REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERMANENT HOMES, INC.,
Petitioner,

- versus - **C.T.A. CASE NO. 6088**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 10 2003
Apolinario

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,283,642.83 (*originally in the amount of P3,104,892.79*), representing petitioner's excess creditable withholding taxes as of December 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, and at present has its principal offices located at the 9/F Vicente Madrigal Building, Ayala Avenue, Makati City. It is engaged in the business of developing, constructing, selling and marketing real estate, specifically condominium and townhouse units.

On April 15, 1998, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year ended December 31, 1997, reflecting a net loss of P35,269,196.00 and the amount of P3,230,074.00, representing the total excess creditable income taxes withheld as of December 31, 1997 (*Annex "A", Petition for Review*).

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On April 30, 1999, petitioner filed its 1998 Annual Income Tax Return declaring net loss in the amount of P81,382,263.00 (*Exhibit "D-2"*) and total tax credits of P4,526,798.00, computed as follows:

Prior Year's Excess Credits	P3,230,074.00
Add: Tax Credits/Withheld/Payments for the First Three Quarters	-----
Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	1,296,724.00
Total Tax Credits/Payments	P4,526,798.00

(*Exhibit "D"*)

On April 7, 2000, petitioner filed an administrative claim for the refund of its unutilized creditable withholding taxes for the taxable years 1996 to 1999 in the amount of P4,410,127.28. This was amended on April 14, 2000, lowering the amount claimed to P3,104,892.79, representing petitioner's unutilized or excess creditable withholding taxes as of December 31, 1997.

To toll the running of the two-year prescriptive period, petitioner filed its Petition for Review with this court on April 14, 2000.

In his Answer filed on May 19, 2000, respondent raised the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

5. The amount of P3,104,892.79 being claimed by petitioner as alleged excess creditable withholding taxes as of December 31, 1997 was not properly documented;

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6. In an action for refund the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

On February 9, 2001, petitioner submitted before this court the report of the commissioned independent CPA, dated December 12, 2000 (*Exhibit "A"*). In the said report, the firm found that the correct amount of petitioner's excess creditable withholding taxes as of year-end 1997 is P3,283,642.83, which is higher than the original amount of P3,104,892.79 being claimed by petitioner in its original petition. The difference was allegedly due to erroneous postings which were corrected prior to submission of the claim with this court, certain remittances recorded twice and certain remittances overlooked and not recorded but actually paid.

On February 13, 2001, petitioner filed an amended Annual Income Tax Return for the calendar year 1997 (*Exhibit "B"*), reflecting the adjusted amount of excess creditable withholding income tax amounting to P3,283,642.83 to conform with the findings of the independent auditor, detailed as follows:

Prior year's excess credits	P1,535,805.48
Creditable tax withheld for the first three quarters	1,191,101.96
Creditable tax withheld for the fourth quarter	556,735.39
Total tax credits/payments	P3,283,642.83

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Consequently, an amended Petition for Review was likewise filed on April 2, 2001 to adjust the amount of the claim for refund from P3,104,892.79 to P3,283,642.83.

The following issues have been jointly stipulated by the parties:

1. Whether or not the income from which the taxes were allegedly withheld was included as part of petitioner's gross income for 1997.

2. Whether or not petitioner is entitled to a refund in the amount of P3,104,892.79 (*now P3,283,642.83*) representing alleged excess and unutilized creditable withholding taxes as of 31 December 1997.

Before delving into the stipulated issues, we shall discuss first the issue raised by respondent in his memorandum that petitioner can no longer claim for the refund of its excess creditable withholding taxes for the year 1997 pursuant to Section 76 of the 1997 Tax Code.

The instant petition pertains to petitioner's excess tax credits for the taxable year ended December 31, 1997. This being so, the applicable provision is not Section 76 of the 1997 Tax Code but Section 69 of the old Tax Code, which reads, thus:

> "SEC. 69. Final Adjustment Return. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar 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 excess 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."

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Clearly from the above, the amendment introduced by Section 76 of the 1997 Tax Code regarding the irrevocability of the option to carry-over does not apply in the instant case for the provisions of the 1997 Tax Reform Act became effective only on January 1, 1998 ***(Read Rite Philippines, Inc. [formerly Sunward Technologies Phils., Inc.] vs. Commissioner of Internal Revenue, CTA Case No. 5717, October 9, 2000)***.

We proceed to the stipulated issues. As they are interrelated, they shall be discussed jointly.

Time and again, this court has ruled that for a refund of creditable withholding taxes to prosper, the taxpayer-claimant must comply with the following basic requirements provided under Revenue Regulations No. 12-94 (*amending Revenue Regulations No. 6-85*), as affirmed by jurisprudence:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204 (C)] in relation to Section 230 [now 229] of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient ***[Citytrust Finance Corporation vs. The 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; Citytrust Finance Corporation (formerly Investors 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 Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock***

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> ***Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].***

With reference to the first requirement, the reckoning of the two-year prescriptive period commences from the date of filing of the final adjustment return which, in this case, is April 15, 1998. Counting from this date, petitioner's original and amended administrative claims for refund filed on April 7, 2000 and April 14, 2000, respectively, as well as the Petition for Review filed on April 14, 2000 fall within the two-year period.

The second requirement was likewise complied with.

In the independent auditor's report, the total creditable taxes withheld for 1996 and 1997 amounted to P3,817,756.83 (*Exhibit "A"; page 194, CTA Records*). However, upon further verification of the said report together with its supporting documents, only the sum of P3,692,086.81 was validly supported by the corresponding certificates authorizing registration and monthly remittance returns, detailed as follows:

Taxable year 1996

BUYER	EXHIBIT	DATE		TAX BASE		TAX WITHHELD
RUBIO, MIGUEL	1-A/1-B	3/6/1996	P	5,500,000.00	P	275,000.00
GOTUACO, ZANDRA & SUSAN	2-1-A	8/26/1996		2,820,000.00		70,500.00[1]
SAMONTE APRICON	3-B	12/5/1996		1,692,900.00		50,787.00
CARRANZA, MARLINDA	4-B	12/16/1996		1,999,534.00		59,986.00
OBEDOZA, RUTH	5-A/5-B	3/27/1996		3,000,000.00		150,000.00
ROYOLA PACIFIC	7-B	12/6/1996		3,816,000.00		190,800.00
SING, MAR	6-B	12/6/1996		4,369,140.00		218,457.00
GOMEZ, GERALDINE	8-A/8-B	6/4/1996		891,600.00		26,748.00
CHIU, GERALYN	9-A/9-B	6/4/1996		910,300.00		27,309.00
XAVIER, RAFAEL	10-A/10-B	6/4/1996		960,080.00		28,802.40
PAPINA, EVELYN	11-A/11-B	6/4/1996		890,400.00		26,712.00
ODONO, LEANARDO	12-A/12-B	6/4/1996		890,116.00		26, 703.48

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ODONO, LEANARDO	13-A/13-B	6/4/1996	890,116.00	26,703.48
ZAMBRANO, KARILAGAN	14-A/14-B	6/4/1996	898,200.00	26,946.00
GABIANA, REMENTO	15-B	7/30/1996	1,105,000.00	33,150.00
YSIP, MA. HTERES	16-A/16-B	7/30/1996	960,080.00	28,802.40
SIA, SALVADOR	17-A/17-B	9/13/1996	1,586,200.00	47,586.00
BETIA, GEORGE	18-A/18-B	9/13/1996	1,650,000.00	49,500.00
ZAIDE, SONIA	19-A/19-B	9/13/1996	1,586,200.00	47,586.00
LEONILA, GILBERT	20-A/20-B	9/13/1996	898,200.00	26,946.00
GATCHALIAN, ANTONIO	21-A/21-B	9/13/1996	898,200.00	26,946.00
ASUNCION, ARMANDO	22-A/22-B	9/13/1996	864,000.00	25,920.00
ROY, ANGELITA	23-A/23-B	12/6/1996	2,277,000.00	113,850.00
YOSHIDA, GLORIA	24-A/24-B	9/13/1996	898,200.00	26,946.00
TAN, ELEANOR	25-A/25-B	9/13/1996	968,568.18	29,057.05
SARMIENTO-JALAN, MA LITA	26-A/26-B	9/13/1996	853,290.00	25,598.70
DELA CRUZ, JULIO	27-A/27-B	9/13/1996	1,700,000.00	51,000.00
RIVERA NONITA	28-A/28-B	9/13/1996	845,500.00	25,365.00
GABIANA, REMENTO	29-A/29-B	9/18/1996	1,604,875.00	48,146.25
SPS EDWIN CANALES	30-A/30-B	9/13/1996	990,000.00	29,700.00
SPS ERWIN MEER	31-A/31-B	9/13/1996	1,836,000.00	55,080.00
DE LEON MANOLETE	32-A/32-B	9/13/1996	941,790.00	28,253.70
SPS JOAQUIN LIZARDO	33-A/33-B	9/13/1996	898,200.00	26,946.00
SPS JOEL LAYSON	34-A/34-B	9/13/1996	1,586,200.00	47,586.00
Subtotal			**P 54,475,889.18**	**P 1,999,419.46**

Taxable year 1997

BUYER	EXHIBIT	DATE	TAX BASE	TAX WITHHELD
DEL MUNDO, IRMA	36A/36B	1/15/1997	960,000.00	28,800.00
ORDOVEZA, FERNANDO	37A/37B	10/24/1997	1,900,000.00	57,000.00
MURATA, MARIBEL	38A/38B	3/14/1997	1,555,200.00	46,656.00
LAGUER, FERNANDO	39A/39B	3/18/1997	1,882,282.50	56,468.46
FLORIDO, NOEL	40A/40B	3/21/1997	1,727,272.72	51,818.18
ISIDRO, JUAN FERNANDO	41A/41B	3/21/1997	1,170,000.00	35,100.00
RIVERA, MANUEL	42A/42B	1/6/1997	1,562,407.00	46,872.21
ALLI, ARLENE	43A/43B	1/16/1997	994,500.00	29,640.00
ABADIANO, JUDITH	44A/44B	2/13/1997	853,290.00	25,508.70[2]
SOLIVEN, FRANCIS	45A/45B	7/3/1997	1,572,750.00	47,182.50
SUGUE, EFREN	46A/46B	7/31/1997	2,062,081.00	103,100.00
CARLY, HICOBLINO	47A/47B	7/31/1997	1,181,818.00	35,460.00
PEREZ, ANDREA CARMEN	48A/48B	7/31/1997	1,836,000.00	55,080.00
BARANDA, JUAN	49A/49B	7/31/1997	1,170,454.00	35,100.00
CORTIDOR, REYNALDO	50A/50B	7/31/1997	1,136,363.00	34,080.00
SANTILLAN, JOSE LUIS	51A/51B	8/7/1997	1,485,000.00	44,550.00
VILLARUEL, MA THERESA	53A/53B	9/16/1997	1,904,000.00	57,120.00
LAYUG,MANUEL	54A/54B	9/16/1997	1,775,000.00	53,250.00
SANTOS, ENRICO	55A/55B	6/3/1997	864,000.00	25,920.00

NACINO, FELICISIMO	56A/56B	6/3/1997	960,000.00	28,800.00
DABELL, CONCHITA	57A/57B	6/3/1997	1,650,000.00	49,500.00
REYES, LOURDES	58A/58B	10/3/1997	1,170,000.00	35,100.00
LERMA, ANNA MARIE	59A/59B	10/3/1997	1,170,000.00	35,100.00
ACOL, MORGAN VINCENT	60A/60B	10/8/1997	1,795,500.00	53,865.00
AMPIL III, FERNANDO	61A/61B	10/15/1997	1,999,534.00	59,986.00
JIMENEZ, EMMANUEL	62A/62B	10/22/1997	1,904,318.18	57,129.55
BERNABE, ALEX	63A/63B	10/24/1997	932,500.00	27,975.00
LACSON, ENRIQUE	64A/64B	11/5/1997	993,500.00	29,805.00
SONOY, ENRIQUE	65A/65B	12/3/1997	898,200.00	26,946.00
KERVIN DU, JOHN	66A/66B	11/5/1997	1,136,363.00	34,090.91
PALMA, FLORENCIO	67A/67B	11/5/1997	1,726,000.00	51,780.00
BENGZON, ANTHONY	68A/68B	11/10/1997	1,974,313.67	59,229.39
OREVILLO, GLENN	69A/69B	11/19/1997	1,181,818.00	35,454.54
ARGENTINA LAND CORP	70A/70B	12/2/1997	1,675,800.00	50,274.00
SPS EDWIN MAQUINTO	71A/71B	1/23/1997	988,000.00	29,835.00
Subtotal			**P 52,930,083.25**	**P 1,692,667.35**
Total				**P 3,692,086.81**

However, it is to be noted that out of the total creditable taxes withheld in the amount of P3,692,086.81, the amount of P1,999,419.46 pertains to Creditable Withholding Tax for the year 1996 (*out of which the amount of P534,114.00 shall be applied against petitioner's income tax liability for the same year*). Section 69 of the old National Internal Revenue Code, *supra*, provides that the refundable amount shown on a final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year only. Consequently, the 1996 excess tax credits of P1,999,419.46 can be applied only to the succeeding taxable year 1997. Since it suffered a net loss in 1997 and was unable to utilize the said 1996 excess credits, petitioner, instead of carrying-over the amount of P1,999,419.46 in 1998, should have filed a claim for refund corresponding thereto within the two-year prescriptive period provided for under Sections 204 and 230 of the Tax Code.

In the case of ***BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6090, promulgated March 4, 2002***, this court, citing the case of

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Belle Corporation vs. Commissioner of Internal Revenue, CTA Case no. 6070, promulgated on April 10, 2001, passed upon a similar issue, thus:

> "It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year *(Paseo Realty and Dev't. Corp. vs. CIR, CTA Case No. 4528, April 30, 1993)*. True enough, implicit from the provisions of Section 69 of the NIRC, as amended, *(supra)* is the fact that the refundable amount may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year, not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year *(citing ANSCOR Hagedorn Securities, Inc. vs. CIR, CA-GR SP 38177, December 21, 1999)*. To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned."

Considering that the two-year prescriptive period under Section 230 of the Tax Code should be computed from the time of filing the Adjustment Return or Annual Income Tax Return [ITR] (***Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 83736, January 15, 1992; Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 117254, January 21, 1999***), which in the case of petitioner's 1996 ITR may be presumed to have been filed on the last day, April 15, 1997 (*since the said return was not presented in evidence*), the administrative and judicial claims for refund pertaining to the 1996 excess tax credits filed on April 7, 2000 and April 14, 2000, respectively, are time-barred. Consequently, out of the validly supported creditable taxes withheld in the amount of P3,692,086.81, only the amount of P1,692,667.35 may be refunded as the creditable taxes withheld in 1996 amounting to P1,999,419.46 has in the meantime prescribed.

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On the third requirement, records disclose that the income received by petitioner corresponding to its 1997 creditable taxes withheld were included as part of its gross income declared in its 1997 annual income tax return (*Exhibit "B"*).

In sum, petitioner is entitled to a refund but in the reduced amount of P1,692,667.35, computed as follows:

Total Creditable Taxes Withheld with valid supporting documents	P3,692,086.81
Less: Disallowed 1996 creditable taxes withheld due to prescription (*inclusive of the 1996 income tax due*)	1,999,419.46
Refundable amount	P1,692,667.35

WHEREFORE, in view of all the foregoing, the instant claim for refund is hereby ***PARTIALLY GRANTED***. Accordingly, respondent is **ORDERED** to **REFUND**, or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P1,692,667.35 representing excess creditable withholding taxes for the year 1997.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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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

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