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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BENGUET MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5334

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 10 1997

x - x

DECISION

Case at bar refers to a claim for refund in the amount of P20,086,063.00, allegedly representing overpaid expanded withholding taxes for the calendar year 1993.

Petitioner is a registered domestic corporation engaged in business as a specialty contractor particularly in metal casting.

During the calendar year ended December 31, 1993, it received income payments from sale of real properties, rentals and contractor fees, which were subjected to creditable expanded withholding taxes in the total amount of P24,140,884.00 in compliance with Revenue Regulations No. 6-85, as amended.

For the same calendar year, petitioner filed on September 2, 1994 an amended annual income tax return declaring therein a net income of P11,585,204.00, a tax due of P4,054,821.00, a creditable income tax withheld of P24,140,884.00 and a refundable amount of P20,086,063.00 This refundable amount was not utilized by petitioner as it has no other tax liabilities except its income tax for the calendar year ended December 31, 1993. Neither was it used as automatic tax credit pursuant to Section 69 of the Tax Code, as petitioner had no income tax liabilities for the calendar year 1994, it being in a net loss position in that year.

Hence, in a letter dated September 29, 1994, petitioner filed with respondent's office a claim for refund of the amount of P20,086,063.00 as overpaid or erroneously paid creditable expanded withholding taxes for the year 1993.

The claim remained unacted upon and so, to toll the running of the two-year prescriptive period, on March 19, 1996 petitioner filed with this Court the instant petition.

On March 25, 1996, summons was served on the respondent. Despite such service, respondent failed to file her answer or even a motion for extension of time to file the same.

Consequently, upon motion filed by petitioner on June 14, 1996, this Court in a resolution promulgated on June 24, 1996 (p. 16, CTA rec.) declared respondent in default and allowed petitioner to present its evidence ex-parte.

After a careful perusal of all the documentary evidence presented ex-parte including the testimony of petitioner's lone witness, Lina Fernandez, this Court is convinced to grant the refund sought by petitioner but only in the partial amount of P19,854,225.09, computed as follows:

Gross income:	
Sale of goods (Schedule 1)	P 89,709,791.00
Sale of services (Schedule 2)	2,497,935.00
Rentals (Schedule 4)	694,909.00
Interest, royalties, dividends not subject to final withholding tax (Schedule 5)	902,212.00
Sale of property other than capital assets (Schedule 7)	145,432,783.00
Total	P239,237,630.00
Less deductions (Section E)	227,652,426.00
Net income	P 11,585,204.00
Tax Due (P11,585,204.00 x 35%)	P 4,054,821.40
Less allowable creditable tax withheld per Schedule "A"	23,909,046.49
TOTAL AMOUNT REFUNDABLE	P 19,854,225.09

CREDITABLE WITHHOLDING TAX AT SOURCE: (Schedule "A")

A. From Sale Of Real Properties:

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Withheld
Benguet Management Corporation	D, D-1	P233,800,000.00	P11,690,000.00
Engineering Equipment, Inc.	E	84,323,200.00	4,216,160.00
Benguet Management Corporation	F, F-1	105,000,000.00	5,250,000.00
Benguet Management Corporation	G, G-1	30,311,850.00	1,515,593.00
Placido O. Urbanes	I, I-1	434,383.60	10,859.59
Ramon M. Cordova	J, J-1	462,266.04	11,556.65
Rommel U. Tinio	K, K-1	1,800,000.00	90,000.00
RZS Resources, Inc.	L-12	1,654,442.40	41,361.06
Mr. & Mrs. Val Santos	M, M-1	2,160,000.00	54,000.00
Sub Total		P459,946,142.04	P22,879,530.30

B. From Rentals:

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Withheld
Consolidated Ind. Gases, Inc.	N, N-1	P 127,641.60	P 6,382.08
Engineering Equipment, Inc.	O, O-1	250,000.00	12,500.00
Engineering Equipment, Inc.	P, P-1	250,000.00	12,500.00
Sub Total		P 627,641.60	P 31,382.08

C. From Fees As Contractor

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Withheld
Bacnotan Cement Corp.	Q, Q-1	P 1,652,559.00	P 16,525.59
Central Azucarera Don Pedro	R, R-1	400,000.00	4,000.00
Central Cement Corp.	S, S-1	3,420,061.00	34,200.61
Concrete Aggregates Corp.	T, T-1	154,286.00	1,542.86
Hi Cement Corporation	U, U-1	1,427,635.00	14,276.35
Iligan Cement Corporation	V, V-1	75,040.90	750.41
Kawasaki Steel Corporation	W, W-1	537,570.00	5,375.70
Marcopper Mining Corporation	X, X-1	3,245,565.00	32,455.65
Philex Mining Corporation	Y, Y-1	80,590,370.00	805,903.70
Phil. Rock Products, Inc.	Z, Z-1	111,915.00	1,119.15
Republic Cement Corporation	AA, AA-1	1,123,534.66	11,235.34
Rizal Cement Co., Inc.	BB, BB-1	5,915,948.00	59,159.48
Solid Cement Corporation	CC, CC-1	1,158,927.00	11,589.27
Sub Total		P 99,813,411.56	P 998,134.11
T O T A L			P23,909,046.49

Furthermore, this Court likewise grants to petitioner the above-stated partial refund considering its compliance with the three (3) basic requirements in claiming for the refund of excess expanded withholding tax, which are as follows:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax 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. **[Sec. 10, Rev. Regs. 6-85; see Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

Exhibits "H" to "H-3" inclusive (Monthly Remittance Return of Income Taxes Withheld, pp. 52-53, CTA rec.) were excluded in the Court's computation as they pertain to the payment of withholding tax for 1994. Further, petitioner failed to submit evidence relative to the payment of withholding tax and income received as a contractor of Hardkrome, Inc..

WHEREFORE, finding instant petition partly meritorious, the Court grants only the amount of P19,854,225.09 and hereby **ORDERS** respondent to **REFUND** such amount in favor of petitioner as unutilized or overpaid creditable expanded withholding tax for the year 1993.

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 with the member 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