REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE REALTY & HOLDINGS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6275

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 16 2003

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P36,331,684.00 allegedly representing excess creditable withholding taxes for the calendar year ended December 31, 1998.

Petitioner is a corporation duly organized and existing by virtue of the laws of the Philippines, with principal office and business address at the 33rd Floor, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig City, Metro Manila. Pursuant to the criteria prescribed in Republic Act No. 7646 and its implementing regulations, the respondent classified the business of petitioner under the large taxpayer's group.

On April 15, 1999, petitioner filed its 1998 Corporation Annual Income Tax Return reflecting, among others, a Minimum Corporate Income Tax (MCIT) due in the amount of P5,011,560.00 and creditable taxes withheld in the sum of P49,062,535.00, thereby resulting in an excess income tax payment in the amount of P44,050,975.00 (*Exhibit A*, *inclusive of submarkings*). Petitioner manifested in the said return its intention to have the excess income tax payment refunded.

On April 29, 1999, petitioner amended its 1998 income tax return in order to correct its erroneous computation of the MCIT for the said year (*Exhibit B, inclusive of submarkings*). Instead of the original MCIT of P5,011,560.00, it rose to P12,730,851.00. Consequently, the excess income tax payment of petitioner was reduced from P44,050,975.00 to the amount of P36,331,684.00 (*Joint Stipulation of Facts, par. 5*).

On December 27, 1999, petitioner filed with the Appellate Division of the Bureau of Internal Revenue a letter of equal date seeking the refund of the alleged excess income tax payment for the taxable year 1998 in the amount of P36,331,684.00 in accordance with the provisions of Section 204(C) of the Tax Code (*Exhibit F, inclusive of submarkings*). The said administrative claim for refund was processed by respondent and was consolidated with the examination of its books of accounts and other accounting records for the year 1998 (*Exhibits I, J, K, L and M*). However, the investigation was not completed. Hence, petitioner was compelled to file the instant petition for review on April 11, 2001 in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code, as amended.

In his Answer filed on May 18, 2001, respondent raised the following Special and Affirmative Defenses:

> "6. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;
>
> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

8. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

9. It is incumbent upon petitioner to prove that it has complied with the governing rules relative to tax recovery or refund as provided for under Sections 204 and 212 of the Tax Code, as amended;

10. Furthermore, petitioner failed to prove that it has complied with Sections 27(E) of the Tax Code, as amended in relation to BIR Revenue Regulations No. 9-88 relative to the imposition of the Minimum Corporate Income Tax on Domestic Corporation;

11. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit; and

12. Finally, there is no way to dispute the cardinal rule in taxation that tax exemptions are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must clearly expressed. (Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., 64 SCRA 555)."

To bolster its entitlement to the claim for refund, petitioner presented the following documentary evidence:

1. Original and Amended Corporation Annual Income Tax Returns for the year 1998 together with their corresponding Account Information Forms and audited Financial Statements (*Exhibits A and B, inclusive of submarkings*);
2. Corporation Quarterly Income Tax Returns for the first, second and third quarters of 1998 with the corresponding attachment of Schedule of Creditable Withholding Taxes for every quarter (*Exhibits C, D, and E, inclusive of submarkings*);
3. Letter claim for refund with the respondent (*Exhibit F, inclusive of submarkings*);

4. Several letters of communication coming from the respondent's Bureau relative to the ongoing examination of petitioner's claim for refund and examination of books of accounts for the year 1998 (*Exhibits I, J, K, L and M*);
5. Summaries of the (unutilized) creditable withholding taxes for the year 1998 (*Exhibits G, inclusive of submarkings, N, O, P*), Summary of Accounted 1998 Creditable Withholding Taxes paid by Unit Buyers (*Exhibit P*), and Summary of Accounted 1998 Creditable Withholding Taxes withheld by Lessees of petitioner (*Exhibits Q and Q-1*);
6. Various Certificates of Creditable Withholding Taxes, Monthly Remittance Returns of Income Taxes Withheld to prove payment of creditable withholding taxes for the year 1998 (*Exhibits O-1 to O-96, P-1 to P-12, and Q-2 to Q-80*); and
7. Report of the commissioned independent CPA with respect to the examination and verification of creditable withholding taxes of petitioner for the year 1998 (*Exhibits R and R-1).*

The above evidence were all admitted by the court in its resolution dated May 14, 2002 (*CTA records, pages 182 & 183*). On August 28, 2002, respondent submitted his case without any evidence (*CTA records, page 189*). Nor did he submit a memorandum.

The issues we are tasked to resolve have been jointly stipulated by the parties, to wit:

1. Whether or not the claim for refund was filed within the two year period under Section 58 of the Tax Code, as amended;

> 2. Whether or not petitioner's overpaid creditable withholding taxes for taxable year 1998 in the total amount of Thirty Six Million Three Hundred Thirty-One Thousand Six Hundred Eighty-Four Pesos (P36,331,684.00) is substantiated by documentary evidence;
>
> 3. Whether or not said overpaid creditable withholding tax was carried over to the next taxable year;
>
> 4. Whether or not the income upon which taxes were withheld were included in the return of the petitioner; and
>
> 5. Whether petitioner is entitled to the refund of the amount of Thirty-Six Million Three Hundred Thirty-One Thousand Six Hundred Eighty-Four Pesos (P36,331,684.00), representing petitioner's excess creditable tax withheld for the taxable year 1998.

The legal anchor of petitioner in claiming for the refund of its excess income tax payment is Section 76 of the Tax Code as amended, which provides:

> **Section 76.** ***Final Adjustment Return.*** - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

Under the aforequoted Section 76 of the Tax Code, as amended, the excess tax credits or overpaid income tax of a given taxable year of a corporation may either be refunded or may be carried-over and credited against its estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

In the case at bar, petitioner suffered a net loss from its business operations during the year 1998 (*TSN, August 13, 2001, page 8*). But it has a total creditable withholding taxes in the sum P49,062,535.00 (P48,758,971.00 + P303,564.00) which was applied against its MCIT due in the amount of P12,730,851.00 leaving a balance of P36,331,684.00 as its unutilized creditable withholding taxes for the year 1998. Thus, based on the face of the 1998 income tax return, the said unapplied creditable withholding taxes appear to be refundable. However, petitioner must still prove its entitlement for the refund by substantial evidence.

Section 229 of the Tax Code provides that the claim for refund both in the administrative and judicial levels, must be filed within two years from the date of payment of the tax. For easy reference, Section 229 of the Tax Code is hereby quoted as follows:

> **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 or illegally assessed or 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 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requisites:

> 1) The claim for refund was filed within two years as prescribed under Section 230 (now 229) of the Tax Code;
>
> 2) The income upon which the taxes were withheld 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.
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> [Section 10, Rev. Regs. No. 6-85; see **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; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**].

Petitioner was able to comply with requirement number one. Petitioner filed its claim for refund with the Bureau of Internal Revenue on December 27, 1999 (*Exhibit F inclusive of submarkings*) and the instant petition for review with this court on April 11, 2002 (*Exhibit H, inclusive of submarkings*). The two-year period is reckoned from April 15, 1999, the date when petitioner filed its original 1998 annual income tax return (**Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corp. vs. The**

Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; and Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989).

The fact of withholding was also established by petitioner through the presentation of the various certificates of creditable withholding taxes at source and a number of monthly remittance returns of income taxes withheld (*Exhibits O-1 to O-96, P-1 to P-12, and Q-2 to Q-80*). The commissioned independent CPA examined the said documents pursuant to CTA Circular No. 1-95, as amended (*TSN, November 21, 2001*). In her report dated November 16, 2001, the following findings were arrived at: (*Exhibits R and R-1*).

> "The results of our examination of the original certificates of creditable withholding taxes (Form No. 2307) follow:
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> | | |
> |---|---|
> | Total amount per income tax returns | P49,062,535.00 |
> | Total tax certificates examined | 48,800,979.41 |
> | Unaccounted | P 261,555.59 |
>
> Further, after deducting the MCIT for 1998 amounting to P12,730,851, the result will still be the same, as shown below:
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> | | |
> |---|---|
> | Total tax certificates examined | P48,800,979.41 |
> | Less MCIT | 12,730,851.00 |
> | Unutilized certificates | P36,070,128.41 |
> | Total amount of claim for refund | 36,331,684.00 |
> | Unaccounted | P 261,555.59 |
>
> The amount being claimed by Philippine Realty & Holding Corporation for refund should, therefore, be reduced by the unaccounted amount of P261,555.59."

A further verification of the tax certificates examined by the commissioned independent CPA disclosed that some of the supported creditable withholding taxes should be disallowed for following reasons:

Withholding Agent	Exh.	Taxes Withheld	R e m a r k s
Chopstix Express	Q-7, Q-8	P 9,866.40	withholding tax compensation
Gammox Foods	Q-24	815.16	withholding tax compensation
Mae Chow Line	Q-38	4,159.02	1999 creditable withholding tax
Sprint Fitness	Q-55	7,507.19	claimed twice; same period with that of Exh. Q-53
T o t a l		P22,347.77	

Therefore, the court finds it necessary to disallow the amount of P261,555.59 representing unsupported creditable withholding taxes for the year 1998 and the additional amount of P22,347.77 for the reasons above-stated.

Anent requirement number three, the court is convinced that the income upon which the creditable taxes were withheld were included as part of the gross income declared in petitioner's income tax return. This finding is based on the presumption that there was no falsity in the preparation of 1998 income tax return of petitioner. It is to be stressed that the respondent had already commenced its examination on petitioner's books of accounts. However, up to the promulgation of this decision, the respondent failed to render his report of investigation. In the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** the Supreme Court relied on the accuracy of income tax return of the taxpayer and emphasized therein:

> In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:

> "Section 8. *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-A) showing the amount paid and the amount of tax withheld therefrom."

A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC.

In the case in hand, Respondent Commissioner examined petitioner's income tax returns and presumably found no false declaration in them, because he did not allege any such false declaration before Respondent Court and the Court of Tax Appeals (CTA). In the CTA, Respondent Commissioner's refusal to refund was based on the argument that the claim filed on October 31, 1981 was time-barred. It bears stressing that this issue was not raised in the appeal before us. The issue of operational losses was not raised until the appeal before Respondent Court was filed on February 5, 1992. By such time, at least a decade had already passed since the pertinent books and accounting records of petitioner-bank were closed. Section 235 of the Tax Code requires the preservation of the books of account and records only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. To expect petitioner to have its books and records on hand during the appeal was obviously unreasonable and violative of Section 235 in relation to Section 203 of the Tax Code.

In addition, the Tax Code has placed several safety measures to prevent falsification of income tax returns which the Court recognized in *Commissioner vs. TMX Sales, Inc.*:

> "Furthermore, Section 321 (now Section 232) of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (P25,000.00) be audited and examined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profit and loss statements, schedules listing income producing properties and the corresponding incomes therefrom and other related statements.
>
> It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of accounts has to be conducted in accordance with generally accepted auditing standards.
>
> Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the Final Adjustment Return, where the figures of the gross receipts and deductions have been audited and adjusted, that is truly reflective of the results of the operations of a business enterprise. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures."

Therefore, the alleged irregularity in the declared operational losses is a matter which must be proven by competent evidence. In resisting the claims of petitioner, Respondent Commissioner set up the defense of the legality of the collection of the creditable withholding tax as well as prescription, instead of presenting an assessment of the proper tax liability of the petitioner. This fact leads us to the conclusion that the income tax returns were accepted as accurate and regular by the BIR.

We find the above pronouncement in all fours with the case at bar. Thus, we safely conclude that the 1998 final adjustment return of petitioner was accurately presented in the absence of any (negative) report of investigation.

Lastly, as testified to by petitioner's witness, Ms. Josefa Bernadette Dizon, the subject creditable withholding taxes were not carried over as tax credit to the succeeding taxable year (*TSN, February 12, 2002, page 6*). This fact is corroborated by the 1998 (original and amended) annual income tax returns wherein petitioner clearly indicated its option to have the excess income tax payment refunded.

Hence, under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something when "there [was] no right to demand it," and thus "the obligation to return arises." Heavily militating against Respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, simple justice requires the speedy refund of the wrongly held taxes (**Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, *supra***).

In sum, petitioner is entitled to the claim for refund in a reduced amount of P36,047,780.64, computed as follows:

Total creditable withholding taxes declared in the 1998 amended annual income tax return		P 49,062,535.00
Less: Disallowances		
a. Per the report of the commissioned independent CPA	P261,555.59	
b. Per court's further verification	22,347.77	283,903.36
Verified 1998 creditable taxes withheld		P 48,778,631.64
Less: 1998 MCIT		12,730,851.00
Amount Refundable		P 36,047,780.64

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED to REFUND** in favor of petitioner the amount of P36,047,780.64 representing unutilized creditable withholding taxes for the year 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

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

LOVELL R. BAUTISTA
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