REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASEO REALTY & DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4148

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

3/17/92

D E C I S I O N

This is a claim for refund of the tax withheld by petitioner Paseo Realty & Development Corporation in the amount of P181,039.00 representing the excess quarterly tax credit and withholding tax for the year 1984.

As borne out by the pleadings and records of the case, petitioner is a domestic corporation duly organized under Philippine laws with principal office and place of business at Makati, Metro Manila.

This case at hand has been submitted for decision based on the pleadings and records of this case, sans the memorandum of both parties. It may suffice to state that there appears to be no basic disagreement as to the facts.

For the year 1984, petitioner's income tax return reflected an excess credit for quarterly corporate taxes paid in previous quarter in the sum of P105,837.00 (Annex "A", Petition for Review, p.3, CTA rec.).

In the same year, petitioner's client withheld and paid to respondent the amount of P92,750.00 from rental payments of the petitioner.

Since the amount of quarterly tax credit available and the withholding tax on rentals exceeds the total tax liability for the taxable year 1984, petitioner's 1984 tax returns reflected a refundable tax amount of P181,039.00.

Petitioner in a letter dated April 10, 1987, requested for the refund or credit of the amount of P181,039.00, representing the excess quarterly tax credit and withholding tax for the calendar year ended December 31, 1984 (Exh. B, Petition for Review, p. 4, CTA rec.).

Respondent Commissioner of Internal Revenue, however, did not act on said claim for tax refund and or tax credit. Petitioner, in order to forestall the running of the two (2) year prescriptive period, filed the instant petition for review on April 15, 1987.

Petitioner strongly claims that since its quarterly income taxes for the year 1984 and the 5% withholding tax on its rental income exceeded its income tax liability for the said year, then it has a refundable tax in the sum of P181,039.00.

Respondent Commissioner of Internal Revenue has not presented any evidence to rebut or contradict petitioner's evidence consisting of its income tax returns and withholding tax certificates and its claim for refund dated April 10, 1987 (Annex B, Petition for Review, CTA rec.). Instead, counsel for respondent submitted this case for decision based on the pleadings.

Since one who prays for judgment on the pleadings without offering proof as to the truth of his allegations must be understood to have admitted the truth of all the material and relevant allegations of the opposing party, and rest his motion for judgment on these allegations taken together with such of his own as admitted ***(Buerman v. Casas, 10 Phil. 386; Evangelista v. de la Rosa,*** *76 Phi. 115)*, respondent may not be considered to question seriously petitioner's entitlement to its claim for refund. This is more true when the evidence of petitioner more that sufficiently establishes its claim to the refund.

WHEREFORE, respondent Commissioner of Internal Revenue is hereby ordered to grant a tax refund/credit to petitioner, Paseo Realty &

Development Corporation, the sum of P181,039.00, representing overpaid income tax.

SO ORDERED.

Quezon City, Metro Manila, April 3, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

C E R T I F I C A T I O N

I hereby certify that this decision was reached after due consultation between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge