REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK & TRUST COMPANY,
Petitioner,

- versus - **C.T.A. CASE NO. 5487**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 04 1999

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of P13,645,109.00 representing alleged overpaid income tax for the years ended December 31, 1994 and December 31, 1995.

Petitioner is a domestic corporation organized and existing under and by virtue of Philippine laws. It is principally engaged in the business of corporate banking and foreign currency transactions. Some of its income is subject to the expanded withholding tax under Revenue Regulations No. 6-85 which is creditable against its income tax liability under Section 24 of the Tax Code.

On April 10, 1995, Petitioner filed separately with the Bureau of Internal Revenue (BIR) two Corporate Annual Income Tax Returns: one, for its Corporate Banking Unit (CBU) and another, for its Foreign Currency Deposit Unit (FCDU), for the calendar year ended December 31, 1994. The CBU's income tax return, however, is already a consolidation of Petitioner's overall income tax liability for 1994, showing a refundable income tax of P12,682,864 detailed as follows:

	FCDU	CBU
Gross Income	P 13,319,068	5,348,080,630
Less: Deductions	1,397,157	5,432,828,719
Net Income	11,921,911	[84,748,089]
Tax Rate	35%	35%
Income Tax Due Thereon	4,172,669.00	NIL
Consolidated tax due for both CBU and FCDU Operations	P 4,172,669.00	
Less:		
Quarterly Income Tax Payments		
CBU - 1st Quarter	633,085	
2nd Quarter	11,844,333	
FCDU -1st Quarter	955,280	
2nd Quarter	1,104,942	
Less:		
Creditable Taxes Withheld at Source	2,317,893	
Refundable Income tax	[P12,682,864]	

Pursuant to Section 69 of the 1994 Tax Code, to state:

> Sec. 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:
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> (a) Pay the tax still due; or

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> (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,

Petitioner carried over and applied its excess income tax credit for 1994 against its income tax liability for the succeeding taxable year ending December 31, 1995.

Upon the other hand, Petitioner's 1995 Annual Income Tax Return filed on April 15, 1996 showed a total overpaid income tax in the amount of P17,443,133 since an additional prior year's excess income tax credit alleged withheld in 1994 but booked only in 1995 was included, thus:

	FCDU	CBU
Gross Income	P 16,531,038	7,076,497,628
Less: Deductions	1,327,549	7,086,821,354
Net Income	15,203,539	[10,423,728]
Tax Rate	35%	35%
Income Tax Due Thereon	5,321,239	NIL
Consolidated tax due for		
Both CBU and FCDU Operations	P 5,321,239	
Less:		
Prior year's (1994) excess income tax credit	12,682,864	
Additional prior years excess income tax credit	6,283,484	
Creditable Taxes Withheld at Source	3,798,024	
Refundable Income tax	**[P17,443,133]**	

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Petitioner opted to carry over to the next taxable year (1996) its 1995 excess creditable withholding tax in the amount of P3,798,024 but sought the refund or tax credit of its 1994 unutilized creditable withholding tax. Through a letter dated May 8, 1996, Petitioner filed on May 17, 1996 a letter-claim for the refund of the amount of P13,645,109 with the Bureau of Internal Revenue (Exh. VV) It anchored its claim on Sections 204 (3) and 230 of the Tax Code, to state:

> ***Sec. 204. Authority of the Commissioner to compromise, abate, and refund/credit taxes.-*** The Commissioner may
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> xxx xxx xxx
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> **(3)** ***Credit or refund taxes erroneously or illegally received,*** penalties 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 shall be allowed unless the taxpayer has filed in writing with the Commissioner a claim or refund within two years after the payment of the tax or penalty.
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> ***Sec. 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.***

There being no action on the part of herein Respondent the instant petition for review was elevated before this Court on April 8, 1997.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

"5. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by the respondent's Bureau.

6. The amount of tax sought by the petitioner to be refunded/credited was paid pursuant to law and BIR implementing rules and regulations, hence the same is not refundable. It should be borne in mind, that whether the recovery of the tax is made by means of a claim for refund or tax credit, before recovery is allowed two things must be established:

(a) That there was an actual collection and receipt by the Government of the tax sought to be recovered. This requires factual proof.

(b) That there is a legal basis for granting the refund or credit.

(William Li Yao vs. Collector, L-11875, December 28, 1963)

Petitioner must prove that the said income tax was actually paid, remitted and received by the respondent's Bureau and that, the income from which the amount of tax paid, were declared and included in its gross income during the years under review;

7. Petitioner's allegation that it overpaid its income tax for the years under review does not **ipso facto** warrant the refund. Petitioner must prove that it is indeed entitled to a refund under the Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence. Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671 [1986]). All presumptions are in favor of the correctness of tax assessments (Sy Po vs. Court of Tax Appeals, et al.,164 SCRA 524, 530 [1988]; Collector of Internal

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Revenue vs. Bohol Land Transportation Co., 58 O.G. 2407 [1960].

8. Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable years:

9. Claims for tax refund are construed strictly against the claimant as it partakes of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund; Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. v. Llamas, 49 Phil. 466 cited in Collector vs. Manila Jockey Club Inc. L-8755, March 23, 1956; Davao Light and Power Co., Inc. vs. Com. of Customs L-28731, 28 902, March 29, 1972).

10. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery on refund, which are found in Sections 204(3) and 230 of the Tax Code xxx"

The sole issue for determination is whether or not Petitioner has complied with all the requirements for a valid claim for refund or tax credit so as to be entitled to the relief sought.

To support its claim, Petitioner presented the following:

Exhibits	Nature and Description
A	Corporate Annual Income Tax Return covering Income of Petitioner's corporate banking unit (CBU) for the year ended December 31, 1994 together with attachment

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B	Corporate Annual Income Tax Return covering income of Petitioner's foreign currency deposit unit (FCDU) for the year ended December 31, 1994 together with attachments
C	Corporate Annual Income Tax Return covering income of Petitioner's CBU for the year ended December 31, 1995 together with attachments
D	Corporate Annual Income Tax Return covering income of Petitioner's FCDU for the year ended December 31, 1995 together with attachments
N to Z; AA to UU	Certificates of Creditable Withholding Tax and Monthly Remittance Returns of Income Taxes Withheld issued by various withholding agents for the year ended December 31, 1994
VV	Letter claim for refund dated May 8, 1996 filed with Revenue District Office No. 33 on May 17, 1996

Counsel for Respondent, on the other hand, manifested during the hearing on January 14, 1998, that he is submitting the case for decision in view of the fact that he has no evidence to present nor records to submit relative to this case.

After a careful scrutiny of the evidence presented by the Petitioner, We rule in favor of Respondent.

To be entitled to a refund, 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;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. That 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. (see **Citytrust Finance Corporation vs.**

> **The Commissioner of Internal Revenue** CTA Case No. 4134, November 11, 1991; **Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue,** CTA Case No. 4046, February 24, 1993; **FEB Investment, Inc. vs. The Commissioner of Internal Revenue,** CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5323, August 25, 1997; **Shangri-la Plaza Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5346, January 9, 1998;**Nestle Philippines, Inc. (formerly Magnolia Nestle Corporation) vs. Hon. Liwayway Vinzons-Chato, Commissioner of Internal Revenue,** CTA Case No. 5350, January 20, 1998; **Bank of Commerce vs. The Commissioner of Internal Revenue,** CTA Case No. 5101, March 17, 1998; **Oranbo Realty Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5335, July 24, 1998; **AGP Industrial Corporation (formerly AGP Investment Corporation) vs. Commissioner of Internal Revenue,** CTA Case No. 5239, April 13, 1999; **The Philippine Banking Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5507, April 30, 1999; **Philippine National Bank, Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 5511, April 30, 1999; **Shimizu Philippine Contractors Inc. vs. The Commissioner of Internal Revenue,** CTA Case No. 5544, May 12, 1999).

These 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.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on May 17, 1996 as well as its Petition for Review filed with this Court on April 8, 1997 are both within the two-year period from the date of the filing of the return on April 10, 1995.

Petitioner likewise submitted various certificates of Creditable Tax Withheld at Source as well as Monthly Remittance Returns of Income Taxes Withheld to establish the fact of withholding. However, an examination of these certificates and returns would reveal

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that the income upon which these taxes were withheld were not included in the return of the Petitioner.

Note that the Certificates of Creditable Tax Withheld at Source submitted by Petitioner pertain to rentals of real property while the Monthly Remittance Returns of Income Taxes Withheld refer to sales of real property. But, if we are to look at Schedules 3, 4 and 5 of the Annual Income Tax Return of Petitioner for 1994(Exhibit "A"), there was no showing that the Rental Income and Income from Sale of Real Property were included as part of the gross income appearing in Section A of the said return. In fact, under the said schedules, the phrase "NOT APPLICABLE" was printed by Petitioner. Verily, the income of Petitioner coming from rent and sale of real property upon which the creditable taxes withheld were based were not duly reflected. As to the certifications issued by the Petitioner (Exh. UU) the same cannot be considered in the absence of the requisite Certificates of Creditable Tax Withheld at Source.

Based on the foregoing, Petitioner has failed to comply with two essential requirements for a valid claim for refund. Consequently, the same cannot be given due course.

WHEREFORE, in view of all the foregoing, the instant petition for review is hereby **DENIED** for lack of merit.

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