REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ORANBO REALTY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5335

Promulgated:
JUL 24 1998

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DECISION

The issue which is presented for our consideration is whether or not petitioner is entitled to the refund or to the issuance of a tax credit certificate in the amount of ₱729,387.70 allegedly representing its unutilized creditable withholding tax for the year 1993.

As represented, petitioner is a domestic corporation and is primarily engaged in the real estate business. Its income consists principally of rentals from the leasing of its real property to its sole lessee, Aris Philippines, Inc.

For the year 1993, Aris paid the petitioner the total amount of ₱14,587,753.96 as rentals. From these rental payments, Aris deducted and withheld the 5% creditable expanded withholding tax of ₱729,387.70. This amount was remitted by the latter to the BIR in various amounts monthly in 1993.

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The said rental income of ₱14,587,753.96 and the corresponding tax withheld therefrom of ₱729,387.70 were reported by petitioner in its 1993 annual income tax return which it filed on April 15, 1994 (Exhibit "B"). The said annual income tax return showed that petitioner suffered net loss for 1993, hence, there was no tax due for the said year, thus, the creditable tax amounting to ₱729,387.70 was not utilized by the petitioner for the year 1993 neither was it utilized or deducted from petitioner's income tax liability for the succeeding taxable year of 1994 as it likewise suffered a loss position for said year.

In a letter dated June 29, 1995, which was received by respondent's bureau on July 14, 1995, petitioner requested that the aforementioned amount of ₱729,387.70 be refunded, as the same actually constitutes an income tax overpayment and inasmuch as it had no tax liability for the years 1993 and 1994 against which to credit the amount withheld.

The said claim for refund was not acted upon by the respondent, hence, on March 19, 1996, petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason for the petition for review that it is entitled to the refund of the aforementioned creditable withholding tax since it has not been able to claim the same as tax credit against its income tax labilities for the years 1993 and 1994. Petitioner stressed that the said withholding taxes

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represented overpaid or erroneously paid taxes, hence, it should be creditable or refundable to herein petitioner pursuant to Sections 69 and 204(3) of the Tax Code, which provides:

> **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:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be;
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid. The refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year.

> **SEC. 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - x x x (3) Credit or refund taxes erroneously or illegally received, penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. <u>No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.</u>

Respondent, on the other hand, in her Answer raised the herein special and affirmative defenses, thus: (1.)

Petitioner has not shown proof that it has incurred losses in the year 1993 x x x; (2.) The expenses claimed by petitioner in its 1993 returns are not totally allowable x x x; (3.) The petition states no cause of action as it does not allege the date/s when the tax sought to be refunded was/were actually paid; (4.) The best evidence of payment and remittance of taxes withheld are the official receipts; (5.) Claims for refund or tax credit are construed strictly against the claimant, the same being in the nature of an exemption from taxes; and (6.) One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute, which is not so in this case.

As earlier adverted to at the outset, the issue to be resolved by the Court is whether or not petitioner is entitled to the refund or to the issuance of a tax credit certificate in the amount of ₱729,387.70 allegedly representing its unutilized creditable withholding tax for the year 1993.

We find nothing ambiguous nor obscure in the language of Section 69 of the Tax Code, insofar as the same is brought to bear upon the circumstances of the petitioner in the case at bar. The provision itself furnishes the best means of its own exposition that any excess of the total quarterly payments over the actual income tax computed and shown in the adjustment or final corporate income tax return shall either (a) be refunded to the corporation, or (b) may be credited against the

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estimated quarterly income tax liabilities for the quarters of the succeeding taxable year. In its numerous decided cases of the same nature, the Court holds firm in its ruling, that in the absence of any contrary evidence a taxpayer need only to prove compliance with the three (3) basic requirements before its claim for tax credit/refund may be given due course, to wit:

> 1. That it was shown on the return that the income payment received was declared as part of the gross income *(Sec. 10, Rev. Regulations No. 6-85, ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957)*;
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> 2. 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 *(ibid.)*;
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> 3. That it filed its claim for refund within the two (2) year period prescribed under Section 230 of the Tax Code.

Based on the records and the evidence adduced, the Court finds that petitioner met all the three requirements aforementioned. Petitioner declared in its annual income tax return, for the year 1993, the income upon which the tax sought to be refunded was withheld. Petitioner's exhibits "B", "B-2" and "B-3", its 1993 income tax return clearly shows that the amount of ₱14,587,754.00 representing rental income received from Aris, its lessee, was the one and only item that comprised the petitioner's gross income for 1993. As regards the fact of withholding, this was clearly established by the petitioner when it presented to the Court a Certificate of Creditable Tax Withheld at Source (Exh. "C"), duly signed by its withholding agent/payor, Aris (Philippines), Inc. Lastly, the timeliness of the claim for refund was complied with by the herein petitioner. It filed its claim for refund with the Bureau of Internal Revenue on July 14, 1995 (Exh. "A") and with this Court on March 19, 1996. The two (2) year period, in the case at bar, commences to run on April 15, 1994, the time required by law for the petitioner to file its final income tax return (**Commissioner of Internal Revenue vs. TMX Sales, Inc., et. al., 205 SCRA 184**).

The evidence adduced by the respondent, which were composed of the Letter of Authority (Exh. "1"), Report of Results of Investigation (Exh. "2") and the Computation of the Alleged Petitioner's Deficiency Income Tax for 1993 (Exh. "3"), did not in any way controvert the above findings of the Court. It is however posited by the respondent that petitioner did not actually incur a loss during the taxable year 1993, as it deducted from its gross income a disallowable deductions, i.e. professional fees amounting to ₱72,200.00 and interest expense amounting to ₱2,542,702.50 (Exh. "2"), for reasons that the former is a prior period and unrelated business expense and the latter was incurred from loans obtained from a related company (Aris Philippines, Inc., 40% stockholder) in violation of Section 30 of the Tax Code. As a result of the disallowance, respondent instead issued against petitioner Assessment Notice Nos. 0001090-93-323 both dated April 10, 1997 involving the amounts of ₱1,822,436.29 and ₱30,000.00 as deficiency income tax assessment and compromise penalty, respectively, for the year 1993 (p. 144, BIR records), which petitioner protested on April 21, 1997 (p. 148, BIR records).

In its memorandum, respondent argues that the findings of the revenue examiners with respect to the disallowed deductions for the taxable year 1993 taints the correctness of petitioner's income taxes for the said year. This, according to respondent, is a valid hindrance to the grant of the refund in favor of petitioner.

We disagree with the respondent.

The assessment issued by the respondent during the trial of this case should not serve as an obstacle to the instant claim for refund for the simple reason that petitioner is given by law, the remedy of protest in case it disagrees with the findings of the revenue examiners. As a consequence of the protest filed, petitioner may be given an opportunity to present additional documents to rebut the conclusion reached by the examiners. To discuss the merits of the assessment and consider the findings therein as factors in deciding a petition claiming for a refund, is tantamount to depriving the petitioner due process of law enshrined in our Consitution. Section 229 of the Tax Code clearly provides for the remedy of protest which may be availed of by taxpayers, as We quote :

> **SEC. 229. Protesting of assessment.** - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.
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> If the protest is denied in whole or in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.[1]

The aforequoted section provides for a different administrative process for assessments. After the taxpayer has exhausted the aforementioned administrative remedies to no avail, he may come to this Court to contest the adverse decision of the Commissioner of Internal Revenue. In presenting the assessment in a case involving a petition claiming for a tax refund, the Commissioner is taking a shortcut thereby depriving the taxpayer of its right to file a protest against said assessment. The impracticability and possible

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[1] As amended by P.D. No. 1773.

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unconstitutionality of allowing the respondent to present the assessment during the hearing of a judicial claim for refund was discussed by this Court in the case of **Citicenter Building Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5244, dated December 9, 1997,** where We ruled:

> "x x x in the event that respondent shall issue a final assessment against the petitioner for said tax deficiencies, the Tax Code has provided the taxpayers the remedy of protest in the administrative level to question such assessment. To address such issue in this decision without allowing the petitioner this particular remedy would be tantamount to depriving the petitioner due process of law in direct contravention of the Constitution."

Similarly, in the case of **Investor's Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 3717, dated May 10, 1993,** this Court also declared:

> "It is significant to note is that in the investigation of petitioner's claim for tax credit, there was instead found due from petitioner alleged deficiency income tax which respondent automically set-off against the amount claimed as excess creditable income tax but a deficiency tax due.
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> The act of respondent smacks of whim or caprice. There was arbitrary disallowance of deductible expenses to create a deficiency tax. No chance was even accorded to petitioner to rebut the findings. The element of due process was sorely lacking."

WHEREFORE, in view of the foregoing, this Court renders judgment in favor of petitioner. Respondent is hereby ordered to **REFUND** or issue a tax credit

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certificate in favor of petitioner the amount of ₱729,387.70.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

(*Dissenting Opinion*)
ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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
Court of Tax Appeals

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

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DISSENTING OPINION

The records of the case at bar show that the assessment in this case arose from the investigation conducted on the claim for refund of petitioner. As a result, there was a finding of deficiency assessment. The assessment was not the result of an independent and separate tax investigation nor the nature of the tax being assessed different from the tax being claimed for refund. Therefore, any findings may very well be set as a defense by respondent. In fact considering that the assessment arose out of or is connected with the claims for refund covering the same type of income tax for the same taxable year, the same may be considered as a compulsory counterclaim under Sec. 7 of Rule 6 of the 1997 Rules of Civil Procedures which this Court has within its jurisdiction to dispose of in the same action to avoid multiplicity of suits.

In the case at bar, I do not feel at liberty to ignore the decision of the Supreme Court in the case of ***Commissioner of Internal Revenue vs. Court of Tax Appeals, 234 SCRA 348,*** the pertinent portion of which states, to wit:

> The grant of a refund is founded on the assumption that the tax return is valid, that is the facts stated therein are true and correct. The

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> deficiency assessment, although not yet final, created a doubt as to and constitutes a challenge against the truth and accuracy of the facts stated in said return which, by itself and without unquestionable evidence, cannot be the basis for the grant of the refund.
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> x x x
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> Moreover, to grant the refund without determination of the proper assessment and the tax due would inevitably result in multiplicity of proceedings or suits. If the deficiency assessment should subsequently be upheld, the Government will be forced to institute anew a proceeding for the recovery of erroneously refunded taxes which recourse must be filed within the prescriptive period of ten years after discovery of the falsity, fraud or omission in the false or fraudulent return involved. This would necessarily require and entail additional efforts and expenses on the part of the Government, impose a burden on and a drain of government funds, and impede or delay the collection of much-needed revenue for governmental operations.
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> Thus, to avoid multiplicity of suits and unnecessary difficulties or expenses, it is both logically necessary and legally appropriate that the issue of the deficiency tax assessment against Citytrust be resolved jointly with its claim for tax refund, to determine one and for all in a single proceeding the true and correct amount of tax due or refundable.

In the case of ***Chua vs. Court of Appeals, 271 SCRA 546,*** the Supreme Court ruled that it should endeavor to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. With due respect to the majority view, I believe we cannot disregard the above ruling of the Supreme Court, without violating the principle of "***Stare decisis et non quinta movere".***

Hence, I take exception to the view of my distinguished colleagues that in effect issue of the claim for refund and the findings of assessment in the instant case cannot be resolve jointly, as it is tantamount to depriving petitioner due process of law. I could not see any deprivation of due process, for both parties in this case were given the opportunity to be heard, more particularly the petitioner was given all the opportunity to rebutt the assessment being raised as a defense.

A close scrutiny of the facts would show that when respondent raised the assessment as a defense, petitioner questioned certain items disallowed as a deduction in the income tax return. Foremost of which is the P2,542,702.50 interest expense which a review of the case would show that the allegation of the petitioner is meritorious. It is not prohibited to claim this interest as deduction as the facts shows that Aris Philippines only owns 40% of the outstanding capital of Oranbo Realty Corp. Petitioner remains silent on the disallowance of P72,200.00 professional fee. The P30,000.00 compromise penalty in the absence of the consent on the part of the taxpayer cannot be allowed based on our established jurisprudence on the matter. On the basis of these findings which are clearly established from the records of the case, we can recompute the refund of the petitioner. Thereby, we will be disposing in one seating the main case and the assessment being raised as a defense.

Taking into consideration the aforementioned decisions of the Supreme Court and factual circumstances of instant case, I vote that this Court in the case at bar, should resolve the issue of refund and assessment, unitedly.

Quezon City, Metro Manila, July 6, 1998.

ERNESTO D. ACOSTA
Presiding Judge

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