REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WESTIN HOTELS & RESORTS-
PHIL. BRANCH,
Petitioner,

- versus - C.T.A. CASE NO. 4791

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 29 1994

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DECISION

In its petition for review filed with this Court on April 14, 1992, petitioner alleges:

1. That petitioner Westin Hotels & Resorts - Phil. Branch is a resident foreign corporation duly licensed under Philippine laws to engage in business in the Philippines with office address at The Westin Philippine Plaza, CCP Complex, Roxas Boulevard, Metro Manila. It operates as a branch of Westin Hotels & Resorts, duly organized and existing under the laws of the State of Delaware, United States of America;

2. That on April 16, 1990, petitioner filed with the respondent its corporate annual income tax return covering the calendar year ended December 31, 1989, reporting a net taxable

income of P19,964,157.00 and an income tax due of P6,987,455.00. From the said income tax due, petitioner credited and/or deducted the following:

a.) Prior year's excess credit	P4,285,052.00
b.) Quarterly payment made this year	
CR# 16982362; ROR# 5162813	463,327.00
c.) Creditable Tax Withheld	3,290,910.00

or a total of P8,039,289.00, resulting to a refundable or overpaid income tax of P1,051,834.00;

3. That on May 6, 1991, petitioner filed an amended corporate income tax return for 1989 after it discovered that instead of realizing income from its management operations it suffered a loss of P5,570,555.00. It was not able to apply its prior year's excess tax credit of P4,352,275.00. Likewise, the quarterly income tax payment made on May 30, 1989 in the amount of P463,327.00 and the Creditable withholding tax at source amounting to P3,290,910.00 resulted to an overpayment in the sum of P3,754,237.00,

4. That on April 14, 1992, petitioner filed with the respondent a claim for refund or issuance of a Tax Credit Certificate in the amount of P3,754,237.00 as overpaid income tax for the year 1989;

5. That petitioner has instituted this appeal to preserve its rights under Section 230 in relation with Section 204(3) of the National Internal Revenue Code.

Respondent, in answer to the petition, manifested that petitioner must prove that this case was filed within the two-year prescriptive period as provided for in Section 230 of the Tax Code. Furthermore, since petitioner's claim for refund or tax credit is still pending investigation by the Bureau of Internal Revenue and this petition was instituted in order to preserve petitioner's right to claim for a refund or tax credit, it might be propitious to wait for the findings and recommendation of respondent's examiners regarding said claim. Moreover, in an action for refund or tax credit, the taxpayer has the burden of proof to show that the taxes paid were erroneously or illegally paid otherwise failure to do so will be fatal to its claim for refund or tax credit. Claims for refund or tax credit are construed strictly against the taxpayer as they are in the nature of a tax exemption.

The date of payment was construed to mean the period when the corporate income tax return is required to be filed. **(Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993.)** Consequently, the two-year prescriptive period provided in Section 292 (now Section 230 of the Tax Code) should be computed from the time of filing the Adjustment Return or Annual Income Tax Return and final payment of the tax. **(Commissioner of Internal Revenue v. TMX Sales, Inc. and the Court of Tax Appeals, G.R. No. 83736, January 15, 1992; Commissioner of Internal Revenue v. Asia Australia Express, Ltd., G.R. 85956, Resolution dated April 10, 1989.)** The term return refers to the final adjustment return covering the total taxable income for the preceding calendar or fiscal year (under Section 69 of the Tax Code) **[ACCRAIN Investments Corporation v. The Hon. Court of Appeals, et. al., G.R. No. 96322, December 20, 1991]**.

Section 70(b) of the same Code provides that the final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year, as the case may be. The final income tax return shall be paid at the time the return is filed. In the recent case of **Far East Bank and Trust Company/Foreign Currency Deposit Unit v. Commissioner of Internal Revenue, CTA Case Nos. 4356 and 4441, May 5, 1994,** this Court ruled:

> "It should be noted that herein petitioner adopts the calendar year basis of reporting its income and expenses. For calendar year ending December 31, 1986, petitioner filed its Income Tax Return on April 15, 1987. The Tax Code states it has on or before April 15, 1987 to file said return. Petitioner has then two years within which to file a written claim for refund with the Commissioner of Internal Revenue and with the Court counted from April 15, 1987, the date when petitioner is required to file its final adjustment return. These requirements were duly complied with by petitioner. On April 14, 1989, petitioner filed in writing with the Commissioner of Internal Revenue a claim for refund and on the same day filed a court suit for the refund of the alleged excess tax payments. Both the written claim for refund and the petition for review were filed within the two-year period as the law expressly and clearly provides. Therefore, the claim for refund in CTA Case No. 4356 has not yet prescribed."

In the case at bar, petitioner filed its Annual Corporate Income Tax Return for the calendar year ending December 31, 1989 on April 16, 1990. Pursuant to Section 70(b) of the Tax Code, petitioner has up to April 15, 1990 to file its final income tax return. April 15, 1990 falls on a Sunday. If the date for filing falls on a Sunday, petitioner herein has up to the next working day to file its return or on April 16, 1990, the date it actually filed its return with the Bureau of Internal Revenue. Therefore, the two-year prescriptive period for filing a written claim for refund or tax credit with the respondent and for bringing a suit for the recovery of overpaid income tax falls on April 16, 1992. On April 14, 1992, petitioner filed with the respondent a written claim for refund or tax credit and on the same date filed a petition for review with this Court. Hence, petitioner's acts fall within the two-year prescriptive period for filing the instant suit for the recovery of an overpaid income tax pursuant to Section 230 of the Tax Code.

The only issue to be resolved in this case is whether or not petitioner is entitled to the refund or tax credit claimed amounting to P3,754,237.00 as overpaid income tax for the year 1989.

After the formal offer of evidence filed by petitioner, respondent did nothing to contest or rebut the same. Neither did she present any evidence to support her answer. Instead, she merely submitted this case for decision on the basis of the records and the pleadings. No memorandum was submitted by both parties.

The requirement for claiming a refund of excess creditable withholding taxes under Section 10 of Revenue Regulations No. 6-85 are:

"(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;

(2) that the income upon which the taxes were withheld were included in the 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." **(Citytrust Finance Corp. v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corp. (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.)**

To prove excess income tax payments for the year 1989, petitioner presented in evidence the following documents:

1. Its 1989 Amended Income Tax Return with the attached Audited Financial Statements (Exh. A);

2. BIR Payment Order No. C5162813, dated May 30, 1989 (Exh. C), and the corresponding CB Confirmation Receipt No. B16982362, dated May 30, 1989 (Exh. D), in the amount of

P463,326.95 to prove that it had made quarterly income tax payments with the BIR; and

3. Certificate of Creditable Income Tax Withheld At Source (BIR Form 1743.1) issued to petitioner showing the amount of Management Fee as P65,818,196.00 and a 5% withholding tax of P3,290,909.80 (Exh. F).

No controverting evidence was presented by respondent. As a matter of fact, respondent submitted this case for decision on the basis of the pleadings and records after petitioner has presented and offered its evidence.

It is noteworthy to point that the Amended Income Tax Return of petitioner for the year 1989 shows a Gross Income of P58,672,237.00. While the Certificate of Creditable Income Tax Withheld At Source for 1989 showed a higher amount of management fee of P65,818,196.00. Petitioner's witness was able to explain the discrepancy when asked during the hearing, when she testified as follows: (pp. 5-7, TSN, Hearing of Jan. 25, 1993.)

"Q. How was the amount P3,290,910.00 arrived at by your withholding agent?

A. The 3 million pesos was based on 5% of the income payment for 1989?

Q. What kind of income payment was this?

A. The management service fees.

Q. What the tax base for creditable tax withheld was something like P65,000,000.00 plus, was this amount declared in your income tax return for 1989?

A. No, because the gross income we declared of P58,672,237.00 actually represents the actual revenues for the year 1989.

Q. Can you please explain why was there discrepancy between the income paid by Philippine Plaza and that which you reported to the BIR?

A. The income payment of P65,818,196.00 which is shown in the certificate of tax withheld at source actually includes a part of 1988 income that was paid in 1989 and for which the 5% tax was also withheld in the year 1989.

Q. What is the accounting system for reporting taxes in the BIR?

A. Accrual method."

Petitioner likewise presented in evidence its 1988 Income Tax Return (pp. 69-71, CTA rec.) showing an income of P44,302,327.00 and a creditable withholding tax of P1,825,903.00. It would appear that of the 1988 tax withheld of P1,825,903.00 the amount of P36,518,060.00 was the income earned on the amount of tax withheld. The 1988 management income was reported at P44,302,327.00 more by P7,784,267.00. Hence, it can be gleaned that the income declared was higher than what was actually withheld. And since petitioner is under the accrual method of accounting, it would appear that the discrepancy of P7,145,959.00, representing income of 1988 paid in 1989, formed part of its 1988 income reported in its 1988 income tax return.

We see no reason therefore why petitioner's claim for refund or tax credit should be denied. Having satisfactorily proven its claim in the sum of P3,754,236.75, itemized as follows:

a.) Quarter Income Tax Payment made on May 30, 1989, under BIR Payment Order No. C5162813 and CB Confirmation Receipt No. B16982362 (Exhs. C and D)	P 463,326.95
b.) 1989 Certificate of Creditable Income Tax Withheld At Source (BIR Form No. 1743.1) [Exh. F]	3,290,909.80
Total Amount Refundable	P3,754,236.75

and there being no objection from respondent with respect to the evidence presented by petitioner, this Court believes the merit of petitioner's case.

WHEREFORE, the petition for review is hereby **GRANTED.** Respondent is hereby ordered to refund or grant a tax credit in favor of petitioner, Westin Hotel & Resorts - Phil. Branch, the amount of P3,754,236.75, representing overpaid income tax for the year 1989. No pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

This is to certify that the above decision was reached after due consultation among 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