REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION
Petitioner,

- versus-

CTA CASE NO. 5056

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 16 1996

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DECISION

This is a judicial claim for the refund of alleged overpaid income tax for the calendar year 1991 in the amount of P6,847,785.00.

Petitioner is a domestic banking corporation duly organized and existing under and by virtue of Philippine laws.

In a letter, dated July 26, 1993, and received by the office of the respondent on July 27, 1993, petitioner requested for the refund or the issuance of a tax credit certificate in the amount of P6,847,785.00 representing overpaid income tax for the taxable year 1991, detailed as follows :

Gross Income		P 959,122,900
Less: Deductions		887,870,560
Net Income		P 71,252,340
		35%
Tax Due		P 24,938,319
Less: Quarterly payments/ credits for 1991	-P 31,566,059	
Creditable Tax Witheld (EWT)	220,045	31,786,104
		(P 6,847,785)

The letter- claim for refund mentioned that the excess income tax payments made in 1991 were not utilized to pay its tax liabilities for the succeeding year due to its loss position in 1992, thus the petitioner saw a sufficient legal basis to ask for the refund of the amount of P6,847,785. However, respondent failed to act upon this administrative claim for refund. Petitioner then resorted to seek redress from this Court by filing a petition for review on January 12,1994. This petition merely echoed the allegations contained in the aforecited letter-claim for refund reiterating herein that the petitioner's income tax liability for 1991 amounted to only P24,938,319.00 and that quarterly payments and withholding tax payments covering the same period all added up to the sum of P31,786,104.00, leaving an excess payment of P6,847,785.00.

The reason for respondent's inaction on the administrative claim for refund was brought to light when she expressed her opposition to this petition by setting forth the following Special and Affirmative Defenses, thus :

> 6. The total amount of P6,847,785.00 claimed by the petitioner as alleged overpaid income tax for calendar year ended December 31, 1991 was not properly documented;

7. Petitioner likewise failed to show that it had strictly complied with the requirements of Section 204 in relation to Section 230 of the National Internal Revenue Code;

8. The burden to show compliance with the requirements for entitlement to tax refund/tax credit is upon petitioner since a claim for refund/or tax credit partakes of the nature of a tax exemption which is construed strictly against the claimant. (Resins Inc. vs. Auditor General, 25 SCRA 754).

9. Allegations of loss in business operations/transaction do not ipso facto entitle one to a tax refund/credit of taxes previously paid .

The foregoing defenses proposed by the respondent focuses the attention of this court to the resolution of the issue of whether or not the petitioner has shown its entitlement to the refund of alleged excess income tax payments in the amount of P6,847,785.00 by the presentation of competent evidence to support its position.

Petitioner began with the presentation of its 1991 final corporate income tax return (Exhibit "A") showing an income tax liability of P24,938,319.00 and a total payment of P31,786,104.00. The same final income tax return reflected the amount of P220,045.00 as creditable withholding taxes for the year 1991. In this connection, petitioner also offered as evidence, photocopies of

Certificates of Creditable Income Tax Withheld at Source (BIR Form No. 1743.1) (Exhibits "L" to "L-109") to show the amount of income tax withheld by various withholding agents during the period covered by the claim for refund. The payments made during the the three quarters of 1991 were shown by the presentation of the photocopies of BIR Payment Orders, Central Bank Confirmation Receipts and Machine Validation/Revenue Official Receipt embodied in petitioner's Quarterly Income Tax Return for the third quarter of 1991 (Exhibit "C","D","F","G",and "H"), all evidencing the total payment of P31,566,059.00. Added to this amount is the sum of P220,045.00 pertaining to the creditable withholding taxes of petitioner for 1991 (Exibit "A-3"). In summary, petitioner's income tax payments as evidenced by Exhibits "C","D","F","G", and "H" are detailed below, thus:

	Amount
1st Quarter Payment	P14,059,442.00
2nd Quarter Payment	11,457,054.00
3rd Quarter Payment	6,049,563.00
	31,786,104.00
Add: Creditable W/T	220,045.00
TOTAL	P31,786,104.00

Respondent offered the BIR records as her evidence, part of which is the investigation report prepared by the Revenue District Officer recommending the denial of the instant claim for refund on the ground that petitioner failed to submit the necessary records, documents and books of account to support its claim.

Contrary to the abovecited recommendation made by the Revenue District Officer, this Court finds that the petitioner has adequately proven its entitlement to the refund claimed. As discussed earlier, petitioner has shown that excess amount was not utilized in 1992 as it suffered a net loss in this period (Exhibit "I"). Moreover, petitioner likewise offered its 1993 final corporate income tax return (Exhibit "K") to prove that the amount in excess of its tax liabilities for 1991 was not used to pay any of its tax liabilities for the taxable year 1993.

Inasmuch as the petitioner produced its 1991,1992 and 1993 final corporate income tax returns which proved to be sufficient to convince this Court that the excess payments made during the 1991 taxable year remain unutilized to warrant the grant of the claim.

Another aspect of the excess income tax payments claimed by the petitioner are the creditable withholding taxes alleged to have been paid by the petitioner during the same taxable period of 1991. It has been well-established that a refund of the excess creditable withholding taxes shall be granted only if the claimant has complied with the three requirements enunciated in numerous decisions decided by this Court, the more recent ones being, Far East Bank and Trust Co.. vs. Commissioner of Internal Revenue, CTA Case No. 4972, January 24, 1996; Ayala Life Assurance Inc vs. Commissioner of Internal Revenue, CTA Case No.4596; Kao (Philippines)Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4899, February 21, 1995. The requirements mentioned in the aforecited cases are the following, thus:

> 1. That it filed a claim for refund within the two-year period as prescribed under Section 230 of the NIRC;
>
> 2. That the income upon which the taxes were witheld were included in the return of the recipient;
>
> 3. The fact of withholding is established by a copy of a 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.

The records of this case reveal that the petitioner has complied with the first requirement because this petition for review filed on January 12, 1994 is well within the two-year period required by law for filing a claim for refund particularly for 1991 income taxes where the final income tax return was filed by the petitioner on April 15, 1992. In the case entitled **Commissioner of**

Internal Revenue vs. TMX Sales Inc. 205 SCRA 184, the Supreme Court held:

> Consequently, the two-year prescriptive period provided in Section 292 (now 230) of the Tax Code should be computed from the time of the filing of the Adjustment Return or Annual Income Tax and final payment of the income tax.

The second requirement was likewise complied with because the income upon which the creditable taxes were withheld were included by the petitioner in its income tax return. With respect to the third requirement, the petitioner offered in evidence the Certificates of Creditable Income Tax Withheld at Source (BIR Form No.1743.1) denominated as Exhibits "L" to "L-109" issued by its various withholding agents stating therein the amount paid to the petitioner and the amount of tax withheld therefrom.

WHEREFORE, in view of the foregoing, the claim for the refund of excess income tax payments made in 1991 is hereby **GRANTED** and the Respondent is hereby ordered to issue a tax credit certificate in favor of petitioner in the amount of P6,847,785.00

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