

lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GREENFIELDS DEVELOPMENT
CORPORATION,

Petitioner,

- versus -

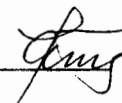
C.T.A. CASE NOS. 4669
and 4867

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Promulgated:

JAN 30 1996



x - - - - - x

DECISION

This refers to consolidated cases for refund of Greenfields Development Corporation (GDC, for brevity), in the amount of P2,808,565.34 and P4,414,278.23 allegedly representing excess tax payments for the taxable fiscal years ended July 31, 1989 and July 31, 1990, respectively.

Petitioner is a domestic corporation engaged in the real estate business.

For the fiscal year ending July 31, 1989, it filed its Corporate Annual Income Tax Return (Exh. "KK", Petitioner) declaring therein a net loss of P5,478,465.84, prior year's tax credit of P1,126,597.38, and total withholding tax of P1,681,967.96 on its rental and miscellaneous income. The return, therefore, reflected a refundable amount of P2,808,565.34 which

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petitioner failed to apply for automatic tax credit in the succeeding taxable year as the corporation also overpaid its income tax due for the year ended July 31, 1990. Consequently, on November 14, 1991, petitioner filed with the B.I.R. a written claim for refund of the amount of P2,808,565.34. On the same date, November 14, 1991, it filed a petition for review with this Court, docketed as CTA Case No. 4669, seeking refund of the amount of P2,808,565.34.

For the fiscal year ending July 31, 1990, petitioner filed its Corporate Annual Income Tax Return (Exh. "LL", Petitioner) on November 14, 1990 reporting therein a taxable net income of P2,449,189.62, tax due thereon of P857,216.00, prior year's (1989) excess credit of P2,808,565.34, and its current withholding taxes of P5,271,494.23 on its rental and management fees income. In this return, petitioner claimed as refundable the amount of P4,414,278.23. In a letter, dated July 18, 1992, filed with respondent's office on August 6, 1992, petitioner sought for the refund of the amount of P4,414,278.23. The judicial claim for this amount was filed with this Court on October 21, 1992 and was docketed as C.T.A. Case No. 4867.

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Answer for C.T.A. Case No. 4669 was filed by respondent on April 20, 1992, admitting only paragraphs 1 and 2 of the petition, and denying the rest of the allegations either for lack of knowledge or information sufficient to form a belief as to the truth thereof, or for being erroneous conclusions of fact and/or of law. The following were alleged as special and affirmative defenses:

1. The application for tax credit/refund is pending investigation by the BIR;

2. In an action for refund of taxes, the burden of proof is upon the taxpayer to show that the taxes paid or remitted were erroneously or illegally collected;

3. It is incumbent upon petitioner to show that it has complied with the pertinent provisions of Section 230 of the Tax Code regarding the prescriptive period within which to file claims for refund;

4. Granting arguendo that payment of the tax sought to be refunded has been made, the same is presumed to have been paid by the taxpayer in accordance with law; and

5. Claims for refund of taxes are construed strictly against the claimant, the same being in the nature of an exemption from taxation.

For C.T.A. Case No. 4867, answer was filed on January 7, 1993. Similar to the first case, paragraphs 1 and 2 were also admitted and the same grounds for denial were invoked for the rest of the allegations in the

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petition. The following were stated as respondent's special and affirmative defenses:

1. Petitioner's claim for refund is still under administrative investigation;
2. Any amount to have been withheld must be shown to have been paid and remitted to the Bureau of Internal Revenue;
3. It is incumbent upon petitioner to show that he has complied with the provisions of Sections 204 and 230 of the Tax Code; and
4. The mere allegation of refundability does not ipso facto merit a refund of taxes legally collected.

On October 29, 1992, petitioner filed a motion to consolidate the instant cases as there are common evidence and witnesses to be presented. In open court, on the same given date, the motion was duly granted.

The lone issue to be resolved in the cases at bar is whether or not petitioner is entitled to the refund of the amounts of P2,808,565.34 and P4,414,278.23 or the total amount of P7,222,843.57.

The Court rules in favor of the petitioner and the grounds are laid as it tackles the special and affirmative defenses of respondent.

Respondent's allegation that petitioner's claims are still under administrative investigation is not a valid ground for this Court not to decide the same. It has already acquired jurisdiction over the claims and the

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Court is not bound to wait indefinitely for no reason for whatever action respondent may take. At stake are claims for refund and unlike disputed assessments, no decision of respondent is required before one can go to this Court. It may not be amiss to state that until these consolidated cases were submitted for decision, no action was taken, whatsoever, in the administrative level.

During the hearings conducted, petitioner presented the numerous certificates of creditable income tax withheld (Exhibits "A" to "JJ", inclusive) and the monthly/annual remittance returns of income taxes withheld as well as the payment orders and confirmation receipts corresponding to said remittances (Exhibits "TT" to "XXXX-3", inclusive). All of these documents were properly identified by witnesses who also testified as to their contents. Said documents were also confirmed by respondent's counsels to be faithful reproductions of the originals. The only objection interposed by respondent's counsel was that the subject documents have not been verified/audited by respondent's examiners, and hence, self-serving (1st paragraph, Respondent's Comments to Petitioner's Formal Offer of Evidence, p. 106, CTA records). The Court brushes aside this objection as

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evidenced by Exhibit "PP" of petitioner which we
reproduce hereunder:

August 20, 1991

GREENFIELD DEVELOPMENT CORPORATION
108 Rada Street, Legaspi Village
Makati, Metro Manila

Sir/Madam:

In connection with the FY 8/1/88 - 7/31/89
and FY 8/1/89 - 7/31/90 internal revenue tax
investigation by Revenue Officers Alexander D.
Martinez, Alejandro F. Felipe, Leonardo T.
Cabarle and Rafael V. Lazo, covered by Letter
of Authority No. 002838 NA dated April 29,
1991, please be informed that a report of
investigation dated July 22, 1991 has been
submitted to higher authorities for evaluation
and final approval. As stated in the aforesaid
report of investigation, the following internal
revenue taxes (including increments) were found
due from you, to wit:

<u>YEAR</u>	<u>DEFICIENCY VALUE-ADDED TAX</u>
FY 8/1/88 - 7/31/89	P -
FY 8/1/89 - 7/31/90	<u>1,855,350.58</u>
TOTAL	<u>P1,855,350.58</u>

Included upon request of the subject
taxpayer.

(SGD.)
CONRADO C. PAZ
Assistant Commissioner
Over-all Coordinator, STAT

clearly states that for fiscal years ended July 31, 1989
and July 31, 1990, petitioner has undergone revenue tax

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investigations and the result showed petitioner having a deficiency value added tax liability in the amount of P1,855,350.58 which petitioner immediately paid as evidenced by Payment Order No. 11381392 (Exhibit "PP-1", Petitioner) and Confirmation Receipt No. 20213651 (Exhibit "PP-2", Petitioner), both dated August 28, 1991. The term "internal revenue tax" includes income tax and/or withholding tax and this being so, connotes that the internal revenue tax investigations of petitioner just mentioned, already included withholding tax investigation. Hence, respondent's allegation and/or objection to the admissibility of Exhibits "TT" to "XXXX-3" has no factual basis and should be set aside.

Sections 204 and 230 of the 1991 Tax Code, the provisions of which pertinent to claims for refund are quoted hereunder:

"Sec. 204. Authority of the Commissioner to compromise, abate, and refund/credit taxes.
- The Commissioner may -

(1) xxx

(2) xxx

(3) Credit or refund taxes erroneously or illegally received, xxx. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for 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, xxx until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax xxx."

have been complied with by the petitioner. Petitioner filed its corporate annual income tax return (Exh. "KK") for the fiscal year ended July 31, 1989 on November 15, 1989. In said return, petitioner declared a refundable amount of P2,808,565.34. The written claim for refund (Exh. "RR") of this amount was filed with respondent's office on November 14, 1991 (Exh. "RR-1"). On that same date, petitioner filed with this Court its petition for refund of the aforesaid amount.

For the fiscal year ending July 31, 1990, petitioner filed its corporate annual income tax return (Exh. "LL") on November 14, 1990. It declared a refundable amount of P4,414,278.23 in this return. Written claim for refund (Exh. "SS") of this amount was filed with the B.I.R. on August 6, 1992 (Exh. "SS-1"). Petition for refund of this amount was filed with this Court on October 21, 1992.

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From all the foregoing, it can be gleaned that from the dates of filing of the corporate annual income tax returns for the fiscal years involved, the two-year prescriptive period has been observed by petitioner in the filing of its administrative and judicial claims. In several cases, this Court has ruled that petitioner is not required to show the date of payment of the tax withheld at source. The rule is, a corporate taxpayer pays on a quarterly basis. The final payment is at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayers either made profit or suffered a loss in their operations (*Ateneo de Manila University vs. CIR*, CTA Case No. 3976, Oct. 18, 1989; *Paseo Realty and Development Corp. vs. CIR*, CTA Case No. 4528, April 30, 1993; *Jardine Davies, Inc. vs. CIR*, CTA Cases Nos. 3839, 4013 and 4124, January 20, 1994).

Moreover, even in the absence of the abovementioned ruling, petitioner's withholding taxes for the fiscal years involved were all properly documented. Petitioner presented summary statements and certificates of withholding taxes accomplished by its withholding agents. As held in *Ateneo de Manila v. Commissioner of Internal*;

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Revenue (CTA Case No. 3213, July 28, 1989), "proof of withholding is established by copies of statements duly issued by the various payors to petitioner." When petitioner made a formal offer of said statements and certificates as its evidence, respondent did not object to the existence of said exhibits but only as to their purpose of proving the taxes withheld. In a similar case it was held that:

"xxx Respondent did not object to the existence of statements and certificates which were offered by petitioner as proof of the withholding taxes but took exception to their contents and purpose. Despite said reservation, up until the submission of this case for decision, respondent was not heard to complain about the veracity of the contents of these documents or exhibits nor has it shown any irregularity in the same which will taint their reliability or sufficiency as proofs of the taxes withheld despite the fact that it is well within their competence to do so. Respondent is thereby considered to have admitted the truth of the contents of these exhibits. Hence, those amounts of withheld taxes which are supported by corresponding statements in evidence shall be allowed as tax credits." (Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, p. 14, May 28, 1991)

Respondent's defense that the mere allegation of refundability does not ipso facto merit a refund of taxes legally collected" does not apply to the instant cases where petitioner has fully substantiated its claims thru documentary and testimonial evidence. The corporate

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annual income tax returns of petitioner for the subject fiscal years were both supported by audited financial statements which to this Court's mind had been thoroughly examined by respondent's examiners when the latter conducted an investigation of petitioner's internal revenue tax liabilities for the fiscal years 1989 and 1990. As mentioned earlier, only a deficiency value added tax assessment was issued and the same was immediately paid by petitioner. The Court, just cannot comprehend why respondent failed, as it has repeatedly done in numerous cases in the past, to submit or forward the B.I.R. records relative to the said cases to this Court. Despite the absence of B.I.R. records, respondent's counsel still had the gall to submit the cases at bar based on the records and pleadings (Minutes of the hearing, November 9, 1994, p. 116, CTA records).

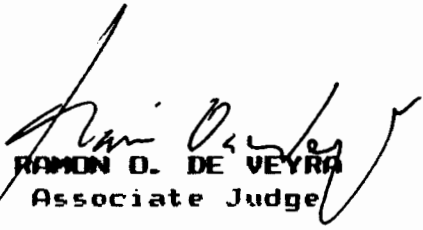
WHEREFORE, finding the petition meritorious and in accordance with law, the same is hereby GRANTED and respondent is ordered to refund or issue in favor of petitioner, Tax Credit Certificates in the amounts of P2,808,565.34 and P4,414,278.23 as excess tax payments for the taxable fiscal years ended July 31, 1989 and July 31, 1990, respectively.

No pronouncement as to costs.

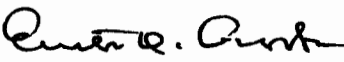
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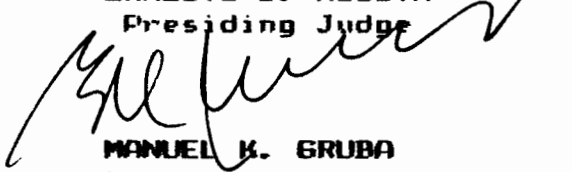
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SO ORDERED.


RAMON O. DE VEYRA
Associate Judge

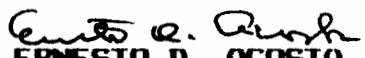
WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge


MANUEL K. GRUBA
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