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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST INVESTMENT
PHILIPPINES, INC.,
Petitioner,

- versus -

THE COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4958

Promulgated:
APR 25 1996

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DECISION

This is a claim for the refund of alleged excess creditable withholding tax in the amount of P186,380.00 for the taxable year 1990.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is engaged in the business of investment banking and it is alleged that creditable taxes were withheld at source from its income by various clients in 1990 in the total sum of P186,380.00. Petitioner claims that this amount was not utilized as it suffered a net loss in 1990 in the amount of P2,901,151.00. Petitioner then sought to apply this unutilized amount of P186,380.00 to the next calendar year as reflected in its final income tax return for 1990, however this did not

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materialize because petitioner again suffered a net loss for the taxable year 1991 in the amount of P2,677,175.00. So in a letter dated June 2, 1992 and received by the respondent on June 5, 1992, petitioner requested for the refund of the amount of P186,380.00, which claim was not acted upon by the respondent. Consequently, petitioner filed a petition for review with this Court on February 19, 1993.

Respondent asserted the following Special and Affirmative Defenses, thus:

> 5. The petition states no cause of action as it does not allege the date when the tax sought to be refunded/tax credited was paid (manufacturer's Bank and Trust Co., as Trustee for Gem Trust Plans vs. Comm. of Internal Rev., C.T.A. CASE NO. 1659, November 19, 1965);
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> 6. Any amount claimed to have been withheld must be shown to have been paid to the government, and in the case at bar, no showing has been made;
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> 7. Certificates of Creditable Income Tax Withheld at Source (Annexes "B" to "E") accomplished by petitioner's withholding agents (BIR Form 1743.1) Manila Doctors Hospital, University Physician Services, Inc., Asset Privatization Trust and PLDT showing amounts deducted and withheld on petitioner's various income payments do not constitute conclusive evidence of payments and remittances to the Bureau of Internal Revenue, to Section 68 of the Government Auditing Code the same being mere proof of withholding of the Philippines (Pres. Decree No. 1445);
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> 8. Well-settled is the rule that mere allegations or indications of net operating loss in the Income Tax Return do not ipso facto

merit a refund, and since this is the sole issue and basis of petitioner's claim, the absence of evidence supporting the same must necessarily work against the granting of such claim;

9. Petitioner's cause of action has already prescribed it appearing that payment effected through the withholding tax system are deemed paid when remittance thereof becomes due at the end of the tax year, in this case December 31, 1990. The reason is obvious. The amount of P186,380.00 was allegedly withheld in 1990, but the petition for review was filed only on February 19, 1993, or after the lapse of more than two (2) years as prescribed by Section 230 of the Tax Code;

10. In an action for refund of taxes, it is incumbent upon the petitioner (taxpayer) to show that the taxes paid were erroneously or illegally collected. Failure to sustain said burden is fatal to the action for refund;

11. It is incumbent upon the petitioner to show compliance with the provisions of Section 243 and 246 of the 1986 Tax Code;

12. Claims for tax refund/credit are construed against claimants, the same being in the nature of an exemption from taxation (Manila Electric Company, vs. Comm. of Int. Rev., 67 SCRA 351).

The sole issue to be resolved in the instant petition is whether or not petitioner is entitled to the refund of P186,380.00 as excess creditable withholding tax for the year 1990.

Petitioner anchors its claim on Section 69 of the Tax Code, which provides for the following:

SEC. 69. *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
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> (a) Pay the excess still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> 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.

To substantiate its claim, petitioner offered as evidence its 1990 final income tax return showing a net loss of P2,901,151.00 and the amount of P186,380.00 as the accumulated creditable taxes withheld for that same year (Exhibit "F"). Petitioner also presented its final income tax return for the taxable year 1991 reflecting a net loss of P2,677,175.00 (Exhibit "G") to show that it was unable to utilize the amount of P186,380.00 to satisfy its tax liabilities for 1991 as it again suffered losses thereby resulting in this instant petition's claim for refund.

Respondent in her Answer raises the issue of prescription. It is claimed that petitioner's cause of action has already prescribed because payments effected through the withholding tax system are deemed paid at the end of the taxable year which in this case falls on

December 31, 1990, thus, the instant petition filed only on February 19, 1993, is already beyond the two-year period prescribed by Section 230 of the Tax Code.

We disagree with the above contention because the foregoing argument propounded by the respondent is already an outmoded line of defense brought about by a clear declaration made by the Supreme Court in **ACCRA Investments Corporation vs. Court of Appeals**, 204 SCRA 957 where it declared that the date of payment for the purpose of computing the 2 year prescriptive period shall be reckoned from the date of the filing of the final adjustment return, thus:

> Clearly, there is the need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue. The petitioner corporation filed its final adjustment return for its 1981 taxable year on April 15, 1982. In our Resolution dated April 10, 1989 in the case of *Commissioner of Internal Revenue vs. Asia Australia Express, Ltd.* (G.R. No. 85956), we ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final tax return. Hence, the petitioner had until April 15, 1984 within which to file its claim for refund.
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> xxx xxx xxx

> It bears emphasis at this point that the rationale in computing the two-year prescriptive period with respect to the petitioner corporation's claim for refund from the time it filed its final adjustment return is the fact that it was only then that ACCRAIN could ascertain whether it made profits or incurred losses in its business operations. The "date of payment", therefore, in ACCRAIN's case was when its tax liability, if any fell due upon its filing of its final adjustment return on April 15, 1982.

As to the merits of the claim for refund, we rule against the petitioner because a review of the evidence presented shows that they are insufficient to convince this Court that the amount of P186,380.00, which is the amount sought to be refunded, was never utilized to satisfy petitioner's tax liabilities for succeeding taxable years. The petitioner's final income tax return for 1990 reflected its intention to carry over the unapplied creditable taxes to the next succeeding taxable year (see Exhibit "F", No. 10 of the income tax return) which did not materialize as the next taxable year of 1991 similarly resulted in a net loss. However, we find it significant to consider that petitioner again opted to carry over the unapplied excess credit of 1991 to the next succeeding taxable year which included the amount of P186,380.00, an amount that was carried over from the previous taxable year of 1990. Shown hereunder are the figures contained in petitioner's 1991 corporate income tax return:

Gross Income		P50,299,701.00
Deductions:		52,976,876.00
Net Income		(2,677,175.00)
Less: Prior year's excess credit	P	186,380.00
Creditable Tax withheld at source		30,000.00
Total amount refundable	P	216,380.00*

*To be applied as tax credit to succeeding taxable year

It is obvious from the aforecited figures that the amount that petitioner intended to carry over to the next succeeding taxable year included the sum of P186,380.00, the same amount which is the subject of the present claim for refund. We are now left with the question of whether or not the amount of P186,380.00 was utilized to satisfy petitioner's tax liabilities for the taxable year 1992. The records of this case leave such question unanswered because petitioner did not present its 1992 corporate income tax return at any stage during the hearings for this case.

In our resolution dated October 21, 1993, in the case entitled **Paseo Realty Development Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 4693, we reconsidered our previous decision and later on denied the claim for refund for the following reasons, thus:

> A punctilious study of the case at bar, reveals that indeed there is a cause to reconsider Our previous Decision. We have overlooked the fact that the petitioner's 1989 Corporate Income Tax Return (Exh. A) indicated

that the amount of P54,104.00 subject of petitioner's claim for refund has already been included as part and parcel of the P172,477.00 which the petitioner automatically applied as tax credit for the succeeding year 1990.

Reproduced, hereunder, is the petitioner's 1989 Corporate Income Tax Return which shows the following computations:

Income		P1,885,000.00
Deductions		1,775,991.00
Taxable Income		P 79,009.00
Tax Due		P 27,653.00
Less: Prior Year's Excess Credit	P146,026.00	
Creditable Tax withheld at Source	54,104.00	200,130.00
Total amount refundable		(P 172,477.00)*

<u>To be Applied as Tax Credit to Succeeding Taxable year</u>

(see Exh. A; Emphasis supplied)

Note should be taken that the amount of P54,104.00 is already part and parcel of P172,477.00 which presumptively was already applied as tax credit to the succeeding taxable year 1990. Such presumption, of course, could have been overturned had the petitioner submitted its 1990 Corporate Income Tax Return showing that it did not automatically credit the said amount for the said taxable year 1990. Unfortunately, petitioner failed to submit that vital document which could have unlocked his entitlement for the elusive claim for refund sought for. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the timed-tested doctrine that claims for refund are construed strictly against claimant (**Commissioner of Internal Revenue vs. Ledesma**, G.R. No. L-17509, January 30, 1970, 31 SCRA 95).

It is to be noted that the 1991 final tax return of petitioner shows that the boxes indicating the choices "to be refunded" and "to be applied to the next succeeding taxable year" are both marked with an "x" (Exhibit "G"). We find this an incongruous situation as one can not ask that the same amount be refunded and at the same time to be applied as tax credit to the succeeding taxable year. However, a close scrutiny of the same tax return for 1991 revealed that what was originally marked with an "x" was the box referring to the choice "to be applied as tax credit to the succeeding taxable year" because the marking "x" has the same typewriter print as the rest of the figures contained in the said return. The other marking of "x" for the box referring to the choice "to be refunded" was obviously made with a pen or pencil leading us to give more credence to the option of petitioner of applying the amount to the next succeeding taxable year. So, if the petitioner had indeed applied the same refundable amount to satisfy its tax liabilities for the succeeding year of 1992, then the present claim for refund must be denied because to grant the same would in effect be granting twice the refund of the same amount which is detrimental to the interest of the government.

WHEREFORE, in view of the foregoing, the petition for review is hereby **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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