REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERMAC, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5632

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 15 2000

x - x

DECISION

This is a judicial claim for refund of alleged overpaid creditable withholding tax in the amount of ₱230,692.00 covering the taxable year 1995.

Petitioner is a corporation organized and existing under and by virtue of Philippine laws with office address at 35th Floor, Tower One, Ayala Triangle, Ayala Avenue, Makati City, Metro Manila. It is authorized to engage in business as a holding company for the purpose, among others, of acquiring and investing in stocks of other corporations.

The facts are simple.

On April 15, 1996, Petitioner filed its Corporation Annual Income Tax Return ended December 31, 1995 showing a net loss and reflecting an excess of creditable withholding tax in the amount of ₱230,692.00 (Exhibit A). In the ensuing year of 1996, Petitioner was not able to utilize said amount of tax for the reason that it suffered again a net loss (Exhibit K).

On December 2, 1997, Petitioner filed a claim for refund with Respondent's Bureau in the amount of ₱230,692.00 representing such unutilized creditable withholding tax. Respondent did not act on said claim for refund. To obviate therefore, the lapse of the two-year peremptory period for the filing of a judicial claim for refund as provided in Section 230 of the Tax Code, as amended, Petitioner instituted the instant claim for refund on April 15, 1998.

At bar, Petitioner restates its stance *a quo*. Respondent, on the other hand, interposed, among others, the affirmative and special defense that the burden of proof is on the taxpayer to establish its right to the refund and failure on its part to sustain such burden is fatal to the action for tax credit.

As We see it from the facts, the sole issue confronting this Court is whether or not Petitioner has submitted sufficient evidence to prove its entitlement to the herein claim for refund. We rule in Petitioner's favor.

There are three requirements in claiming refund for excess creditable withholding taxes and these are:

> 1. that Petitioner filed a claim for refund within the two (2) year period as prescribed under Section 230 of the Tax Code, as amended;
>
> 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 or certificate of creditable tax withheld at source (BIR Form 1743.1, now 1743-750) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom. *(Section 10, Revenue Regulations No. 6-85; Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993; Commissioner of Internal Revenue*

vs. Court of Tax Appeals and Paseo Realty and Development Corporation, CA-G.R. SP No. 32927, February 28, 1994; and, Far East Bank and Trust Company vs. Court of Tax Appeals and Commissioner of Internal Revenue, CA-G.R. SP No. 41666, May 7, 1997)

Petitioner has satisfied the filing of the instant claim for refund within the two-year period as prescribed in Section 230 of the Tax Code, as amended. The final adjustment return for year 1995 was filed on April 15, 1996, the last day required under Section 77 of said Code, and the petition at bar was filed on April 15, 1998, or exactly on the last day of the two-year reglementary period.

With regard to the second requirement, Petitioner's final adjustment return for year 1995 showed indubitably under Section E thereof (Exhibit A) that the amount of ₱230,692.00 was duly reported and included in said return.

Going into the last requirement, records show that Petitioner submitted in evidence the following Certificates of Creditable Tax Withheld At Source in satisfying proof of withholding of the amount of tax by the payor, to wit:

Withholding Agent	Amount of Tax Withheld	Exh.
Smart Communications, Inc.	₱103,300.00	B
Toyota Motor Phils., Corp.	3,500.00	C
Stephen D. Williams c/o Caltex (Philippines), Inc.	12,700.00	D
DHL Aviation (Phils.), Inc.	51,000.00	E
Griffin Securities Corp.	11,191.66	F
Ayala Corporation	1,000.00	G
Procter & Gamble Phils.	48,000.00	H
TOTAL	₱230,691.66	

Based on the preceding compliance by the Petitioner of the requirements for a successful refund of creditable withholding tax, this Court is left with no alternative but to act favorably on its claim for refund at bar.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Accordingly, Respondent Commissioner of Internal Revenue is **ORDERED** to **REFUND** the amount of **₱230,691.66** to the Petitioner immediately.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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