REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERF REALTY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4680

Promulgated :
JUN 28 1995

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DECISION

This case involves a claim for refund of alleged overpaid withholding taxes on rental income for the calendar years ended December 31, 1989 and December 31, 1990, in the total amount of P2,620,343.76.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines with principal office at Philamlife Building, United Nations Avenue, Ermita, Manila. The name of the corporation stands for Philamlife Employees' Retirement Fund and one of its business activities is renting out real estate properties. This activity generates rental income for the petitioner and as a consequence taxes are withheld by its various withholding agents.

Petitioner alleges that for the year 1989, it did not incur any income tax liabilities because it suffered losses from its business operations and this resulted in an overpayment of taxes withheld from its rental income during this period hence the excess payments are refundable. Similarly, for the year 1990, petitioner asserts that losses were again incurred resulting in an overpayment of taxes withheld from its rental income for the said year.

On June 26, 1991, petitioner filed a claim for refund with the Appellate Division of the BIR in the total amount of P2,620,343.70 representing overpaid income taxes for the calendar years 1989 and 1990 (see exhibit "N"). This claim did not elicit any kind of response from the respondent so petitioner elevated its case to this court on December 19, 1991.

The petition for review reiterates the same arguments propounded by the petitioner in its letter claim for refund which details its net taxable income and the refundable amount due them for each quarter capped by a computation showing the total refundable amount of P2,620,343.70, thus:

the creditable amount shown in its final adjustment return for the preceding calendar year 1989	P 572,201.00
5% withholding tax on the company's rental income withheld by the withholding agents in 1990	P2,048,142.76
T O T A L	P2,620,343.76

In support of its claim, petitioner presented to this court its quarterly income tax returns, as well as its final adjustment returns, corresponding to the aforementioned years. Also presented were photocopies of certificates of creditable income tax withheld at source submitted by its withholding agents to show that taxes were withheld from the rental income of the petitioner.

Respondent interposed the following Special and Affirmative Defenses in her answer, thus:

> 5. The claim for refund is still under investigation;
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> 6. The taxes claimed are presumed to have been collected in accordance with law and regulations;
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> 7. In a claim for refund, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, failure on the part of the petitioner to prove the same is fatal to its claim;
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> 8. Claims for refund are construed strictly against the claimant for the same partake of the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-175509, January 30, 1970,

31 SCRA 95; Resins vs. Auditor General, 25 SCRA 754).

Furthermore, respondent raised the issue of prescription in her memorandum asserting that payments made prior to December 19, 1989 have already prescribed, thus cannot be the subject of the claim for refund. To further seal its case against petitioner, respondent averred that petitioner cannot ask for a refund for the years 1989 and 1990 because it has a deficiency income tax covering the same years in the total amount of P59,441,491.27 allegedly uncovered during the investigation conducted by its examiners on the income tax liability of the petitioner.

The sole issue presented to Us for resolution is whether or not petitioner is entitled to the refund sought.

Respondent has raised the issue of prescription as to payments made prior to December 19, 1989 pursuant to Section 230 of the Tax Code. Respondent contends that in reference to the date of filing of this petition on December 19, 1991, all those payments made prior to December 19, 1989 fall outside the two-year period prescribed by law for claiming a refund.

We find respondent's contention an erroneous interpretation of the law and we agree with the petitioner that the claims for refund filed by petitioner for alleged excess income tax payments are well within the 2-year prescriptive period.

In the case of **Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue** (CTA Case No. 4254, August 10, 1993), this Court laid down the rule that the two-year prescriptive period with respect to refund of corporate income taxes shall be reckoned from the time when the corporate annual income tax is required to be filed because such time is considered the date of payment, thus:

> "Section 292 (now 230) of the National Internal Revenue Code provides a two-year prescriptive period to file a suit for a refund of tax erroneously or illegally collected or of any sum alleged to have been excessively collected counted from the date of payment. The date of payment for corporate income taxpayers has been construed to mean the period when the income tax return is required to be filed. Corporate annual income tax returns are requested to be filed on or before the 15th day of the day of April (if on a calendar basis) or on the 15th day of the fourth month following the close of the fiscal period, as the case may be.
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> xxx xxx xxx
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> In this case, the two-year prescriptive period commenced to run, at the earliest, from the time petitioner was required to file a return. That is, on April 15, 1986. Petitioner filed a written claim for refund or tax credit with the respondent on October 1, 1987. Hence, the two-year period for

judicially claiming for a refund has not yet lapsed when the petition was filed on April 15, 1988."

The Supreme Court in the case entitled **ACCRA Investments Corporation vs. Court of Appeals 204 SCRA 957** adopted its stance in their Resolution in the case of **Commissioner of Internal Revenue vs. Asia Australia Express Ltd. (G.R. No.85956)** and ruled, thus:

> xxxxxx In our Resolution dated April 10, 1989 in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd. (G.R. No.85956)**, we ruled that the two-year prescriptive period within which to claim a refund commence to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund. xxx
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> xxx xxx
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> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment" therefore, in ACCRAIN's case was when its tax liability, if any, fell due upon its filing of its final adjustment return on April 19, 1982.

In the instant case, petitioner had until April 15, 1990, within which to file its adjustment return and make its final payment with respect to its income tax liabilities for 1989. The claims for refund were filed with the BIR on June 26, 1991 and the petition for review was filed on December 19, 1991 which is clearly within the two-year prescriptive period provided in Section 230 of the Tax Code.

Respondent also presented the argument that petitioner has a deficiency income tax liability in the total amount of P59,441,491.27 corresponding to the years 1989 and 1990 hence no refund may be granted for the said periods. Petitioner on the other hand maintains in its supplemental memorandum, dated October 12, 1994, that no assessment has been issued by the respondent regarding their income tax liability for the aforementioned years and what was allegedly sent to them was merely a "recommendation" thus the findings of the investigating team of the BIR cannot be considered final.

A perusal of the evidence offered by respondent reveals that there was a preliminary letter, dated November 26, 1992, sent by respondent to petitioner containing the results of the investigation conducted by its examiners on its 1989 income tax liability (Exhibit "6") pursuant to letter of Authority dated December 5, 1991 (Exhibit "1"). No evidence was offered showing that there was any kind of preliminary letter or an assessment issued for its 1990 income tax liability. There is however a memorandum for the Chief of the Appellate Division, dated April 27, 1992, prepared by the Revenue officers (Exhibit "3") recommending the issuance of an assessment on the deficiency income taxes for the years 1989 and 1990 and a note that the claim for refund filed by the petitioner be denied. This memorandum suggests that petitioner deducted substantial amounts on their corporate income tax that should not have been allowed. It also contained other allegations that would show that petitioner utilized several devices and schemes to avoid paying the correct amount of taxes. Be that as it may, no formal assessment has been issued by the respondent to petitioner at the time this case was submitted for decision. Furthermore, respondent did not submit the BIR records of this case to this Court. We are then confronted only with the facts relating to petitioner's claim for refund and this Court is faced with the determination of the legal and factual bases of petitioner's cause to determine whether or not petitioner has successfully established his right to the refund based on the evidence presented.

Subsections (c) and (f) of Section 51 of the 1990 Tax Code provides as follows:

(c) *Statement of income payments made and taxes withheld.* - Every withholding agent required to deduct and withhold taxes under Section fifty-three (now 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. For final withholding taxes the statement should be given to the payee on or before January 31 of the succeeding year.

(f) *Income of recipient.* - Income upon which any creditable tax is required to be withheld at the source under Section 53 (now 50) shall be included in the return of its recipient but the 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 295 (now 204); if the income tax collected at source is less that the tax due on his return, the difference shall be paid in accordance with the provision of Section 50.

Also applicable in the instant case is Revenue Regulations No. 6-85, Revised and Consolidated Expanded Withholding Tax Regulations particularly Sections 6, 7 and 10, quoted hereunder:

SECTION 6. - Statement of income payments made and taxes withheld. - Every withholding agent required to deduct and withhold taxes under these Regulations shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year a written statement (BIR Form 1743.1) 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. Such statement (BIR Form 1743.1) shall be furnished the corporate payee not later that the 20th day following the close of the quarter in which payments was made or not later than March 1 of the following year in the case of individual payee. However, upon request, the payor shall be obliged to furnish such statement to the payee simultaneously with the income payment.

"The amount so withheld shall be allowed as a tax credit against the income tax liability of the payee in the taxable quarter or year in which the income was earned or received."

SECTION 7 - Verification of returns and statements. - Any return, statement or other document required to be filed under these Regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury and this declaration shall be in lieu of any oath otherwise required.

SECTION 10 - Claims 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 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 (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

In the case of **Citytrust Finance Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4134, November 11, 1991, this court interpreted the aforequoted provisions of law and came up with the following requirements in claiming a refund of creditable withholding taxes, thus:

> "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 records of this case show that petitioner has complied with requirement number (1) and as earlier discussed the claim for refund covering the taxable years 1989 and 1990 was filed within the two-year prescriptive period provided by law.

Petitioner has also complied with requirement number (2) as shown by the final adjustment returns filed by petitioner for 1989 and 1990. The final return filed by petitioner for the year 1989 (Exhibit "D") showed the total amount of P16,601,101.00 as rental income for the said period from which the various creditable taxes were withheld. Similarly, petitioner also declared a total amount of P44,614,317.00 as rental income for the calendar year 1990 (Exhibit "I"). A close examination of these aforementioned pieces of evidence shows that petitioner has declared in its annual corporate income tax returns the rental income as part of the gross income declared for the years 1989 and 1990.

Lastly, petitioner has complied with requirement number three (3) as shown by the photocopies of the Statements of Tax withheld at source (BIR Form No. 1743) submitted by its various withholding agents (Exhibits "E", "E-1", "J" and "J-1") reflecting therein the amount of tax withheld and the amount of rental income earned by the petitioner for the years 1989 and 1990, briefly summarized as follows:

For 1989

Withholding agent	Exh.	Rental Income	Tax Withheld
The Philippine American Life Insurance Company	E, E-1	P11,417,156.92	P 570,858.61

For 1990

Withholding agent	Exh.	Rental Income	Tax Withheld
The Philippine American Life Insurance Company	J	P40,195,323.82	P2,009,776.41
Paradise Holdings Corp.	K	468,016.20	23,400.84
Ms. Elsie Sorongon	K-1	49,860.60	2,493.03
IBM Philippines,			

Inc.	K-2	47,250.00	2,362.50
	T O T A L	P40,760,450.62	2,038,032.78

It was observed however that the statements of tax withheld at source issued by petitioner's withholding agents show only the total amount of P2,608,891.39 as taxes withheld for the years 1989 and 1990 which is less than the amount claimed as refund by petitioner.

WHEREFORE, in view of the foregoing, respondent Commissioner of Internal Revenue is hereby ordered to grant a refund to petitioner in the amount of P2,608,891.39 representing overpaid income tax for the taxable years 1989 and 1990.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
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