REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

METRO PACIFIC MANAGEMENT SERVICES, INCORPORATED,
Petitioner,

- versus -

C.T.A. CASE NO. 5786

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2000

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P15,566,603.00, allegedly representing unutilized creditable income taxes withheld at source for the calendar year ending December 31, 1996.

The antecedent facts follow:

Petitioner is a corporation duly organized and existing under Philippine laws, with principal office at the 41st Floor, Rufino Pacific Tower, 6784 Ayala Avenue Corner Herrera Street, 1226 Makati City. It was formerly registered with the Securities and Exchange Commission and the Bureau of Internal Revenue (BIR) as FP Management Services, Inc. but was changed in 1997 to Metro Pacific Management Services, Inc.

Petitioner is engaged in the business of providing management consultancy services in various aspects of business operations including strategic planning, business development, acquisitions and mergers, project management, planning and/or development of management systems, treasury management and sourcing of funds, audit, legal, management information systems development, human resource development, administration, sales, marketing and data management. It is likewise authorized to manage, operate, administer, supervise and participate in the management of any corporation, association, partnership, firm, organization or other entity, whether or not it holds any interest therein, except the management of funds, investment portfolio and similar drafts of said entity.

On April 5, 1997, Petitioner filed its Annual Income Tax Return for the year 1996 declaring a net loss of P14,276,717.00 (Exh. A), arrived at as follows:

Gross Income		
Management Fees	P63,936,058.00	
Interest	96,482.00	
Rental	5,060,436.00	
Miscellaneous	1,589,605.00	
Gain from Sale of Property	67,433,161.00	P138,115,742.00
		138,115,742.00
Less: Deductions		152,392,459.00
Loss		(P14,276,717.00)

which allegedly resulted to the following unutilized creditable income taxes withheld at source by Petitioner's withholding agents:

Wtihholding Agent	Income	Tax Withheld	Annex
Steniel Mfg. Corp.	P 1,296,134.10	P 64,806.70	G
	2,488,598.40	124,429.93	H

SMART Communications, Inc.	141,807.00	7,090.35	I
	5,471,061.00	273,553.05	J
Fort Bonifacio Development Corp.	1,733,334.34	86,666.72	K
	2,166,530.00	108,326.50	L
	4,500,000.00	225,000.00	M
Bonifacio Land Corp.	2,000,000.00	100,000.00	N
Metrolab Industries, Inc.	16,580,625.00	829,031.25	O
Metro Paper Packaging Products, Inc.	116,873.00	5,844.00	P
	546,414.00	27,321.00	Q
	364,100.00	18,205.00	R
Metro Bottled Water Corp.	6,082,844.00	304,142.20	S
Pacific Plaza Towers, Inc.	4,000,000.00	2,000,000.00	T
Landco Asset Management, Inc.	468,242.40	23,412.12	U
Multinational Investment Corp.	67,101,706.50	12,393,216.48	V
Metro Drug Distribution, Inc.	1,500,000.00	75,000.00	W
AR Packaging Corp.	1,372,200.00	68,610.00	X
Holland Pacific Paper, Inc.	6,675,401.40	333,770.07	Y
Metrovet, Inc.	4,203,477.20	210,173.86	Z
Landco Pacific Corporation	1,370,000.00	68,500.00	AA
	37,045.40	19,633.00	BB
	130,216,393.74	15,566,732.23	

In 1997, Petitioner again suffered a loss of P72,015,722.00 from its operations (Exh. F), which prompted Petitioner to file with the Respondent's Bureau, on April 13, 1999, ad administrative claim for refund (Annex C, Petition for Review). Petitioner cited as basis for its claim the following provisions of the then National Internal Revenue Code of 1977:

Section 51. ***Returns and Payment of Taxes Withheld at Source.*** –

"(a) *Quarterly Returns and Payments of Taxes Withheld.* x x x

(b) *Statement of income payments made and taxes withheld.* x x x

(c) *Annual returns.* x x x

(d) *Income of recipient.* - Income upon which any creditable tax is required to be withheld at the source under Section 50 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 49.

All taxes withheld pursuant to the provisions of this Code and its implementing regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.

x x x   x x x   x x x

Section 76. ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 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.

Section 204. ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:

x x x x x x x x x

(3) 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 his 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 years after the payment of the tax or penalty.

As there was no immediate action on the part of herein Respondent, the instant Petition was filed on April 14, 1999.

Respondent admits in her Answer the existence of the income tax return and the filing of a claim for refund but denies the correctness or veracity of the contents thereof as well as the grounds relied upon by the Petitioner to support its claim for refund.

As Special and Affirmative Defenses, Respondent claimed that:

"6. The petition states no cause of action as it does not alleged (sic) the dates when the taxes sought to be refunded were actually paid;

7. 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);

8. In an action for tax refund, the burden of proof 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;

9. One who claims to be exempt from the 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);

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

11. It is incumbent upon petitioner to show compliance with the provision of Section 229 of the Tax Code, as amended."

The sole issue to be resolved by this Court is whether or not Petitioner is entitled to a refund or tax credit in the amount of P15,566,603.00 representing unutilized income tax withheld at source for the taxable year ended December 31, 1996 on the basis of the evidence presented.

Under Section 10 of Revenue Regulations No. 6-85, claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when:

1) it is shown on the return that the income payment received has been declared as part of the gross income;

2) the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom; and

3) the claim for refund is filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code **[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].

The foregoing requirements were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

Thus, to prove its case Petitioner presented in evidence documents consisting of:

a. Corporate Annual Income Tax Return of Petitioner for 1996 (Exhibit "A");

b. Quarterly Income Tax Returns of Petitioner for the first three quarters of 1996 (Exhibits "B" to "D");

c. Annual Income Tax Return of Petitioner for 1995 (Exhibit "E");

d. Annual Income Tax Return of Petitioner for 1997 (Exhibit "F");

e. Certificates of Creditable Tax Withheld at Source from various withholding agents (Exhibits "G" to "BB");

f. Reconciliation of Creditable Withholding Tax per Certificates and per Income Tax Return (Exhibit "CC"); and

g. Annual Income Tax Return for 1998 (Exhibit "DD").

On the other hand, counsel for the Respondent failed to present any controverting evidence and submitted her case based on the pleadings (p. 238, CTA records).

After a careful scrutiny of the evidence adduced solely by Petitioner, We find the latter to be entitled to a partial refund.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on April 13, 1999 as well as its Petition for Review filed with this Court on April 14, 1999 are both within the two-year period from the date of the filing of the annual income tax return for taxable year 1996, on April 15, 1997.

Second, the 1996 Annual Income Tax Return of Petitioner likewise revealed that the income upon which the taxes were withheld was included in said return.

And third, the fact of withholding was also established by Petitioner's submission of the Certificates of Creditable Income Tax Withheld at Source and supporting invoices and deed of sale. We noted, however, that while the total taxes withheld per Certificates of Creditable Tax Withheld at Source (Exhs. G to BB) is P15,566,732.23, the total tax credits appearing in Petitioner's 1996 Income Tax Return which is also the amount being claimed in this petition is lesser by P129.23 or P15,566,603.00. Nonetheless, the difference was explained by Petitioner during the hearing on November 22, 2000 as an adjustment to Management and evidenced by its Reconciliation (Exh. CC).

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1996 which it was not able to apply against its tax liability for the said year and in the succeeding year, its 1997 Income Tax Return was likewise submitted by Petitioner to prove that during that year, Petitioner did not utilize the amount sought to be refunded.

However, while this Court rules in favor of Petitioner, We cannot allow the refund of its unutilized creditable tax withheld during the year 1997 even if it pertains to income recognized by it in 1996. It bears stressing that this is a claim for refund of creditable taxes withheld for the taxable year ending December 31, 1996 and We find it absurd for the Petitioner to claim that it accumulated P15,566,603.00 in creditable withholding taxes during the said year when some certificates show that Petitioner's clients made the withholding and payment only in 1997. Exhibit K even shows that the same was received by Petitioner from Fort Bonifacio Development Corp. only on May 1997 when the return was filed on April 15, 1997. More importantly, this Court cannot determine with certainty if the amount was included in Petitioner's 1997 Income Tax Return as creditable tax withheld, there being no showing what comprised the P2,880,741.00 tax credits of Petitioner for the said year.

Thus, a re-computation of Petitioner's excess income tax payments would show its entitlement to a reduced amount of P15,118,249.27, detailed as follows:

Claimed per ITR			P15,566,603.00
Less: Taxes Withheld in 1997			
	Exh. J	P 273,553.05	
	Exh. K	86,666.72	
	Exh. AA	68,500.00	
	Exh. BB	19,633.96	P 448,353.73
AMOUNT REFUNDABLE			**P15,118,249.27**

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner the reduced amount of P15,118,249.27 representing unutilized creditable taxes withheld for the calendar year ended December 31, 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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