Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

ROBINSON'S LAND CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4699

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
FEB 21 1996

x - x

D E C I S I O N

This case involves a claim for refund of overpaid income tax in the amount of P994,919.45 arising from quarterly income tax and creditable income tax withheld at source for the fiscal year ending September 30, 1989.

The facts are simple.

Petitioner is a domestic corporation, organized and existing under the laws of the Republic of the Philippines with principal office at M. Adriatico Street, Ermita, Manila.

Primarily, petitioner is engaged in the business of leasing commercial area/spaces.

As alleged petitioner incurred a net operating loss of P83,385,421.00 for the fiscal year 1989.

Thus, incurring a refundable income tax amounting to P994,919.45 which was carried over to the succeeding fiscal year 1990. Allegedly, petitioner again incurred a net operating loss in fiscal year 1990 in the amount of P58,857,796.00.

On November 21, 1991, petitioner filed an administrative claim for refund with the Bureau of Internal Revenue, but up to this date the same remains unacted upon.

Thus, to toll the running of the two-year prescriptive period, petitioner filed this petition for review.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the claim for refund in the amount of P994,919.45 arising from quarterly income tax and creditable income tax withheld at source for the year ending September 30, 1989.

We find for the petitioner.

Section 69 of the National Internal Revenue Code provides, thus:

> 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:
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> 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, <u>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.</u> (*Underscoring supplied*)

Insofar as the refundable amount shown on its final adjustment return for taxable year 1989 was not applied in the succeeding taxable year 1990 as petitioner again experienced tax loss positions, the automatic carry-over was therefore, impracticable.

Moreover, in claims for refund the law requires the following:

> 1. that petitioner filed a claim for refund within the two (2) year period as prescribed by Sec. 292 (now 230) of the NIRC;
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> 2. that the income upon which the taxes were withheld were included in the return of the recipient; and
>
> 3. the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount paid and the amount of tax withheld therefrom. (Sec. 10, Rev. Regs. No. 6-8; see Citytrust Finance vs. The Commissioner of Internal Revenue, CTA Case No. 4143, November 1, 1991, and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046 Supra).

The aforementioned requirement were satisfactorily met by petitioner when it filed the subject claim for refund with the Bureau of Internal Revenue on November 29, 1991. Second, petitioner's witness Mr. Precioso J. Sapina testified during the hearing on February 4, 1993 that petitioner included in its income tax return for the fiscal year 1989 the particular income from which the various creditable taxes were withheld. (Exhibit "A" - 1989 Income Tax Return of Robinson's Land Corporation)

Petitioner complied with the third requirement when it presented in evidence statements of the tax withheld at source (BIR Form 1743), certificates of creditable income tax withheld at source (BIR Form 1743.1) and the Quarterly Income Tax Return (BIR Form 1702-Q) for the period in question.

However, records reveal that petitioner marked the appropriate box in the lower left portion of 1990 income tax return "to be carried as tax credit to the succeeding taxable year", nevertheless the same will not defeat the granting of the refund for taxes paid in 1989 as the law allows only an automatic carry-over on a succeeding year. Thus, petitioner cannot apply the payments made in 1989 to 1991.

A cursory examination of the documents presented by petitioner reveals that some are not conclusive of withholdings tax payments. These are those covered by withholding agent's monthly remittance returns of income tax withheld (BIR Form 1743-W) and withholding agent's annual returns of expanded withholding taxes (BIR Form 1743-B). The payments covered by these documents were disregarded in the computation while the following payment of taxes were conclusively paid:

a. Income Tax Payments:

Qtr	CBCR	Date	Exh.	Order	Payment Date	Exh.	Amount
1st	16236913	2.28.89	C	4461235	2.28.89	D	P 38,431.40
2nd	16981977	5.29.89	F	5162662	5.29.89	G	42,195.65
3rd	17814544	8.29.89	I	5897378	8.29.89	J	50,940.40
						TOTAL	P131,566.45

b. Creditable withholding tax at source:

Withholding Agent	Tax Withheld	Exh.
JBS Enterprises	P 1,423.11	R,S
International Culinary School	2,862.50	T,U
M.S. Ocana Copy Systems/ Jocelyn Grace Ocana Pico	1,686.30	AA,Z
Molano Handicraft	1,074.16	EE,HH,II
Reech Ent.	1,100.00	MM
Corazon E. Silva (Tots & Teens Ent.) "CORALYN"	5,511.24	QQ
Voyager Travel & Tours, Inc.	1,939.20	UU,VV
Foto-Me	3,175.00	WW,XX,YY,ZZ,AB
Wenphil Corporation	16,350.00	AC,AD,AE,AF,AG,AH,AI
PS Photoserve	915.00	AM
National Book Store	5,848.37	AR,AT,AU,AV
Golden Donuts, Inc.	9,578.25	AW,AX,AY,AZ,BA
Robinson's Chicken Avenue/ PAM's Burger Avenue	7,395.83	BG,BH,BI,BJ,BK,BL
Shopper's Gain Supermart	105,750.00	BQ,BR
Food & Such Inc. (Cafe Faura)	3,825.50	BY,BZ
Sinde's Gift Shop	16,905.94	CE,CG,CH
JCEE Marketing Corporation	2,160.00	CN,CM,CO
Visual Mix, Inc.	6,415.78	CP,CQ,CR,CS,CT,CU,CV, CW,CX,CY,CZ,DA,DB,DC, DE,DF,DG,DH,DI
Bevan Supplies	7,290.00	DO,DP,DQ
Alta-Food Services	6,973.58	DT,DX,DY,DZ,EA,EB,EC
Golden Hen Food Services, Inc.	1,661.46	ED

Mercury Drug Corporation	4,288.26	EG,EH,EI,EJ
Farmacia Oliva	10,821.13	EK,EP,EQ,ER,ES,ET
J/J Medical & Industrial Service	1,200.00	EU
Sencio Richard Yu (Lady Annelle Shop)	4,927.50	EW,EX,FB
Faustino O. Salud/Trade Mark Ind.	3,799.48	FC,FH,FK
Philippine Telegraph & Tel. Corp.	4,932.00	FL,FN,FO
Radio Comm. of the Phils. Inc.	1,240.00	FP,FQ
LBC Express, Inc.	1,413.75	FR,FS,FT
Present Perfect Enterprises, Inc.	4,001.74	FU,FV,FW,FX
Jo-ni's Cakes & Pastries, Inc.	1,035.00	FY
Kameraworld Inc.	4,640.49	GA,GB
Cindy's Hamburger, Inc.	9,000.00	GC,GD,GF,GE
Frosty Foods, Inc.	7,664.64	GH,GL
Trophical Stitch Inc.	1,890.00	GM,GN,GO
Avant Garde Travel and Tours	2,762.50	GP,GQ
Bevan Supplies	7,573.44	GR,GS,GT
Mirriams Boutique	3,105.00	GX
Coco Villa Chinese Rest. & Karaoke	7,762.50	HD,HE,HF,HG,HI
Frosty Foods, Inc.	5,400.00	HJ,HK,HL,HM,HN
Salvador Togle (Mint & Mart)	1,350.00	HO
Tropical Stitch Inc.	2,700.00	HP
Ricobensen Trading Corporation	1,276.44	HQ
Robinson's Inc.	388,724.64	HR,HS
Robinson's Inn Inc.	44,141.50	HT
TOTAL	P735,491.23	

As it is, petitioner is only entitled to the amount of P867,057.68 which was proven by evidence, while petitioner claims the amount of P994,919.45. Insofar as petitioner suffered a net loss position for the year 1990 as reflected in its annual corporate income tax return, a refund in the reduced amount of P867,057.68 is in order. (*BPI Family Savings Bank Inc. vs. CIR, CTA Case No. 4325, March 17, 1994; Maja Development Corp. vs. CIR, CTA Case No. 4788, September 30, 1994*).

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or issue a tax credit in favor of the petitioner, the amount of P867,057.68 representing overpaid income tax.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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