REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

F & K REALTY DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5489

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 29 1998

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DECISION

Whether or not the petitioner is entitled to the refund/tax credit in the amount of One Hundred Twenty Four Thousand and Five Hundred Fourteen (₱124,514.00) Pesos allegedly representing excess income tax payments for calendar year ended December 31, 1994, is the foremost question which confronts this Court.

Petitioner is a domestic corporation mainly engaged in the leasing business (Exh. B).

On March 24, 1995, petitioner filed its annual corporate income tax return for the calendar year ending December 31, 1994, wherein it reported creditable taxes withheld at source in the amount of P195,380.00 (Exhs. C-3, C-2). Tax due for the period amounted to ₱70,866.00, thus, leaving an excess creditable withholding tax in the sum of P124,514.00 (Exh. C).

For the calendar year ending December 31, 1995, herein petitioner filed its corporate annual income tax return on April 15, 1996. Said return reflected a creditable tax withheld at source in the amount of ₱360,387.00 (Exh. G-3). Tax due thereon was ₱157,729.00, hence, the total excess tax credits for the period was ₱202,658.00 (Exh. G).

Subsequently, on December 27, 1996, petitioner filed a claim for refund with the Bureau of Internal Revenue on its excess unutilized creditable withholding taxes for 1994 in the amount of ₱124,514.00 (Exh. H). With the two-year reglementary period about to lapse and the claim having been unacted by the respondent, petitioner filed the instant petition on April 10, 1997.

Surprisingly, on July 30, 1997, after the claim with the Bureau and the herein petition were filed and the trial of the case had already started, petitioner amended both its 1994 and 1995 income tax returns (Exhs. I & J, respectively).

To support its case, the following documents were marked and submitted by the petitioner:

1) SEC Certificate of Registration;
2) Articles of Incorporation;
3) 1994 Corporate Annual Income Tax Return;
4) 1995 Corporate Annual Income Tax Return;
5) Certificates of Creditable Tax Withheld at Source;

6) Letter-claim for refund;

7) Amended 1994 Corporate Annual Income Tax Return;

8) Amended 1995 Corporate Annual Income Tax Return.

Petitioner also presented a witness, in the person of Mr. Claro Tumbaga.

Respondent, on the other hand, manifested that there was no investigation conducted relating to the case at bar. She just submitted the case based on the pleadings and records of the case (p. 118, CTA rec.).

The single issue to be resolved by this Court is whether or not petitioner deserves the refund/tax credit sought.

The answer is in the negative.

Pertinent to this case are several provisions of the Tax Code, which are quoted below:

> **SEC. 51.** ***Returns and Payment of Taxes Withheld at Source.*** - (a) xxx xxx xxx
>
> (b) ***Statement of income payments made and taxes withheld.*** - Every withholding agent required to deduct and withhold taxes under Section 50 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. x x x
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> xxx xxx xxx

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(d) ***Income of the recipient***. - Income upon which any creditable tax is required to be withheld at source under Section 50 shall be included in the return of its recipient but any 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 204; x x x

SEC. 69. ***Final Adjustment Return***. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

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 quarters of the succeeding taxable year.

SEC. 230. ***Recovery of tax erroneously or illegally collected***. - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided*,

> *however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

As long been settled, the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return or annual income tax return and final payment of income tax. Thus, Section 230 of the Tax Code should be interpreted in relation to the other provisions of the Code in order to give effect to legislative intent and to avoid an application of the law which may lead to inconvenience and absurdity. (**Commissioner of Internal Revenue vs. TMX Sales, Inc.**, *G.R. No. 83736, January 15, 1992*; **ACCRA Investments Corp. vs. Court of Appeals**, *G.R. No. 96322, December 20, 1991*).

It is true that in numerous cases this Court ruled that the grant of refund when the creditable withholding tax is in excess of the amount of the tax due, depends on three factors, to wit:

(1) that the claim for refund is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of tax as required under Section 204 of the Tax Code;

(2) it must be shown on the return of the recipient that income payment received was declared as part of the gross income; and

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(3) the fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (**Citytrust Finance Corporation vs. The Commissioner of Internal Revenue**, CTA CAse No. 4134, November 11, 1991; **Citytrust Finance Corportion [formerly Investor's Finance Corportion/FNCB Finance] vs. Commissioner of Internal Revenue**, CTA CAse No. 4046, February 24, 1993; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5323, August 25, 1997).

In the instant case, what greatly perturbs this Court is the fact that the amount of P124,514.00 being claimed by petitioner was carried over to the succeeding year. Therefore, the same amount became part and parcel of the ₱360,387.00 which the petitioner automatically applied as tax credit for the year 1995 and of the ₱202,658.00 representing excess tax credits for which petitioner intended to apply as "credit to next year" (Exh. G-5). In other words, petitioner has nothing to claim as a refund unless it can prove that in 1996 it incurred a loss or it did not utilize the excess ₱202,658.00 tax credits. Unfortunately, no 1996 corporate annual income tax return was ever submitted by the petitioner.

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However, petitioner came up with an idea of amending its returns for 1994 and 1995. For what purpose? To prove that it applied for refund its excess creditable taxes in calendar years 1994 and 1995 (p.35, CTA rec.).

It is worth emphasizing once again that the claim for refund of petitioner's excess 1994 tax credits was filed on December 27, 1996 and the instant petition on April 10, 1997. The 1994 income tax return was amended only on July 30, 1997. This actuation of petitioner of proving a fact by a subsequent act is an affront to this Court's apperception. Note that by July 30, 1997, it is legally presumed (on or before April 15, 1997) that the petitioner had already filed its final adjustment return for calendar year 1996.

The case could be simplified by the mere submission of the 1996 income tax return. The petitioner cannot and should not expect that this Court will act favorably on its claim by its presentation of the amended returns. As already pointed out, the purpose of the amended returns was to prove that the petitioner did not carry over to the succeeding years 1994 and 1995, the excess tax credits of the prior years (1993 and 1994, respectively). Now, how can this Court consider such evidence when the original 1994 and 1995 tax returns showed just the contrary? This Court is not impressed with the presentation of the returns which were amended long after the claim for refund and the herein petition were filed.

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In the case of **Greater Asia Resources Corporation, (formerly Ramie Textiles, Inc., then, Gaming Interest and Franchise Technologies, Inc.) vs. The Commissioner of Internal Revenue**, CTA Case No. 5427, January 8, 1998, this Court declared, thus:

> After a thorough review of the records and evidence of the case, we rule against the petitioner.
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> An analysis of petitioner's June 30, 1994 annual income tax return reveals that an "X" was marked in the box "TO BE APPLIED AS CREDIT TO NEXT YEAR" (Exhs. H to H-4, p. 97, CTA records), leading us to believe that petitioner applied the excess income tax payment to the succeeding taxable fiscal year ended June 30, 1995.
>
> We would like to emphasize that in this scenario, presentation of the succeeding year's income tax return is very material in order to determine whether or not petitioner applied the overpaid creditable withholding tax of the fiscal year ended June 30, 1994 to the succeeding taxable year.
>
> Time and again, we have denied several claims for refund due to the failure of petitioner to present the succeeding year's income tax return wherein the overpaid income tax sought to be refunded was opted to be carried over to the succeeding taxable year (AF Holdings and Management Corporation v. Commissioner of Internal Revenue, CTA Case No. 4529, March 16, 1993; Philippine Bank of Communications v. Commissioner of Internal Revenue, CTA Case No. 4309, May 20, 1993; BPI Data Systems Corporation (formerly Filipinas Management and Leasing Services, Inc.) v. Commissioner of Internal Revenue, CTA Case No. 4691, December 6, 1993; BPI Family Savings Bank, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4694, December 24, 1993; Anscor Hagedorn Securities, Inc. v. Commissioner of Internal Revenue, CTA Case No. 4947, January 30, 1995; Pasig Land Corporation v. Commissioner of Internal Revenue, CTA Case No.

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> 4773, May 30, 1995; Rondel Management, Inc. v. The Commissioner of Internal Revenue, CTA Case No. 4787, January 3, 1996; Citytrust Investment Philippines, Inc. v. The Commissioner of Internal Revenue, CTA Case No. 4958, April 25, 1996). To grant a refund to petitioner who may have already applied its excess credit to the succeeding year would be tantamount to granting twice the refund being sought (Paseo Realty and Development Corp. v. Commissioner of Internal Revenue, CA G.R. SP No. 33589, October 14, 1994).

It bears stressing that in the case of petitioner, the tax credit sought to be refunded was actually carried over to the succeeding year.

In **AF Holdings & Management Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5099, May 9, 1996, it is proclaimed that "this Court cannot be left to speculate as to whether the amount claimed was actually credited to the succeeding taxable year or not." In the case at bar, it is crystal clear that there is no need for speculation as the amount of P124,514.00, subject of this petition, was carried over to the succeeding year 1995. As adverted to earlier, the presentation of the 1996 income tax return will tell us if the excess tax credits in 1995 (which the amount subject of this claim formed part of) were utilized in 1996 or not.

It is worth reiterating that tax refunds partake of the nature of tax exemption and are construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority. (**Resins, Inc. vs. Auditor General**, L-17888, 25 SCRA 754, October 29, 1968; **Commissioner of**

Internal Revenue vs. Ledesma, L-17509, 31 SCRA 95, January 30, 1970; **Insular Lumber Co. vs. Commissioner of Internal Revenue and Court of Tax Appeals**, G.R. No. L-31057, May 29, 1981; **Caltex (Phil), Inc. vs. Commissioner of Internal Revenue**, CTA Case 2871, January 29, 1986; **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation**, G.R. Nos. L-83583-84, March 25, 1992; **AF Holdings & Management Corp. v. Commissioner of Internal Revenue**, CTA Case No. 4529, March 16, 1993; **AF Holdings & Management Corp. v. CIR**. *supra*; **Bogo Medellin Milling Co., Inc. Employees Retirement Plan Private Dev. Corp. of the Phil. Trustee v. CIR**, CTA Case No. 4861, June 5, 1996).

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby dismissed for lack of merit.

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
Court of Tax Appeals