REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MARTIN B. PROPERTIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5361

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 01 1997

x - x

DECISION

This case involves a claim for refund of the sum of ₱1,344,676.00, representing overpaid income tax resulting from an excess payment of creditable withholding tax, for the calendar year ended December 31, 1993.

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the real estate business of selling townhouse units with principal office at Unit No. 45, Beverly Glen Townhomes, Peach Valley, Lahug, Cebu City.

On April 15, 1994, petitioner filed its 1993 Corporation Annual Income Tax Return reflecting a nil income tax liability but with a refundable income tax payment arising from excessive payment of creditable withholding tax at source in the amount of ₱1,580,426.00, detailed as follows: (Exhs. A to A-2)

Gross income:	
Sale of goods (Sch. 1)	₱ 2,023,194.00
Rent, lease etc. (Sch. 3)	694,425.00
	₱ 2,717,619.00
Less deductions (Sec. D)	12,749,063.00
Net loss	₱10,031,444.00
Tax due	nil
Less tax credits: (Sec. E)	
a. Prior year's excess credit	₱ 235,750.00
b. Quarterly payments made this year	
c. Creditable tax withheld	1,344,676.00
Amount refundable	₱ 1,580,426.00

Petitioner opted to apply this excess income tax payments as tax credit for the next calendar year of 1994. However, petitioner changed its course and decided to have the sum refunded by filing a written claim for refund with the Bureau of Internal Revenue on August 26, 1994.

Respondent did not act on this claim for refund, thus, the petitioner was compelled to take the present action in order to preserve its right to judicially claim for the refund of excess payment of income tax pursuant to Section 230 of the National Internal Revenue Code, as amended.

It is noteworthy at this juncture to point out that the amount judicially sought by petitioner was only limited to ₱1,344,676.00 representing the 1993 payment of creditable withholding tax at source and not

P1,580,426.00 reflected in its 1993 income tax return nor in the administrative claim for refund.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund of the sum of P1,344,676.00, representing alleged overpaid creditable withholding tax for the calendar year 1993.

Petitioner believes that it is entitled to the refund sought anchoring its stand on Section 69 of the National Internal Revenue Code, as amended, in relation to Section 230 of the same code. For easy reference Sections 69 and 230 are hereby quoted as follows:

> **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 face of the return upon which payment was made, such payment (should be read "tax") appears clearly to have been erroneously paid.
>
> x x x x x x x x x."

In support of its contention, petitioner presented the following documents as evidence:

a. the 1993 and 1994 final income tax returns with the attachments of 1992 income tax return, financial statements and auditors' report (Exhs. A to A-2, and P to P-1);

b. the various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. B to N-1, inclusive);

c. the letter-claim for refund with the Bureau of Internal Revenue (Exhs. O and O-1); and

d. the monthly remittance return of income taxes withheld pertaining to the certificates of creditable withholding tax at source (Exhs. Q to BB-1, inclusive).

Respondent, on the other hand, failed to submit any controverting evidence to refute the claim of the petitioner. Her counsel merely manifested in the Hearing of October 25, 1996 that after "verification made by the Regional Office of the various documents relevant to this case, showed that the present claim for refund is *meritorious*". Respondent's counsel then submitted his case on the basis of the pleadings (see Minutes of the Session, October 25, 1996, CTA records, p. 101).

After a thorough study of the records and evidence of the case, this Court finds the petition for review meritorious. Petitioner complied with the requirements this Court has laid down in numerous cases involving claim for refund of excess creditable withholding tax at source, and these are the following:

1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;

2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and

> 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. **[Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

Petitioner filed a claim for refund with the BIR and with this Court within the two-year prescriptive period prescribed by Section 230. It filed its letter-claim for refund with the BIR on August 26, 1994 (Exhs. O and O-1) and its petition for review in this Court on April 12, 1996. The two-year period, in the instant case, commenced to run on April 15, 1994, the actual date of filing of petitioner's 1993 Corporation Annual Income Tax Return which is also the time required by law for it to file its final income tax return **(Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 83736, January 15, 1992).** The income upon which the creditable withholding taxes were paid were included in petitioner's gross income (Exh. A). Further, the certificates of creditable withholding tax at source (BIR Form 1743.1) and the monthly remittance returns established the fact of payment and remittance of the same (Exhs. B to BB-1, inclusive).

However, this Court noted that Exhs. N and N-1 pertain to the payment of 1994 withholding tax, hence the amounts reflected therein should not be included in petitioner's final computation of allowable refund for 1993.

It was stressed earlier that the present claim for refund only covers the year 1993 thus the payment of 1994 should not form part as payment for 1993.

The amount to be granted to petitioner are the following creditable withholding tax payments made in 1993 which were not applied as tax credit in 1994:

Withholding Agent	Amount of Income Payment	Amount of Tax Withheld	Exh.
Ermar Bolabola	₱ 4,530,000.00	₱ 113,250.00	C, C-1
Emma E. Bayer	4,573,550.00	114,338.75	D, D-1
Jose B. Garcia	4,500,000.00	112,500.00	E, E-1
Ramon & Marilu Gruet	4,500,000.00	112,500.00	F, F-1
Dennis & Genevieve Yap	4,530,000.00	113,250.00	G, G-1
Faustino Co	4,530,000.00	113,250.00	H, H-1
Socorro V. Lienaw	4,530,000.00	113,250.00	I, I-1
Rosario Chew	4,530,000.00	113,250.00	J, J-1
Mr. Antonio Dy	4,410,000.00	110,250.00	K, K-1
Ingrid Sala Santamaria	4,320,000.00	108,000.00	L, L-1
Johnson Ong Ang	4,303,500.00	107,587.50	M, M-1
T O T A L	₱49,257,050.00	₱1,231,426.25	

WHEREFORE, in view of the foregoing, the petition for review is hereby **PARTIALLY GRANTED.** Respondent is ORDERED to **REFUND** in favor of petitioner the sum of P1,231,426.25, representing overpaid income tax for the calendar year 1993.

No pronouncement as to cost.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with the member 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