REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PDCP DEVELOPMENT BANK, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5237

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 25 1997

x - x

DECISION

This is an action for the refund or tax credit of the sum of ₱815,891.00, representing excess income tax for the year ended December 31, 1992.

Petitioner PDCP Development Bank, Inc. (formerly Private Development Corporation of the Philippines) is a domestic corporation duly organized and existing under the laws of the Philippines. It is registered with the Security Exchange Commission, to engage in the business, as a private development bank having been issued Certificate of Registration No. 22401 (Exh. AA).

On December 29, 1994, petitioner filed its second amended annual income tax return for the calendar year 1992 reflecting an income tax due in the sum of

P3,135,026.00 but with an overpaid income tax in the sum of P815,891.00, due to its excessive creditable withholding taxes, computed as follows: (Exh. A)

Gross income	P332,760,525.00
Less: deductions	323,803,309.00
Net income	P 8,957,216.00
Tax due	P 3,135,026.00
Less: Creditable tax withheld	3,950,917.00
Tax Payable/(Refundable)	(P 815,891.00)

This 1992 overpayment was carried over as tax credit to the succeeding taxable year - 1993. However, petitioner suffered a net loss from its operations during the year 1993, amounting of P26,637,224.00. Thus, petitioner's application of the overpayment in the year 1993 became nugatory since there was no income tax liability where the excess income tax payment can be applied for (Exh. B). Petitioner also manifested that the 1992 overpayment was not applied against the income tax liability in the next succeeding calendar year - 1994 (Exh. EE).

On January 11, 1995, petitioner filed, through its auditors, a letter claim for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the amount of P815,891.00 representing allegedly overpaid income tax for the year 1992. (Exh. Z).

The inaction of respondent on its letter compelled petitioner to file the instant petition on April 11, 1995 pursuant to Section 230 of the National Internal Revenue Code, as amended.

In a resolution dated August 10, 1995, respondent was declared in default, for failure to file her answer on time (pp. 74-76, CTA records). Thus, the case was set for hearing *ex-parte.*

The only issue to be resolved by this Court is whether or not petitioner is entitled to the refund or to the issuance of a tax credit certificate of the alleged overpaid income tax for the calendar year ended December 31, 1992.

Petitioner alleged that it is entitled to the refund of its overpaid income tax as of December 31, 1992 which was not applied or utilized in the succeeding taxable year (1993) pursuant to the provision of Section 69 of the Tax Code, as amended.

Section 69 of the tax Code reads as follows:

> "Sec. 69. **<u>Final adjustment return.</u>** — Every corporation liable to tax under Section 24 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 excess 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." (Underlining supplied)

And to further support its contention, petitioner presented in evidence various documents which, among others, consist of: [1] the (amended) annual income tax returns for the years 1992, 1993, and 1994 (Exhs. A, B, and EE); [2] the certificoates of creditable withholding tax at source (Exhs. C, D, E, F, G, H, I, J, K, L, M, N, O, P and V); [3] the Central Bank confirmation receipts and the Bureau of Internal Revenue payment orders (Exhs. Q to U-1, inclusive, and W to Y-1, inclusive), relative to its own payment of expanded withholding tax; and [4] the letter claim for refund with the respondent (Exh. Z).

The issue before us is not of first impression. This Court has already laid down three basic requirements for a taxpayer to comply with in order to be entitled to the refund of excess creditable withholding tax. These are:

a. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;

b. that the income upon which the taxes were withheld were included in the return of the recipient; and

c. 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; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue v. Court of Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994).

After a careful examination of the records and evidence of the case, petitioner prove its compliance with the first requirement. It filed within the two years from the date of payment of the tax its claim for refund, both in the administrative and judicial level, as prescribed under Section 230 of the Tax Code, as amended, which reads as follows:

"Sec. 230. <u>Recovery of tax erroneously or illegally collected</u>. - 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 oollected, until a claim for refund or oredit has been duly filed with the Commissioner of Internal Revenue; but suoh 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 olaim therefor, refund or credit any tax, where on face of the return upon whioh payment was made, suoh payment* appears clearly to have been erroneously paid. (Underlining supplied)
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> x x x x x x x x x."
> (* should read "tax")

The two-year period commences to start on April 15, 1993, the time required by law for petitioner to file its 1992 final adjustment return (**Commissioner of Internal Revenue v. TMX Sales, Inc., et al., G.R. No. 83736,** January 15, 1992). Petitioner has, therefore, up to April 15, 1995 to file a written claim for refund or tax oredit with the BIR and with this Court. It filed with the Bureau of Internal Revenue a letter-claim for refund on January 11, 1995 and with this Court on April 11, 1995.

As regards the second and third requirements, this Court noted that some of the creditable withholding taxes of petitioner were not supported by a valid evidence. The amount of P3,316,850.27 was supported by BIR Form 1743. 1 (Exhs. C, D, E, F, G, H, I, J, K, L, M, N, O, P and V) while the amount of P581,065.19 was covered by Central Bank confirmation receipts (Exhs. Q, R, S, T, U, W, X and Y). And the remaining amount of P53,001.54 was not at all supported by any evidence.

The Court strongly believes that the income payments reflected in the certificates of creditable withholding taxes were reported on petitioner's 1992 income tax return. However, we cannot ascertain if the income payments which were covered by Central Bank confirmation receipts were reported by the petitioner as these documents do not show corresponding income received. Furthermore, there is no certainty whether or not the expanded withholding taxes, purportedly paid for petitioner's own account, accrue to it or to other payees which petitioner is bound to remit to the Bureau of Internal Revenue as a withholding agent. As we ruled in the similar oase of **Far East Bank and Trust Company v.**

Commissioner of Internal Revenue, CTA Case No. 4972, January 24, 1996:

> "In its Petition for Review and in the Memorandum, Petitioner alleged that CDB withheld the creditable withholding taxes from the sales proceeds of its acquired assets. It would seem, therefore, from the allegation that CDB was the taxpayer (recipient of the income) and the withholding agent at the same time of its own transaction. In fine, they are one and the same. Although, it can, of course, be argued that the Tax Code does not specifically prohibit the taxpayer from withholding its own tax, yet, this Court finds it rather amusing as it is not in accordance with the normal practice. Under the facts presented, CDB as seller of capital assets is really the one liable to pay the creditable withholding tax. Thus, We see no reason why CDB cannot pay for the tax it is responsible to pay in the first place under the expanded withholding tax system.
>
> However, in the case at bar, petitioner did not pass the Court's scrutiny in proving its claim for refund. The documents presented by the Petitioner were not sufficient to warrant that CDB withheld and remitted the withholding taxes corresponding to its own sale of capital assets. The various Central Bank confirmation receipts and BIR official receipts and payment orders presented by petitioner (Exhs. "I" to ""I-36"), although all in the name of CDB, are not conclusive evidence as to the actual payment and remittance of the withholding taxes pertaining to the sale of CDB's capital assets. The existing doubts are due to the following:
>
> 1. The amount of income payments received by CDB cannot be ascertained by the mere presentation of confirmation receipts. The BIR Form 1743.1 is needed, as required

> under Sec. 10, Rev. Regs. 6-85 of the expanded withholding tax regulations, for the purpose or at the very least the annual return (i.e., reconciliation statement of quarterly payments and list of payees and income payments), required under Sec. 51(d) of the Tax Code, to be submitted to the Commissioner of Internal Revenue wherein the Court can check if the said payments of tax are indeed done by the CDB for its own account by listing its own name as one of the recipients of the tax it paid.
>
> 2. It can not be well said that the amounts paid and remitted to the BIR were for CDB's account and not for the other possible payees of withholding taxes which CDB may also be liable to remit as a withholding agent."

Based on the above authority, we are denying the portion which was not supported by BIR Form 1743.1.

A recomputation of the refundable income tax of petitioner would reveal that it is only entitled to the amount of P181,824.27 as shown below:

RECOMPUTATION:

Withholding Agent	Amount of Income Received	Amount of Tax Withheld	Exhs.
ABT Industrial Development Corp.	₱ 3,457,764.40	₱ 288,147.20	C
FH cement Corp.	106,790,826.05	2,669,770.65	D
Pansalan Cooperative Society	450,000.00	22,500.00	E
PDCP as Investment Manager for Various Accounts	2,303,744.00	115,187.22	F
RAM Holdings Corp.	18,000.00	900.00	G
Pilipino Telephone Corp.	18,457.60	922.88	H
Mabuhay Vinyl Corp.	50,000.00	2,500.00	I
PDCP Insurance Brokers, Inc.	1,268,872.10	87,042.99	J
PDCP Trading, Inc.	713,281.34	35,664.06	K
R.R. Tan & Associates	129,800.00	6,490.00	L
Isla Del Palacio Marine Pro Corp.	894,942.80	44,747.14	M
Plexchem International, Inc.	529,200.00	26,460.00	N
Metro Realty/Jose B. Pilar	106,762.50	5,338.13	O

Carmen Villanueva-Jacinto	48,600.00	2,430.00	P
Buen M. Morales	350,000.00	8,750.00	V
T O T A L	P117,130,250.79	P3,316,850.27	
Less 1992 tax due		3,135,026.00	
Amount refundable		P 181,824.27	

WHEREFORE, in view of the foregoing, respondent is hereby ordered to refund or in the alternative issue a tax credit certificate in favor of petitioner the sum of P181,824.27 representing validly proven overpaid income tax for the oalendar year 1992. No pronouncement as to oosts.

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 between the members 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