REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK, INC.,
Petitioner,

-versus -

C.T.A. CASE NO. 4412

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

8/17/92

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

D E C I S I O N

This is a simple claim for refund of alleged overpaid income tax amounting to P29,926.99 covering petitioner's income tax return for 1987.

It appears from the records of the case that for taxable year 1987, petitioner allegedly received rental income from various lessees from which income the total amount of P29,926.99 was withheld under the expanded withholding tax regulation by the said lessees. Petitioner alleged that as can be shown by its income tax return, it has included the rental income subject to such withholding as part of the gross income. So that when it filed its final return showing a net loss of P23,920,974, the entire amount of P29,926.99 under creditable withholding should be refunded to it.

In a letter dated July 4, 1988 duly filed with the BIR on August 3, 1988, petitioner filed a claim for tax credit but as of the time of the filing of the petition for review remains unacted. Hence, the filing of the instant petition for review to stop the running of the (2) two-year prescriptive period.

Respondent for his part admits only the personal circumstances of the parties and denies all other allegations of the petitioner. While respondent admits the filing of a formal claim for refund, he nevertheless denies the truth and veracity of the grounds stated in support of the claim. As special and affirmative defenses, he alleged that the claim is still under investigation; that the income tax return of petitioner is not sufficient to prove the claim; that petitioner has the burden of proof to prove its claim and that taxes are presumed to have been paid in accordance with law.

The issue in this case is whether or not petitioner has fully complied with the requirement of the law to entitle to a refund of the excessive payment of income tax for taxable year 1987.

Petitioner presented the following documents in support of its claim for tax credit:

(1) Exh. "A" - Corporation Annuanl Income Tax return for calendar year ending December 31, 1987 to prove the loss, and inclusion of rental income as part of gross income declared;

(2) Exh. "B to B-15" - Various withholding tax certifications - to prove the withholding of creditable tax in the total amount of P29,296.99;

(3) Exh. "C" - Claim for refund dated July 4, 1988, filed with the BIR on August 3, 1988.

Respondent unfortunately failed to present evidences to disprove the case of the petitioner and instead submitted the case on the basis of the pleadings and the records. On the basis above of the failure on the part of the respondent to prove his case, this court on the basis of the evidences presented by the petitioner should have awarded the claim for tax credit. However, an examination and evaluation of the evidences presented show that petitioner likewise failed to satisfy the requirements of the law in cases of this nature.

The applicable provisions of law is Section 54 (now Section 51) of the National Internal Revenue Code particularly subsections (c) and (f), quoted hereunder:

xxx xxx xxx

> (c) Statement of income payments made and taxes withheld. - Every withholding agent required to deduct and wihhold taxes under Section fifty-three shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year. (As amended by Batas Pambansa Blg. 41.) (Underscoring supplied.)

xxx xxx xxx

> (f) Income of recipient. - Income upon which any creditable tax is required to be withheld at the source under Section 53 shall be included in the return of its recipient but any excess of the amount of tax so withheld over the tax due on hs return shall be refunded to him subject to the provisions of Section 295; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 51. (As amended by Batas Pambansa Blg. 41.) (Underscoring supplied.)

In a similar case, this court had occasioned to interpret said provisions of law. As held in the case of Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, as follows:

> "An analysis of the provisions of law involved will show that the grant of tax refund when the creditable withholding tax is in excess of the amount of the tax due, depends on three factors: (1) that the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax as required under Section 295 of the Tax Code (now Section 204); (2) it must be shown on the return of the recipient that the income payment received was declared as part of the gross income; and (3) the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. The first two requirements are embodied in Section 54(f) of the Tax Code while the last is a requirement under Section 54(c)."

To these requirements, petitioner has complied with the requirement number (1) one when it filed subject claim for refund dated July 4, 1988 duly stamped "received" by the BIR RR 4-B2-32-A-West Makati on August 3, 1988, in accordance with the provision of Section 295 of the Tax Code (Exh. C). It likewise substantially complied with requirement number 3 (three) when petitioner submitted statements of tax withheld at source (BIR Form 1743), certificates of creditable income tax withheld at source (BIR Form 1743.1) and other certifications showing the taxes withheld from petitioner by various withholding agents. However, petitioner failed to comply with the second requirement. It failed to present documentary evidence to show that for the taxable year in question, petitioner declared in its income tax return the rental income from which the various creditable taxes were withheld. We have examined the photocopy of the annual corporate income tax return ending December 31, 1987, presented by petitioner as Exhibit "A" but it failed to show the rental income as part of the gross income declared. The said copy of the return merely showed the total gross income declared, the total deductions claimed, the resulting net loss incurred and the creditable withholding tax being applied. The same was not even covered by the testimony of Mrs. Yolanda Esmundo, Accounting Manager of petitioner in her testimony before this court on September 10, 1991.

Furthermore, Revenue Regulation No. 13-78 (as amended by Revenue Regulation No. 6-85) particularly Section 10 thereof likewise has the same requirement, as follows:

> Sec. 10. Claim for tax credit or refund.- Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return <u>that the income payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee</u> (BIR Form No. 1743.) <u>showing the amount paid and the amount of tax withheld therefrom.</u> (Underscoring supplied.)

Regulations issued by the implementing agency pursuant to the provisions of the law has likewise the force and effect of the law.

WHEREFORE, in view of all the foregoing, petitioner's claim for refund is denied and accordingly this petition for review is hereby dismissed.

SO ORDERED.

Quezon City, Metro Manila, August 17, 1992.

ERNESTO D. ACOSTA
Associate Judge

I CONCUR:

STELLA DADIVAS-FARRALES
Acting Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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