REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TIFFANY TOWER REALTY CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5495

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 2000

x - x

DECISION

This is a petition seeking for the refund or issuance of tax credit certificate amounting to P3,752,527.00, allegedly representing overpaid income tax payments for the calendar year ended December 31, 1994.

The antecedent facts are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws and is engaged in the development, sale and rental of real estate.

On April 17, 1995, Petitioner filed its Annual Income Tax Return for the year 1994 showing a net refundable income tax of P7,823,012.00 (Exh. A). However, said return was subsequently amended on September 24, 1996, this time reflecting a refundable amount of P3,752,527.00 after adjusting its prior year's excess credit from P6,349,991.00 to only P2,279,506.00 (Exh. B), detailed as follows:

Taxable Income	P14,904,925.00
Tax due	5,216,724.00

Less: Tax Credits/Payments		
Prior Year's Excess Credit	P2,279,506.00	-
Quarterly Payments	-	
Creditable Tax Withheld	6,689,745.00	8,969,251.00
Tax Payable (Refundable)		(P3,752,527.00)

Petitioner opted to carry over to the succeeding year 1995 its 1994 excess tax payments of P3,752,527.00 but failed to do so as it ended up in a net loss position in that year (Exh. C). Thus, on March 31, 1997, Petitioner, through counsel, filed with the Bureau of Internal Revenue a letter-claim for the refund or issuance of a tax credit certificate in the amount of P3,752,527.00 (Exh. E). Petitioner anchored its claim on Sections 69 and 230 of the Tax Code, to state:

> "***Sec. 69 Final Adjustment Return.***-Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."
>
> "***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, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner, 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 or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

As there was no immediate action on the part of herein Respondent, the instant Petition was filed on April 11, 1997.

Respondent, in his Answer, raised the following Special and Affirmative Defenses.

"4. Petitioner's claim for refund was filed on March 31, 1997 whereas the instant petition was filed on April 11, 1997; BIR needs reasonable period of time to process the claim;

5. The alleged tax withheld must be shown to have been paid and remitted to the respondent's Bureau . The best evidence of payments and remittance of the alleged taxes withheld are the official receipts;

6. In a claim for refund, it is incumbent upon petitioner to prove that it is entitled to it. Failure to do so is fatal to its claim for refund;

7. Claims for refund of taxes are construed strictly against claimant, the same being in the nature of exemption from taxes (CIR vs. Ledesma, 31 SCRA 95 (1970); Manila Electric Co. vs. CIR, 67 SCRA 35 (1975);

8. It is incumbent upon petitioner to show that it has complied with the provision of Section 230 of the Tax Code."

The sole issue for resolution is whether or not Petitioner has complied with all the requirements for a valid claim for refund so as to be entitled to the relief sought.

Petitioner, to support its case, offered the following in evidence:

Exhibits	Description
A	Corporation/Partnership Annual Income Tax Refund of Tiffany Tower Realty Corporation for the taxable year 1994
B	Amended Corporation/Partnership Annual Income Tax Return of Tiffany Tower Realty Corporation for the taxable year 1994 with the attached audited financial statements
C	Amended Corporation/Partnership Annual Income Tax Return of Tiffany Tower Realty Corporation for the taxable year 1995 with the attached audited financial statements
D	Corporation/Partnership Annual Income Tax Return of Tiffany Tower Realty Corporation for the taxable year 1996 with the attached audited financial statements
E	Letter Claim for Refund of Overpaid Income Tax for the taxable year 1994 filed by SGV & Co. with the Bureau of Internal Revenue on behalf of Tiffany Tower Realty Corporation

Petitioner likewise presented a Summary of income payments with the corresponding taxes withheld (Exh. HHHHH) and various supporting documents such as the Monthly Remittance Returns of Income Taxes Withheld, Certificates of Creditable Tax Withheld at Source, Certificates Authorizing Registration and official receipts.

Respondent, on his part, submitted the following:

Exhibits	Description
1 and 1-a	Letter of Authority No. 137590 dated September 11, 1997 and name and signature of RDO Hernani S. Arboleda.
2, 2-a to 2-c	Memorandum For: The Revenue District Officer, Revenue District No. 47, East Makati City, dated February 20, 1998

After examining the evidence presented by the parties, We rule in favor of Petitioner.

To be entitled to a refund, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. That 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.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable 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, C.A. 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**].

The aforementioned requirements were affirmed by the Supreme Court in the case entitled Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on March 31, 1997 as well as its Petition for Review filed with this Court on April 11, 1997 are both within the two-year period from the date of the filing of the return on April 17, 1995.

Second, the Amended Income Tax Return of Petitioner for 1995 (Exh. B) likewise revealed that the income upon which the taxes were withheld was included in said return.

And third, the fact of withholding was also established by Petitioner's submission of the Certificates of Creditable Income Tax Withheld at Source, Monthly Remittance Returns of Income Taxes Withheld and Certificates Authorizing Registration of real property.

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1994 which it was not able to fully apply against its tax liability for the said year and in the succeeding years, its 1995 and 1996 Income Tax Returns were likewise submitted by Petitioner to prove that during those years, Petitioner did not utilize the amount sought to be refunded.

However, while this Court finds for the Petitioner, We concur with Respondent's finding (Exh. 2) that Petitioner is not entitled to the full amount sought. Except for the amount of P2,344.82 where Petitioner was able to present supporting documents (Exhs. R and R-3), the latter failed to substantiate the rest of its prior year's excess credit of P2,279,506.00 which was applied by Petitioner against its tax liability for 1994. Likewise, the amount of P66,288.00 is disallowed for reasons stated hereunder:

REASON	EXHIBIT	CLIENT	AMOUNT
(1) Recorded twice	BBBBB	Sps. Gregory & Adrienne Torres	P42,923.90
(2) Denied exhibits per Resolution dated 11/25/98	CCCCC	Pancake House	3,285.72
	DDDDD	Pancake House	3,319.24
	EEEEE	Pancake House	3,206.00
	FFFFF	Excelfoods	6,683.14
	GGGGG	Cindivic Corp.	6,870.00
		TOTAL	**P66,288.00**

Thus, a recomputation of Petitioner's excess income tax payments would show its entitlement to a reduced amount of P1,022, 291.75, detailed as follows:

TAXABLE INCOME	P14,904,925.00

TAX DUE			5,216,724.00
LESS: TOTAL TAX CREDITS			
(a) Prior years' excess credit	P	2,344.82	
(b) Creditable tax withheld		6,236,670.93	6,239,015.75
AMOUNT REFUNDABLE			P 1,022,291.75

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner the reduced amount of P1,022,291.75 representing overpaid income tax for the calendar year ended December 31, 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals