REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

INTERLAND RESTAURANT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5620

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 24 1999

x - x

DECISION

This is a Petition for Review filed by the herein Petitioner on April 14, 1998, seeking for a refund of the amount of SEVEN HUNDRED TWENTY TWO THOUSAND NINE HUNDRED AND NINETY PESOS (P722,990.00), representing allegedly overpaid quarterly corporate income taxes and excess creditable income taxes withheld at source for the taxable years 1995 and 1996.

The antecedent facts of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 2282 CBI Building, Pasong Tamo Extension, Makati City.

As culled from the records, Petitioner filed its Annual Income Tax Return for calendar year 1995 on April 15, 1996 (Exh. D) reflecting a net operating loss in the amount of P3,880,570.00 and a creditable withholding tax amounting to P244,253.00 (Exhs. D and D-1). Likewise, it has quarterly income tax payments in the total amount of

P116,039.00 in the same calendar year (Exhs. A, A-1, B, B-1, C, and C-1), thus, giving the Petitioner a total excess credit of P360,292.00 for the taxable year 1995 which, by reason of its net loss position, was carried over to the succeeding taxable year 1996.

In taxable year 1996, Petitioner allegedly incurred again a net operating loss in the amount of P4,811,137.00, thus, it was not able to apply as a tax credit the prior year's (1995) excess income tax payments and creditable taxes withheld at source of P360,292.00. In the same breath, its creditable income taxes withheld at source and quarterly corporate income tax payments for 1996 in the amount of P355,041.00 and P9,657.00, respectively, were likewise not applied against Petitioner's income tax liability in 1997 calendar year due to net losses from its business operations.

On April 3, 1998, Petitioner filed an administrative claim for refund of the amount of P722,990.00 with the Bureau of Internal Revenue, representing its allegedly overpaid quarterly income taxes and over withheld creditable income taxes withheld at source in 1995 and 1996. Without waiting for the decision of the Respondent and the two-year reglementary period within which to file a claim for refund to this Court about to expire, Petitioner elevated its case to Us on April 14, 1998.

On May 25, 1998, Respondent filed his Answer to the Petition for Review and prayed for the dismissal of the petition based on the following Special and Affirmative Defenses:

4. The alleged filing and/or payment of quarterly annual corporate income tax returns for taxable years 1995 and 1996 as well as the alleged previous filing by its adviser of a claim for refund/tax credit with the Bureau of Internal Revenue are subject to and pending administrative investigation;

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

6. In an action for tax refund/credit, the burden of proof is upon the taxpayer to establish its right thereto, otherwise, failure to sustain the same is fatal to the action and it is incumbent upon Petitioner to show compliance to the provisions of Section 229 (formerly 230) of the Tax Code;

7. Well-settled is the rule that claims for refund are construed strictly against taxpayers/claimants, since the same partake of the nature of exemption from taxation **(Resins, Inc. vs. Auditor General, 25 SCRA 754, 1968).**

To prove its entitlement to the refund sought, Petitioner formally offered as documentary exhibits its Quarterly Corporate Income Tax Returns for taxable years 1995, 1996 and 1997. In addition, copies of various Certificates of Creditable Tax Withheld at Source were likewise presented in evidence. The authenticity of the aforementioned exhibits were testified to by Petitioner's witness during the hearings of this case.

In a resolution promulgated on December 3, 1998, all the exhibits formally offered by the Petitioner were admitted subject, however, to Our appreciation of their relevancy, materiality and probative value to the issues involved in this case.

On June 21, 1999, this case is considered submitted for decision sans the memorandum of the Respondent.

In the absence of the memorandum of the Respondent, We are now tasked to resolve the issue of whether or not the Petitioner was able to present clear and convincing proof of its entitlement to a refund of the amount of P722,990.87.

In its Memorandum, Petitioner, in support of its stance, placed reliance on the provisions of Section 69 which reads, thus:

> **Section 69.** ***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.

Furthermore, Petitioner relied upon Our decision in the case of **Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997** where We declared the requirements for entitlement to a refund of excess creditable taxes withheld at source, thus:

> 1. That the taxpayer filed its claim for refund within the two year period prescribed under Section 230 of the Tax Code;
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> 2. That it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, ACCRA Investment Corp. vs. CA, 204 SCRA 957);
>
> 3. The fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount of income paid and the amount of tax withheld therefrom (*ibid.*).

The aforementioned requirements cited by Petitioner for the entitlement to a refund of excess creditable taxes was affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

A careful scrutiny of Petitioner's evidence veers towards the direction of granting the claim for refund.

Firstly, Petitioner complied with the requirement set forth under Section 230 of the 1997 Tax Code which provides, thus:

> **Section 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 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.

As could be gleaned from the records, Petitioner filed its administrative claim for refund with the Respondent on April 3, 1998 and elevated its case to this Court on April 14, 1998, both dates are well within two years from April 15, 1996 and April 15, 1997, the dates Petitioner filed its final adjustment return with the Bureau of Internal Revenue.

Anent the second requirement, Petitioner was likewise able to comply by including, as part of the gross income declared in the income tax return of the Petitioner, the income payments upon which the taxes were withheld. The total income as established by the certificates of income tax withheld at source amounted to P46,628,114.72 for taxable year 1995 (Exhs. N to YY) and P66,717,509.83 for taxable year 1996 (Exhs. ZZ to

HHHHHHH). The total amount of income was verified to have been included in the annual income tax returns of Petitioner.

Finally, Petitioner was able to establish the fact of withholding through presentation of a copy of a statement duly issued by its withholding agents except the amount of P7,209.50 which certificates were not duly signed by its withholding agents, to wit:

1995

Withholding Agent	Exhibit	Amount
Rizal Commercial Banking Corp.	KK	P 15.25
Far East Bank & Trust Co.	ZZ	902.32
Far East Bank & Trust Co.	AAA	662.80
Far East Bank & Trust Co.	BBB	1,350.29
Far East Bank & Trust Co.	DDD	1,462.58
	Subtotal	P 4,393.24

1996

Withholding Agent	Exhibit	Amount
Rizal Commercial Banking Corp.	QQQQQ	P 166.89
Far East Bank & Trust Co.	UUUUUU	1,031.11
Far East Bank & Trust Co.	GGGGGGG	1,618.35
	Subtotal	P 2,816.35
	TOTAL	P 7,209.59

In sum, only the amount of P233,744.71 for taxable year 1995 and P330,890.07 for taxable year 1996 were properly substantiated, detailed as follows:

1995

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
Citibank N. A.	N	1,426,412.01	7,131.90
Citibank N. A.	O	1,325,016.67	6,624.89

Citibank N. A.	P	513,057.57	7,565.10
Citibank N. A.	Q	1,243,081.92	6,215.29
Citibank N. A.	R	1,169,732.88	5,848.47
Citibank N. A.	S	1,231.55	6.15
Citibank N. A.	T	96,919.09	484.54
Citibank N. A.	U	1,110,237.52	5,551.02
BA Merchant Services, Inc	V	221,021.85	1,105.11
BPI Express Card Corporation	W	398,690.00	1,993.00
BPI Express Card Corporation	X	497,906.00	2,489.53
BPI Express Card Corporation	Y	450,468.00	2,252.34
BPI Express Card Corporation	Z	679,758.00	3,398.79
BPI Express Card Corporation	AA	420,760.00	2,103.80
BPI Express Card Corporation	BB	799,394.00	3,996.97
BPI Express Card Corporation	CC	538,854.00	2,694.27
Bankard, Inc.	DD	594,568.57	2,972.84
Bankard, Inc.	EE	734,922.80	3,674.61
Bankard, Inc.	FF	709,201.09	3,546.01
Bankard, Inc.	GG	731,025.58	3,655.13
Bankard, Inc.	HH	785,433.32	3,927.17
Bankard, Inc.	II	963,689.00	4,818.45
Bankard, Inc.	JJ	703,517.64	3,517.59
Rizal Commercial Banking Corp.	LL	23,758.46	118.78
Rizal Commercial Banking Corp.	MM	1,047.67	5.24
Rizal Commercial Banking Corp.	NN	5,568.34	27.84
Rizal Commercial Banking Corp.	OO	5,499.30	27.50
Rizal Commercial Banking Corp.	PP	841.40	4.21
Rizal Commercial Banking Corp.	QQ	25,180.13	125.91
Rizal Commercial Banking Corp.	RR	165,672.74	828.36
Rizal Commercial Banking Corp.	SS	157,604.02	788.02
Rizal Commercial Banking Corp.	TT	2,052.00	10.26
Rizal Commercial Banking Corp.	UU	7,701.70	38.51
Rizal Commercial Banking Corp.	VV	146,984.19	734.92
Rizal Commercial Banking Corp.	WW	163,124.25	815.63
Rizal Commercial Banking Corp.	XX	184,642.11	923.22
Rizal Commercial Banking Corp.	YY	171,960.62	859.83
Far East Bank & Trust Co.	CCC	286,662.09	1,433.28
Far East Bank & Trust Co.	EEE	226,821.07	1,134.11
Far East Bank & Trust Co.	FFF	220,451.58	1,102.25
Far East Bank & Trust Co.	GGG	144,225.50	721.14
Far East Bank & Trust Co.	HHH	230,287.95	1,151.43
Far East Bank & Trust Co.	III	627,354.05	3,136.77
Far East Bank & Trust Co.	JJJ	460,704.24	2,303.54
Far East Bank & Trust Co.	KKK	433,656.03	2,168.29
Far East Bank & Trust Co.	LLL	485,825.73	2,429.12
Far East Bank & Trust Co.	MMM	485,842.74	2,429.22
Equitable Card Network, Inc.	NNN	469,946.82	2,349.72
Equitable Card Network, Inc.	OOO	1,656,892.62	8,284.57
Equitable Card Network, Inc.	PPP	2,105,148.00	10,525.74
Equitable Card Network, Inc.	QQQ	793,632.77	3,968.16
Equitable Card Network, Inc.	RRR	2,542,259.88	12,711.35
Equitable Card Network, Inc.	SSS	866,758.75	4,333.78

Equitable Card Network, Inc.	TTT	2,832,432.91	14,162.16
Security Diners International Corp.	UUU	403,717.43	2,018.59
Security Diners International Corp.	VVV	532,404.59	2,662.02
Security Diners International Corp.	WWW	767,545.68	3,837.69
The Hongkong & Shanghai Banking	XXX	463,890.00	2,319.45
The Hongkong & Shanghai Banking	YYY	4,776.00	23.88
The Hongkong & Shanghai Banking	ZZZ	2,292,386.00	11,461.93
The Hongkong & Shanghai Banking	AAAA	1,834,298.00	9,171.49
American Express Int'l, Inc.	BBBB	492,020.21	2,460.10
American Express Int'l, Inc.	CCCC	188,037.61	940.15
American Express Int'l, Inc.	DDDD	230,901.04	1,154.50
American Express Int'l, Inc.	EEEE	264,198.21	1,320.98
American Express Int'l, Inc.	FFFF	196,447.40	982.27
American Express Int'l, Inc.	GGGG	554,580.23	2,772.92
American Express Int'l, Inc.	HHHH	202,308.54	1,011.56
The Unibancard Corp.	IIII	2,655,111.48	13,274.87
The Unibancard Corp.	JJJJ	1,414,271.68	7,070.92
Citibank N. A.	KKKK	96,910.00	484.54
Citibank N. A.	LLLL	1,110,228.92	5,551.02
TOTALS		46,628,114.72	233,744.71

1996

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
Equitable Card Network, Inc.	MMMM	7,642,945.79	38,214.73
Equitable Card Network, Inc.	NNNN	2,989,403.42	14,947.01
Equitable Card Network, Inc.	OOOO	2,739,261.79	13,696.31
Equitable Card Network, Inc.	PPPP	3,329,208.36	16,646.04
Equitable Card Network, Inc.	QQQQ	3,138,536.59	15,692.68
Bankcard, Inc.	RRRR	845,413.59	4,227.07
Bankcard, Inc.	SSSS	634,126.33	3,170.63
Bankcard, Inc.	TTTT	41,939.17	209.70
Bankcard, Inc.	UUUU	885,117.50	4,425.59
Bankcard, Inc.	VVVV	633,766.30	3,168.83
Bankcard, Inc.	WWWW	753,929.87	3,769.65
Bankcard, Inc.	XXXX	658,349.86	3,291.77
Bankcard, Inc.	YYYY	754,083.50	3,770.40
Bankcard, Inc.	ZZZZ	601,878.93	3,009.37
BPI Express Card Corp.	AAAAA	756,000.00	3,780.00
BPI Express Card Corp.	BBBBB	498,176.00	2,490.88
BPI Express Card Corp.	CCCCC	767,376.00	3,836.88
BPI Express Card Corp.	DDDDD	574,368.00	2,871.84
BPI Express Card Corp.	EEEEE	771,368.00	3,856.84
BPI Express Card Corp.	FFFFF	579,022.00	2,895.11
BPI Express Card Corp.	GGGGG	308,552.00	1,542.76
BPI Express Card Corp.	HHHHH	506,874.00	2,534.37
Rizal Commercial Banking Corp.	IIIII	191,303.15	956.53

Rizal Commercial Banking Corp.	JJJJJ	203,184.79	1,015.92
Rizal Commercial Banking Corp.	KKKKK	198,444.33	992.24
Rizal Commercial Banking Corp.	LLLLL	152,575.74	762.88
Rizal Commercial Banking Corp.	MMMMM	147,900.51	739.47
Rizal Commercial Banking Corp.	NNNNN	209,127.18	1,045.62
Rizal Commercial Banking Corp.	OOOOO	162,690.45	813.47
Rizal Commercial Banking Corp.	PPPPP	189,606.55	948.05
Rizal Commercial Banking Corp.	RRRRR	19,541.59	97.71
The Unibancard Corp.	SSSSS	2,664,498.39	13,321.87
The Unibancard Corp.	TTTTT	2,705,578.29	13,645.68
The Hongkong & Shanghai Banking	UUUUU	3,001,352.00	15,006.76
The Hongkong & Shanghai Banking	VVVVV	3,685,916.00	18,429.58
The Hongkong & Shanghai Banking	WWWWW	5,480,236.00	27,401.18
The Hongkong & Shanghai Banking	XXXXX	5,141,996.00	25,709.98
Security Diners Int'l Corp.	YYYYY	698,117.33	3,490.59
Security Diners Int'l Corp.	ZZZZZ	737,499.36	3,687.46
Security Diners Int'l Corp.	AAAAAA	668,432.53	3,342.16
Security Diners Int'l Corp.	BBBBBB	697,167.00	3,485.86
American Express Int'l	CCCCCC	593,301.47	2,966.51
American Express Int'l	DDDDDD	202,247.35	1,011.27
American Express Int'l	EEEEEE	576,296.68	2,881.52
American Express Int'l	FFFFFF	177,418.94	887.11
American Express Int'l	GGGGGG	759,101.44	3,795.54
American Express Int'l	HHHHHH	253,013.51	1,265.12
American Express Int'l	IIIIII	591,099.08	2,955.52
American Express Int'l	JJJJJ	229,061.97	1,145.33
Far East Bank & Trust Co.	KKKKKK	292,256.00	1,461.28
Far East Bank & Trust Co.	LLLLLL	298,908.00	1,494.54
Far East Bank & Trust Co.	MMMMMM	206,706.00	1,033.53
Far East Bank & Trust Co.	NNNNNN	341,646.00	1,708.23
Far East Bank & Trust Co.	OOOOOO	231,084.00	1,155.42
Far East Bank & Trust Co.	PPPPPP	356,740.00	1,783.70
Far East Bank & Trust Co.	QQQQQQ	217,637.98	1,088.19
Far East Bank & Trust Co.	RRRRRR	265,816.22	1,329.08
Far East Bank & Trust Co.	SSSSSS	187,375.69	936.87
Far East Bank & Trust Co.	TTTTTT	236,842.16	1,184.21
Far East Bank & Trust Co.	VVVVVV	276,094.35	1,380.49
Far East Bank & Trust Co.	WWWWWW	140,837.78	704.19
Far East Bank & Trust Co.	XXXXXX	211,217.19	1,056.07
Far East Bank & Trust Co.	YYYYYY	214,538.00	1,072.69
Far East Bank & Trust Co.	ZZZZZZ	412,694.00	2,063.47
Far East Bank & Trust Co.	AAAAAAA	185,561.14	927.79
Far East Bank & Trust Co.	BBBBBBB	240,328.00	1,201.64
Far East Bank & Trust Co.	CCCCCCC	34,502.64	172.51
Far East Bank & Trust Co.	DDDDDDD	387,452.35	1,937.21
Far East Bank & Trust Co.	EEEEEEE	174,358.00	871.89
Far East Bank & Trust Co.	FFFFFFF	197,304.00	986.52
Far East Bank & Trust Co.	HHHHHHH	298,231.74	1,491.16
TOTALS		66,717,509.83	330,890.07

Thus Petitioner's total refundable amount has been reduced to P690,330.65 computed as follows:

1995	
QUARTERLY INCOME TAX PAYMENTS	P116,039.00
CREDITABLE TAX WITHHELD	233,744.71
SUBTOTAL	P349,783.71
1996	
QUARTERLY INCOME TAX PAYMENTS	P 9,656.87
CREDITABLE TAX WITHHELD	330,890.07
SUBTOTAL	P340,546.94
TOTAL REFUNDABLE AMOUNT	P690,330.65

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate for the amount of SIX HUNDRED NINETY THOUSAND THREE HUNDRED THIRTY PESOS AND SIXTY FIVE CENTAVOS (P690,330.65) in favor of the Petitioner, representing unutilized excess corporate quarterly income tax payments and creditable income taxes withheld at source for the taxable years 1995 and 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