Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PL MANAGEMENT INTERNATIONAL PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6107

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 10 2001

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DECISION

This case involves a claim for refund in the amount of P1,200,000.00 allegedly representing overpaid creditable withholding tax for the taxable year 1997.

Petitioner is a corporation duly organized and existing under Philippine laws. For the taxable year 1997, Petitioner allegedly earned income from professional services rendered to UEM-MARA Philippines Corporation (UMPC) in the amount of P24,000,000.00. Such income was, however, declared as part of Petitioner's unearned income in its 1997 Income Tax Return filed on April 13, 1998, particularly in the attached Balance Sheet for the period ended December 31, 1997 (Exhibit A, page 96, CTA Records)

UMPC, Petitioner's withholding agent, withheld the amount of P1,200,000.00 as evidenced by a certified true copy of the Certificate of Creditable Tax Withheld at Source (Exhibit B). This amount was withheld from the professional fees paid to Petitioner amounting to P24,000,000.00.

On April 13, 1998, Petitioner filed its 1997 Income Tax Return (Exhibit A) reporting a net loss of P983,037.00 and an excess tax credit of P1,200,000.00 which was opted to be applied as credit to the next taxable year, to wit:

Gross Income	P 391,240.00
Less: Deductions	1,374,277.00
Taxable Income/(Loss)	P (983,037.00)
TAX DUE	NIL
Less: Tax Credits	P 1,200,000.00
Income Tax Overpayment	P(1,200,000.00)

On April 13, 1999, Petitioner filed its 1998 Income Tax Return declaring a net loss of P2,772,043.00 and an income tax overpayment of P1,800,000.00 which included prior year's excess credits of P1,200,000.00 (Exhibit C), details of which are shown below:

Gross Taxable Income	P 6,527,901.00
Less: Deductions	9,299,944.00
Taxable Income/(Loss)	P (2,772,043.00)
TAX DUE	NIL
Less: Tax Credits/Payments	
1.) Prior Year's Excess Credits	P1,200,000.00
2.) Tax Credits/ Withheld/ Payments for the First Three Quarters	600,000.00
Income Tax Overpayment	P(1,800,000.00)

The income tax overpayment of P1,800,000.00 was opted to be carried over to the next taxable year as signified by marking the box "to be carried as tax credit next year."

Petitioner was unable to apply the 1997 tax credit against its 1998 tax due because it incurred a net loss for that year. A written claim for refund was thus, filed on April 12, 2000 with the Revenue District Office No. 50, Makati City pertaining to the 1997 tax credit in the amount of P1,200,000.00.

For Respondent's failure to act on the said claim, Petitioner filed the instant Petition for Review on April 14, 2000 by registered mail to toll the running of the two-year prescriptive period prescribed under Section 204 (3)[now 204 (C)] in relation to Section 230 [now 229] of the old Tax Code.

In his Answer dated June 5, 2000, Respondent raised the following Special and Affirmative Defenses, to wit:

> "4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35)*;
>
> 6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (*Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304*);
>
> 7. In action (*sic*) for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;
>
> 8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;
>
> 9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable."

Petitioner formally offered the following documents to support its claim for refund:

Exhibit	Description
A	Certified True Copy of 1997 Income Tax Return with attachments and supporting documents
B	Certified True Copy of Certificate of Creditable Tax Withheld issued by UEM Mara Philippines Corporation
C	Certified True Copy of 1998 Income Tax Return with attachments and supporting documents
D	Letter dated April 12, 2000 addressed to the Commissioner of Internal Revenue and Revenue District Officer, Makati District Office, BIR

The following are the issues which have been jointly stipulated by the parties, to wit:

1. Whether or not Petitioner declared the P24,000,000.00 income, from which the P1,200,000.00 overpaid tax was withheld, as part of its unearned income in its 1997 Income Tax Return (the "1997 ITR");

2. Whether or not the P1,200,000.00 was actually withheld at source by UEM-MARA Philippines Corporation from the Petitioner, and

3. Whether or not Petitioner has evidence to support the refund in the claimed amount.

We resolve to deny the claim.

Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85) as affirmed by jurisprudence, laid down the following three basic requirements for the refund of excess creditable withholding taxes, thus:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204(C)] in relation to Section 230 [now 229] of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient [*Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citytrust Finance Corporation vs. The Honorable 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, C.A. 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. CIR, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. CIR, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000; Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

Records reveal that Petitioner filed its Annual Income Tax Return for taxable year 1997 on April 13, 1998 (Exhibit "A") and its claim for refund with the BIR on April 12, 2000 (Exhibit "D" and No. 2 of the Statement of Admitted Facts and Issues). Several days thereafter, or on April 14, 2000, Petitioner filed an appeal with this Court.

The aforementioned facts clearly show that the judicial claim for refund via this Petition for Review was already filed beyond the two-year prescriptive period mandated by Sections 204(C) and 229 of the Tax Code, quoted hereunder, thus:

"**SEC. 204.** *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* – The Commissioner may –

x x x x x x x x x

"(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in this discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

Section 229. *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 collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively 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 filed after the expiration of two (2) 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.

Jurisprudence has clearly established that the two-year period of prescription for claiming a refund of corporate income tax is counted from the date of payment of the tax, that is, from the date of actual filing of the annual income tax return. The Supreme Court in the case of **Commissioner of Internal Revenue vs. Court of Appeals, CTA and Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation, G.R. No. 117254 promulgated on January 21, 1999**, explained the rationale of counting the 2-year prescriptive period from the date of filing of the annual ITR, in this manner:

> On the other hand, in ACCRA Investments Corporation v. Court of Appeals, where the question was whether the two-year period of prescription should be reckoned from the end of the taxable year (in that case December 31, 1981), we explained why the period should be counted from the filing of the final adjustment return, thus:
>
> > Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue v. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that 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. Hence, the petitioner corporation had until April 15, 1984 within which to file its claim for refund.
> >
> > 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 15, 1982.

As earlier mentioned, Petitioner filed its Annual ITR on April 13, 1998 and filed its judicial claim for refund only on April 14, 2000 which is beyond the two-year period earlier discussed. The aforequoted Sections 204(C) and 229 of the Tax Code mandates that both the administrative and judicial claims for refund must be filed within the two-year period, otherwise the taxpayer's cause of action shall be barred by prescription. Unfortunately, this lapse on the part of Petitioner proved fatal to its claim.

Considering that Petitioner failed to file its judicial claim within the two year prescriptive period provided under Section 230 of the old Tax Code (now Section 229), the Court finds it no longer necessary to discuss Petitioner's compliance with the other two aforementioned requirements.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** due to prescription.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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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