REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITICORP CAPITAL PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6058

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 09 2001

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of Five Million Nine Hundred Thirty One Thousand and Ninety Eight Pesos (P5,931,098.00), allegedly representing overpaid income tax and unutilized creditable withholding tax for the taxable year 1997.

The facts of the case are simple:

Petitioner is a domestic corporation engaged in the business of underwriting securities as an investment house with principal office at 8741 Paseo de Roxas, Makati City.

On May 29, 1997, Petitioner filed its Quarterly Income Tax Return for the first quarter of 1997, reflecting a taxable income of P14,448,965.40 and paid the tax due thereon amounting to P5,057,137.90 (Exhibit A).

For the succeeding quarters of 1997, however, Petitioner incurred losses from its foreign exchange transactions, resulting to a net loss position at the end of the year.

On April 15, 1998, Petitioner filed its Annual Income Tax Return for the taxable year 1997 reporting a net loss of P97,237,756.00 and a refundable amount of P5,057,138.00, representing the income tax paid on the first quarter of 1997 (Exhibits D, D-2). Petitioner opted to apply the refundable amount as credit against the income tax due on the following year 1998 and indicated such choice by marking with an 'x' the appropriate box in the return (Exhibit D-1).

During the taxable year 1997, Petitioner derived income which were subjected to expanded withholding tax as follows:

Exhibit	Income Payment Subject to Expanded Withholding Tax	Amount	Tax Withheld
G	Payment to Customs, Real Estate and Commercial Brokers. Withholding Agent: Equitable Banking Corporation	P 119,984.70	P 5,999.24
H	Professional/Talent Fees	2,446,372.60	
	Withholding Agent: Citicorp	2,462,354.07	
	Securities Int'l. (RP), Inc.	1,114,568.40	670,517.86
I	Professional/Talent Fees	1,134,165.20	
	Withholding Agent: Citicorp	1,537,776.20	
	Securities Int'l. (RP), Inc.	1,276,924.40	197,443.29
		P10,092,145.57	P873,960.39

Realizing that it failed to report the creditable tax withheld in its Annual Corporate Income Tax Return for 1997, Petitioner filed an Amended Corporate Annual Income Tax

Return for the year 1997 on June 19, 1998 (Exhibit E), this time reporting a refundable amount of P5,931,098.00 representing overpaid income tax of P5,057,137.90 and unutilized creditable withholding tax in the amount of P873,960.39, which it opted to carry over to the succeeding taxable year 1998.

Petitioner, however, failed to carry over the amount of P5,931,098.00 to the succeeding taxable year of 1998 as it ended up again in a net loss position on that year (Exhibit J). Thus, on February 10, 2000, Petitioner filed with the Bureau of Internal Revenue (BIR) RDO No. 50, a letter-claim for the refund of its unutilized tax credit in the amount of P5,931,098.00 (Exhibit F).

As there was no action on the part of herein Respondent, and the two-year prescriptive period was about to expire, the instant Petition was filed on April 11, 2000, anchored on Sections 76 and 204(c) of the 1997 Tax Code, to state:

> **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 income of that year, the corporation shall either:
>
> (A) Pay the balance of the 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."

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

(1) 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 (2) years after the payment of the tax or penalty: *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

In his Answer filed through registered mail on June 14, 2000, Respondent claimed by way of Special and Affirmative Defenses that:

"4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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

7. 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.

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

The issues We are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not the Petitioner has an excess quarterly income tax payment and unutilized creditable withholding tax in the amount of P5,931,098.00 for calendar year ending December 31, 1997.
2. Whether or not the income from which taxes were withheld were included as part of the gross income in the Petitioner's 1997 income tax return.
3. Whether or not the Petitioner's claim for refund of alleged excess quarterly income tax payment and unutilized creditable withholding tax is substantiated by documentary evidence.
4. Whether or not the petitioner applied the overpaid income tax and the unutilized creditable withholding tax for taxable year 1997 to its income tax liabilities for the subsequent taxable year.

Petitioner, to support its case, offered the following evidence:

Exhibits	Description
A to C	Quarterly Income Tax Returns for the first, second and third quarters of 1997
D	Annual Corporate Income Tax Return for calendar year 1997
E	Amended Corporate Annual Income Tax Return for calendar year 1997
F	Administrative claim for refund dated 4 February 2000
G to I	Certificates of Creditable Tax Withheld at Source during the year 1997
J	Annual Income Tax Return for taxable year 1998

K Amended Annual Income Tax Return for taxable year 1999

Respondent's counsel, on his part, submitted this case for decision on the ground that there is no report on the investigation (p. 173, CTA records). He likewise failed to file his memorandum within the period given by the Court.

We find for the Petitioner.

The right of a taxpayer to recover from the Respondent's bureau any excess income tax paid is provided for under Section 69 (now Section 76) of the Tax Code, hereinbefore quoted. On the other hand, to be entitled to a refund of excess or unutilized creditable withholding tax, the following requirements have to be met:

> 1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;
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> 2. That the income upon which the taxes were withheld were included in the return of the recipient; and
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> 3. That the fact of withholding is established by a copy of a statement [BIR Form 2307 (formerly Form 1743-750)] 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**].

The aforementioned 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.**

As to the first requirement, We find Petitioner's claim for refund, both in the administrative and judicial level, as timely filed. The Corporate Annual Income Tax Return of Petitioner for the taxable year ended December 31, 1997 was filed on April 15, 1998 (Exhibit D). Verily, the claim for refund filed with the BIR on February 10, 2000 as well as the instant petition for review filed on April 11, 2000 fall within the two-year prescriptive period.

Petitioner's annual income tax return for the taxable year ending December 31, 1997 also showed that part of its gross income (loss) of P (58,696,747.00) (Section A of Exhibit E) came from underwriting commission of P7,428,386.00 and management and professional fees of P9,972,165.00 from which amounts the total creditable tax of P873,960.39 was withheld [(Schedule 2 of Section C) Exhibit E].

And to prove the fact of withholding, Petitioner submitted certificates of creditable tax withheld at source (Exhibits G to I) issued by its withholding agents specified earlier.

From the above, it is evident that Petitioner has shown compliance with the requirements set forth.

We, therefore, proceed to the issue of whether or not Petitioner has an excess quarterly income tax payment and unutilized creditable withholding tax in the amount of P5,931,098.00 for the calendar year ending December 31, 1997.

For the first quarter of 1997, Petitioner declared taxable income in the amount of P14,448,965.40 and paid the corresponding income tax of P5,057,137.90. Likewise during the year, Equitable Banking Corporation and Citicorp Securities International (RP), Inc. withheld creditable tax from Petitioner's income from underwriting commission and management and professional fees totalling P873,960.00. However, during the succeeding quarters of the year, Petitioner suffered losses from its foreign exchange transactions resulting to a loss position at the end of the year. Consequently, since Petitioner had no tax liability for the year, the payment made by Petitioner for the first quarter of 1997 in the amount of P5,057,137.90 as well as creditable taxes withheld from Petitioner's income in the total amount of P873,960.00 remained unapplied or unutilized by the end of the year

The second issue having been passed upon when the second requirement was discussed, We proceed to the issue on substantiation.

An examination of the Quarterly Income Tax Return offered by Petitioner as Exhibit "A" would reveal that Petitioner made an income tax payment during the first quarter of 1997 in the amount of P5,057,137.90 at Citibank, N.A., Manila (Exhibit A-3). Also, the fact of withholding was proven by the Certificates of Creditable Tax Withheld at Source offered by Petitioner as Exhibits G to I. The Quarterly and Annual Income Tax Returns of Petitioner also showed that except for the first quarter of 1997, Petitioner indeed suffered losses during the years 1997 and 1998 and that the amount of P5,931,098.00 was not carried over in 1999(Exhibits A to E, J and K).

It is also significant to note that Respondent offered no evidence to counter Petitioner's claim and since the latter has shown sufficient evidence to support its entitlement to the relief sought, this Court has no recourse but to grant the same.

With reference to the fourth issue, since in this case Petitioner is seeking for the refund of its overpaid income tax and unutilized creditable taxes withheld for the taxable year 1997 which it was not able to apply against its tax liability for the said year as it ended up in a net loss position, Petitioner has shown that it did not utilize the amount sought to be refunded by presenting in evidence not only its 1998 but also its 1999 Annual Income Tax Return. Petitioner's 1998 Income Tax Return showed that while the amount of P5,931,097 appeared as "Prior Year's Excess Credits", the same was not applied against any tax liability of Petitioner for it ended up also in a loss position. On the other hand, the 1999 Income Tax Return of Petitioner showed that the amount sought to be refunded was no longer carried over.

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 **ISSUE A TAX CREDIT CERTIFICATE** to Petitioner in the amount of P5,931,098.00 representing overpaid income tax and unutilized creditable withholding tax for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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