, respondent has repeatedly raised these same arguments in all similar cases involving the same petitioner.

All that is required of petitioner in claiming for refund of excess creditable withholding taxes are:[1]

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1. Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, Nov. 11, 1991; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No.4046, February 24, 1993.

"(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 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) 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.

Neither is it required of petitioner to show the date of payment of the tax withheld at source. The rule is a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayer either made profit or suffered a loss in its operations.[2] The best proof of withholding

2. Sun Insurance Office Ltd., v. Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989; Ateneo De Manila University v. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd., v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989.

is the presentation of Statements of Creditable Withholding Tax. Their presentation will be sufficient to show that indeed the withholding agent withheld and remitted to the Bureau of Internal Revenue the amount indicated therein.

It is significant to note that petitioner's tenant, Citibank, had withheld a 5%, or P92,750.00 on the rental of P1,855,000.00 (Exh.B), but petitioner claimed only P54,104.00 because, as explained by witness Reynaldo Acejo, that was the amount of the tax accrued up to July 1989 (P92,750/12 = P7,729.16 x 7 months = P54,104.16) and thereafter the taxpayer shifted to a cash basis:

> Q. This Exhibit "B", which is the certificate of creditable income tax withheld at source for the year 1989 issued by a withholding agent called Citibank, N.A.; shows that there is rental income paid of P1,855,000.00 for Paseo Realty and a creditable tax withheld of P92,750.00. My question to you is, how come that the creditable tax withheld at source shown in the income tax return for 1989 is only P54,104.00 while the certificate of withholding issued by Citibank says that they withheld P92,750.00?

> A. When we reviewed the General Ledger of Paseo Realty and Development Corporation, we noticed that in 1989 there was a change in the accounting procedure in booking of the creditable tax. We noted that from January to July of 1989 there was an accrual a monthly accrual of the withholding tax. But starting August to December of the same year, they changed to cash basis. That's why what appeared in the books in 1989 was only P54,104.00 and the total amount of creditable tax of P92,750.00 was not taken up in the books (tsn, June 19, 1992, pp.11-12).

It is noteworthy to point at this juncture that the declarations made by the taxpayer in his income tax return are for all intents and purposes made in good faith and are true and correct for the best of his knowledge and belief. In fact the Treasurer and the Director, both representatives of the corporation signed under oath the income tax return of the corporation. Notice to the filer/taxpayer is presented just above the space provided for their signatures, to wit:

> "We declared under the penalties of perjury that this return has been made in good faith, verified by us and to the best of our knowledge and belief is true, and correct pursuant to the provisions of the National Internal Revenue Code, as amended, and the regulations issued under authority thereof."

Section 45(a) and 266 of the National Internal Revenue Code are clear on this matter. Thus, the law provides:

> "**Sec. 45.** *Corporation returns.* (a) Requirements. -- Every corporation subject to the tax herein imposed, except foreign corporation not engaged in trade or business in the Philippines shall render, in duplicate, a true and accurate quarterly income tax return and final or adjustment return in accordance with the provisions of Chapter IX of this Title. The return shall be filed by the president or vice-president or other principal office, and shall be sworn to by such officer and by the treasurer or assistant treasurer.
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> "**Sec. 266.** *Declaration under penalties or perjury.* -- Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

WHEREFORE, respondent is hereby ordered to refund in favor of petitioner the amount of P54,104.00, representing excess creditable withholding taxes paid for January to July, 1989.

No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, July 29, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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