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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JOLOU REALTY AND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5092

Promulgated:
DEC 02 1996

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DECISION

This case involves a judicial action for the refund of the sum of P2,161,632.16, representing overpaid income tax resulting from excess payment of creditable withholding taxes for the calendar year ended December 31, 1991.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. Its principal office is located at the 6th Floor, Sol Building, Amorsolo Street, Legaspi Village, Makati, Metro Manila.

On April 15, 1992, petitioner filed its 1991 Annual Income Tax Return (Exhs. A, A-2 and A-3) reflecting a refundable amount of P2,161,632.16, computed as follows: (Exh. A-1)

Gross Income	P6,485,982.59
Less: Deductions	3,054,020.44
Net Income	P3,431,962.15
Tax due	P1,201,186.75
Less:	
a. Prior years excess credit	P1,509,057.18
b. Quarterly payments made this year	-
c. Creditable tax withheld	1,853,761.73
Total	P3,362,818.91
Amount Refundable	P2,161,632.16

On April 12, 1994, petitioner filed a letter claim for refund with the Bureau of Internal Revenue seeking the refund of P2,161,632.16, representing its alleged overpaid creditable withholding tax at source for the year 1991 (Exhs. 1 and 1-1).

On April 14, 1994, petitioner filed the instant petition for review in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

While the case was pending trial, a Letter of Authority No. 18251, dated May 24, 1994, was issued authorizing revenue officer Paulino Aganon to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the year 1991 (Exh. 1). He was also tasked to investigate on petitioner's claim for refund as contained in the Memorandum (Ref. No. 7059/505), dated July 18, 1995, issued by Ms. Eleanor N. Litao, Actg. Asst. Rev. Dist. Officer (Exhs. 2 and 2-a).

The only issue to be resolved is whether or not petitioner is entitled to the refund of the sum of P2,161,632.16, representing allegedly overpaid creditable withholding tax for the year 1991.

Petitioner cites as legal bases Sections 204 and 230 of the Tax Code, as amended.

For easy reference pertinent portions of Section 204 in relation to Section 230 of the Tax Code, as amended, are hereby quoted as follows:

> "Sec. 204. *Authority of the Commissioner to compromise, abate, and refund/credit taxes.* - The Commissioner may -
>
> (1) xxx
>
> (2) xxx
>
> (3) Credit or refund taxes erroneously or illegally received, 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."

> "Sec. 230. ***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 excessive 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 begun after the expiration of two 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 face of the return upon which payment was made, such payment (should be read "tax") appears clearly to have been erroneously paid.
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> x x x x x x x x x."

To further support its entitlement for the refund, petitioner presented the following documents as evidence:

a. the 1991 final income tax return (Exhs. A, A-1, A-2, and A-3);

b. the auditor's report on petitioner's financial statements (Exhs. B and B-1);

c. petitioner's financial statements (Exhs. C, D and E);

d. the various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. F, F-1, G, G-1, H, and H-1); and

e. the letter-claim for refund with the Bureau of Internal Revenue (Exhs. I and I-1).

The issue presented before us is nothing new. In fact this Court has already laid down three basic requirements. for a taxpayer to comply with, in order to be entitled for the refund of excess creditable withholding tax at source. These are:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient: and
>
> 3. The fact of withholding is established by a copy of 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. [Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The 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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].

Petitioner filed within the two-year period its claim for refund with the BIR and with this Court. It filed its letter-claim for refund with the BIR on April 12, 1994 (Exh. I) and its petition for review with this Court on April 14, 1994. The two-year period, in the instant case, commences to run on April 15, 1992, the actual date of filing its 1991 Annual Income Tax Return which is also the time required by law for the filing of its final income tax return (**Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 837736, January 15, 1992**). The certificates of creditable withholding tax at source (BIR Form 1743.1), offered in evidence by petitioner, sufficiently established the amount of creditable withholding tax for the year 1991. Furthermore, as testified by petitioner's witness, Mrs. Anita Besitan, the income upon which these creditable withholding taxes were paid were included in petitioner's gross income for income tax purposes (TSN, December 12, 1994, p. 17).

However, we are convinced that petitioner is entitled only to a lesser amount of P1,966,296.31 as recommended by revenue officer, Mr. Paulino Aganon, in his Memorandum Report (Exh. 3). Pertinent portion of which reads as follows:

"3) The 1991 all internal revenue tax liability of the above-named taxpayer was already examined under Letter of Authority No. 18251 dated May 24, 1994 and the corresponding report thereon was already submitted on July 28, 1995 with an assessment of the following deficiency internal revenue taxes:

Taxable income per BIR Form 17.17-A	P3,990,062.67
Tax due per investigation	1,396,522.60
Less: Tax credit	3,362,818.91
Refundable amount per audit	(P1,966,296.31)

In view of the foregoing facts and issues as well as the results of the tax audit findings and assessment, JOLOU Realty and Development Corporation now requests that the alleged unutilized excess creditable taxes withheld at source for the year 1991 be granted a refund in the total amount of P2,161,632.16. However, based on the final report of investigation conducted by the undersigned disclosed that the taxpayer's unutilized excess tax credit for 1991 was only P1,966,296.31 and such amount were not yet applied in the succeeding years.

In the light of the foregoing, and since the taxpayer's claim for refund has legal and factual basis, it is respectfully recommended that the request be granted and that the total amount of only P1,966,296.31 be refunded after approval of this report by higher authorities." (Emphasis supplied)

Petitioner did not object to said findings. As a matter of fact, it adopted the findings of the revenue officer when it so declared that petitioner should at least be granted a tax refund of P1,966,296.31 as found by Revenue officer Paulino Aganon (see last par. of

Petitioner's Memorandum, p. 97, CTA rec.). It is presumed that the official duty of said examiner has been regularly performed [Sec. 3(m), Rule 131, Rev. Rules of Court].

It is an elementary rule that in the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Corollarily, the findings of the revenue officer as shown in his investigative report that petitioner is liable to pay an income tax due of P1,396,522.60 stands of great weight. Thus, petitioner is entitled to the refund of a lesser amount of P1,966,296.21. The same will hold judicial affirmance if not controverted by petitioner. In this case, it was admitted by petitioner in its memorandum.

WHEREFORE, in view of the foregoing, the petition for review is hereby **GRANTED PARTIALLY**. Respondent is ordered to **REFUND** in favor of petitioner the sum of P1,966,296.21, representing overpaid income tax for the calendar year 1991.

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