REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5505

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 31 1999

x - x

RESOLUTION

Respondent seeks the reconsideration of this Court's decision in the above entitled case, dated July 7, 1999, the dispositive portion of which reads as follows:

> "WHEREFORE, in view of the foregoing, the instant petition for review is hereby GRANTED. Accordingly, Respondent is ordered to refund or issue a tax credit certificate in the amount of P2,835,424.00 to the Petitioner immediately.
>
> SO ORDERED."

Respondent contends that Petitioner is not entitled to the refund sought for failure to substantiate the alleged net loss it suffered during the calendar year 1995. It further insists that mere allegation of net loss in Petitioner's Income Tax Return does not *ipso facto* merit a tax refund or credit and the absence of evidence supporting the same must necessarily work against the granting of such claim in line with the principle that claims for refund are construed in *strictissimi juris* against the taxpayer as refund partakes the nature of exemption from taxation.

On August 10, 1999, Petitioner filed its Opposition to the Respondent's "Motion for Reconsideration adopting the ruling in the case of **Citytrust Banking Corporation vs. CIR (CTA Case No. 4099, May 28, 1991),** to wit:

> "Respondent's contention that a mere allegation of loss in 1985 does not ipso facto merit a refund is likewise unmeritorious.
>
> As stated, Respondent did not present any evidence which will effectively dispute the correctness of the returns and other material facts therein. Neither did Respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence, the income tax return should be given credence and thus, coupled by the fact that Petitioner was able to present documents to substantiate its income tax return, provided sufficient proof of a loss sustained by Petitioner in the year."

The lone issue in this Motion for Reconsideration is whether or not Petitioner has substantiated the alleged net loss it suffered in 1995 so that the excess tax paid in 1994 could be carried over to the year succeeding 1995.

We find Respondent's contention bereft of merit.

The allegation of loss by the taxpayer – claimant need no detailed substantiation. The financial statement and other supporting documents attached to the Income Tax Return submitted is sufficient to establish the financial position of the taxpayer for the given year. There is that presumption although disputable that private transactions have been fair and regular (Section 2, Rule 131). It is not incumbent upon the taxpayer to show proof of the truthfulness of each and every item in the income tax return, especially if such return is accompanied by financial statements and report duly prepared by their auditor under the penalty of perjury. The burden of proof now lies with the Respondent.

Thus, as held by this Court in the case of **Robinson's Incorporated vs. CIR (CTA Case No. 4700, April 30, 1996):**

> "This Court firmly stand that the burden of proving whether Petitioner's income tax returns are accurate or not has been shifted to the Respondent. It is within her competence to examine Petitioner's financial statements and auditor's report as these are documents necessarily attached to the return filed by Petitioner and formed part of the BIR records but failed to do so." (BPI as Liquidator of Paramount Acceptance Corp. vs. CIR, CTA Case No. 4257, December 20, 1993)

The Supreme Court, in the case of **Citibank, N.A. vs. Court of Appeals (G.R. No. 107434, October 10, 1997)** ruled that the alleged irregularities in the declared operating losses is a matter which must be proven by competent evidence, thus:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of withholding. However, <u>detailed proof of the truthfulness of each and every item in the income tax return is not required.</u> That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return." (Underscoring supplied).

In the case at bar, since Respondent failed to manifest any reasonable effort to rebut or controvert the documentary evidence presented by Petitioner, this Court then gives credence to the Income Tax Return and other supporting documents offered by Petitioner as a proof of net loss from its operations.

Respondent's failure to present evidence and relying merely on its usual defense that claims for refund are strictly construed cannot possibly withstand substantial evidence which Petitioner was able to present to prove its claim **(Shangri-La Plaza Corp. vs. CIR, CTA Case No. 5346, January 9, 1998).**

WHEREFORE, in view of the foregoing, this Court sees no valid reason to set aside its original Decision and this motion is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge