REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM FUND MANAGEMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5562

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
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DECISION

This case involves a claim for refund in the amount of ₱605,654.22 allegedly representing overpaid and unutilized creditable withholding taxes for calendar years 1995 and 1996.

The antecedent facts of the case are as follows:

Petitioner, formerly named Philamlife - PDCP Fund Management, Inc. is a domestic corporation organized and existing under Philippine Laws with principal office at 5th Floor Gamon Centre, 126 Alfaro St., Salcedo Village, Makati City; and is engaged in rendering management and technical services (TSN, January 12, 1998, pp. 5 and 6).

On April 11, 1996, petitioner filed its 1995 Annual Income Tax return reflecting a total income tax due in the amount of ₱23,619.00 as against its creditable taxes withheld from management and technical services income for the period January to December, 1995 in the total amount of ₱314,444.86, resulting in the alleged overpayment of its income tax in the total amount of ₱290,825.86 for that year (Exh. A, p. 63, CTA records).

For calendar year 1996, petitioner filed its Annual Income Tax return on February 13, 1997 reflecting a "NIL" income tax due and tax refundable in the amount of ₱605,654.22 (Exh. D). The amount of ₱605,654.22 allegedly refers to the aforementioned 1995 excess credit in the amount of ₱290,825.86 and unutilized creditable tax withheld from its management and technical services income for the period January to December 1996 in the amount of ₱314,828.36.

On March 3, 1997, petitioner filed with the BIR a written claim for refund in the amount of ₱605,654.22 allegedly representing overpaid and unutilized creditable tax withheld for calendar years 1995 and 1996 (Exh. F).

Since no action was taken by the respondent and the two (2) year period was about to lapse, petitioner filed a petition for review with this Court on November 4, 1997.

Upon these facts, respondent advances the following special and affirmative defenses, thus:

> 1. Petitioner's right to claim refund has partially, if not totally prescribed;
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> 2. Petitioner's claim for refund is still pending administrative investigation and evaluation;

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3. Taxes paid and collected are presumed to have been in accordance with law and regulations, and hence, not refundable;

4. In an action for tax refund, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the corresponding action;

5. Claims for refund are strictly construed against claimants since they partake of the nature of an exemption from taxation.

The only issue to be resolved in this case is whether or not petitioner has satisfactorily proven its claim for refund in the amount of ₱605,654.22 allegedly representing overpaid and unutilized creditable tax withheld for calendar years 1995 and 1996.

In support of its case, petitioner presented in evidence various documents which, among others, consist of the following:

a. Annual Income Tax Returns for the years 1995 and 1996 (Exhs. A and D) together with its corresponding auditor's report as an attachment;

b. Certificates of Creditable Withholding Tax at Source (Exhs. A-14 and D-1);

c. Administrative Claim for Refund (Exh. F);

d. Monthly Remittance Return of Income Taxes Withheld for calendar years 1995 and 1996 (Exhs. C to C-11, E-1 to E-12).

On the other hand, respondent failed to submit any controverting evidence. Petitioner submitted its memorandum while respondent did not.

After a careful scrutiny of all the evidence presented before Us, We rule in favor of the petitioner.

This Court, in a long line of cases of similar nature and issue, has already laid down three (3) basic requirements for the granting of a claim for refund of excess and unutilized withholding tax payments, to wit:

> 1. That the claim for refund is filed within the two (2) year period prescribed under Sections 204 and 230 of the Tax Code;
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> 2. That the income upon which the taxes were withheld were included in the return of the recipient; and
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> 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 paid and the amount of tax withheld therefrom (Section 10, Rev. Regs. No. 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 CA-G.R. SP No. 28239, March 14, 1994;** ***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 CA-G.R. SP No. 31104, April 18, 1994 and** ***Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993,*** **affirmed by the Court of Appeals in CA-G.R. SP No. 32927, February 28, 1994).**

Petitioner satisfactorily complied with the first requirement when it filed its claim for refund with the

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Bureau of Internal Revenue on March 3, 1997 and with this Court on November 4, 1997. Said claim was filed within the two-year prescriptive period required under Section 204 and 230 of the Tax Code since the taxes sought to be refunded were considered paid on April 11, 1996 and February 13, 1997, the dates the Corporate Annual Income Tax returns for calendar years 1995 and 1996 were filed **(Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4596, January 6, 1995).**

The second requirement was also met by the petitioner when it offered in evidence its Corporate Annual Income Tax return for calendar years 1995 and 1996 (Exhs. A to A-11, D to D-15). In said returns, petitioner declared as part of its gross income the management/professional fees derived from its management services rendered to Philam Fund, Inc. (PFI), which were subject to withholding taxes.

With regard to the third requirement, the fact of withholding was established by a copy of the statements duly issued by the withholding agent (Philam Fund, Inc.) to the petitioner as payee showing the amount paid and the amount of tax withheld therefrom. The proof of withholding was well established by the presentation of Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743-1750) showing that the amount subject of the claim was in fact withheld by the withholding agent and remitted to the BIR (Exhs. A-14 and D-1) for the calendar years 1995 and 1996. Thus, petitioner has satisfactorily proven its claim for refund.

As regards the respondent's contention that petitioner's claim for refund is premature as the same remains pending administrative investigation this Court finds it unavailing and without basis in fact and in law. The pendency of an administrative claim for refund is not a valid ground for this Court not to decide the instant petition since it has already acquired jurisdiction over the claim and this Court is not bound to wait indefinitely for whatever actions respondent may take. Unlike disputed assessments, no decision of respondent is required before the taxpayer can come to this Court **(Greenfields Development Corporation vs. CIR, CTA Case Nos. 4669 and 4867, January 30, 1996).**

Moreover, respondent failed to manifest any reasonable effort to rebut or controvert the oral and documentary evidence presented by petitioner. Respondent's failure to present evidence and defense which is anchored as usual on the principle that claims for refund are strictly construed cannot possibly withstand as it is always vulnerable to overwhelming evidence which petitioner was able to present to prove its claim **(Shangri-la Plaza Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5346, January 9, 1998).**

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When the evidence presented were not disputed by the Commissioner, this sufficiently establishes the taxpayer's right to the refund **(Van Melle [Phils.], Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4783, February 6, 1995, citing Sanitary Wares Mfg. vs. Commissioner of Internal Revenue, CTA Case No. 4150, August 21, 1992; Sun Life Insurance Office Ltd. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989)**

In conclusion, We find that petitioner has adequately proven its case before this Court.

WHEREFORE, in view of all the foregoing, Respondent is hereby ORDERED to REFUND in favor of Philam Fund Management, Inc. the total amount of P605,654.22 representing overpaid and unutilized creditable withholding taxes for calendar years 1995 and 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

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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

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