Wr.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

WISE CAPITAL INVESTMENT and TRUST COMPANY (formerly Dharmala Capital Investment ant Trust Company),
Petitioner,

- versus -

C.T.A. CASE NO. 5790

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 08 2001 [signature]

x - x

DECISION

This is a Petition for Review which seeks for the refund or in the alternative, for the issuance of a tax credit certificate in the amount of FOUR HUNDRED SIXTY SEVEN THOUSAND FOUR HUNDRED TWENTY THREE PESOS (P467,423.00) representing the alleged unutilized creditable income tax withheld for the taxable year 1997.

In lieu of an Answer to the instant Petition for Review, Respondent, through counsel, filed on June 9, 1999 via registered mail, a "Motion to Dismiss" on the ground that the Petition for Review states no cause of action for the reason that the claim for refund or the issuance of a tax credit certificate can no longer be availed of by Petitioner as a remedy since it already opted to carry over the excess creditable income tax for 1997 to the succeeding taxable year.

In a resolution dated July 29, 1999, the Court resolved to deny Respondent's Motion to Dismiss, holding that the provisions of Section 69 of the previous Tax Code should apply as it is the law prevailing at the time the taxes were withheld.

On August 16, 1999, Respondent filed an Answer and raised among others, the following Special and Affirmative Defenses, to wit:

> "8. The amount claimed by Petitioner has been applied as tax credit to the next succeeding year, hence, not refundable;
>
> 9. Petition is insufficient as it does not contain any averment to show that the amount claimed was not utilized in any of the quarters of the succeeding years (1998);
>
> 10. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 11. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 12. Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation."

On November 8, 1999 (pages 58-60), herein parties entered into a "Joint Stipulation of Facts and Issues" and admitted the following facts which need not be proven in Court, thus:

> "1. Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office at the 10th Floor, Dharmala Center, 142 Amorsolo Street, Legaspi Village, Makati City.
>
> 2. Respondent is the duly-appointed Commissioner of Internal Revenue, vested under the appropriate laws with the authority to carry out all

the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve and grant refunds and/or tax credits of taxes erroneously or illegally paid or penalties imposed without authority and to enforce the provisions of the National Internal Revenue Code (NIRC), as amended, and other tax laws. He may be served with summons and other legal processes of this Honorable Court at the 4th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

3. Respondent Commissioner of Internal Revenue is the appropriate party to whom the instant claim for refund or issuance of tax credit certificate is directed to, in accordance with Section 204 of the NIRC, as amended, which states thus:

> "**Sec. 204**. Authority of the Commissioner to Compromise, Abate and Refund/Credit Taxes. - The Commissioner may – x x x
>
> **(C) Credit or refund taxes erroneously or illegally received,** or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund." (Emphasis supplied)

4. The Honorable Court of Tax Appeals has the exclusive appellate jurisdiction to review the instant Petition for Review, in accordance with Section 7 of Republic Act (RA) No. 1125, otherwise known as "An Act Creating the Court of Tax Appeals."

5. The existence of Sections 69 and 229 of the NIRC, as amended.

6. The authenticity, due execution and due filing of Petitioner's 1996 Annual Corporate Income Tax Return on April 14, 1997, as received by the authorized agent bank (Traders Royal Bank, Paseo Branch) of Respondent.

7. The authenticity, due execution and due filing of Petitioner's 1997 Annual Corporate Income Tax Return on April 15, 1998, as received by the authorized agent bank (Urban Bank of the Philippines, Aguirre Branch) of Respondent.

8. The authenticity, due execution and due filing of Petitioner's administrative claim for refund with the BIR on April 14, 1999, as received by Respondent Commissioner of Internal Revenue through Revenue District Office (RDO) No. 47 (East Makati).

9. That the Petitioner is one and the same legal entity and party to the instant case as so named in Petitioner's Annual Income Tax Returns, Certificates of Creditable Income Tax Withheld at Source, and other evidentiary documents.

Records show that for the taxable year 1996, Petitioner declared in its Corporate Annual Income Tax Return a taxable income of P15,499.00 and a tax due of P5,424.00. An amount of P385,482.00 was also withheld from Petitioner's income resulting to an excess withholding tax credit of P380,058.00, thus:

TAXABLE YEAR 1996
(from Exhibit A)

Taxable Income		P 15,499.00
Tax Due		5,424.00
Less: Prior Year's Excess Credit	P222,003.00	
Creditable Withholding Tax	163,479.00	385,482.00
Excess Tax to be applied as credit to next year		P380,058.00

Despite its intention to carry-over said excess tax, Petitioner was not able to utilize the full amount of its 1996 excess tax credits against its 1997 tax liability as Petitioner suffered a loss in its business operations, resulting in no income taxes due to the government. Also, an amount of P347,015.00 was withheld from Petitioner's income in

1997. Thus, as of this date, Petitioner's excess creditable withholding tax credit as of taxable year 1997 amounted to P467,423.00, ,computed as follows:

TAXABLE YEAR 1997
(from Exhibit B)

Taxable Income		(P 21,969.00)
Tax Due		N I L
Less: Prior Year's Excess Credit	P120,408.00	
Creditable Withholding Tax for 1997	347,015.00	467,423.00
Excess Creditable Withholding Tax		(P467,423.00)

Resultantly, on April 14, 1999, Petitioner filed with the BIR an administrative claim for refund of the aforesaid amount (admitted, Joint Stipulation of Facts and Issues, par. 8, CTA docket, p. 60). On the same date, Petitioner elevated the matter with this Court.

In order to substantiate its claim for refund, Petitioner submitted the following documentary evidence, to wit:

Exhibit	**Description**
A, B, C	Petitioner's Annual Income Tax Return for taxable years 1996, 1997, 1998
F, G, H, I, J, K, L M, N, O, P, R, S, T	Various Certificates of Creditable Tax Withheld for 1996 and 1997

The lone issue to be resolved by this Court as stipulated by the parties (see CTA records, p. 60) is WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF A TAX CREDIT CERTIFICATE FOR THE AMOUNT OF

P467,423.00 REPRESENTING UNUTILIZED CREDITABLE INCOME TAXES WITHHELD AT SOURCE FOR TAXABLE YEAR 1997.

In ventilating its case to this Court, Petitioner draws its legal strength on Sections 69, 229 and 204 of the National Internal Revenue Code, as amended, which for easy reference are hereunder quoted as follows:

> **Section 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.
>
> **Section 229.** ***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 excessively 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 (2) 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

Section 204. ***Authority of the Commissioner to Compromise, Abate, and Refund/Credit Taxes.*** - The Commissioner may – x x x

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund.

It is apparent from the evidence on record that Petitioner incurred net operating losses from its business undertakings during the taxable years 1997 and 1998. As the income tax payments arising from creditable withholding tax at source for the taxable years 1996 and 1997 remain unapplied, it appears that Petitioner is legally entitled to the refund sought. However, Petitioner must still prove its entitlement thereto by pertinent and substantial evidence.

Refund of unutilized creditable income tax shall be granted if there is compliance with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85 as amended by Revenue Regulations No. 12-94. Thus, 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 prescriptive period provided under Section 230 (now Section 229) of the Tax Code;

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 (Revenue Regulations No. 12-94, amending Revenue Regulations No. 6-85; **Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957**).

Records show that Petitioner filed a claim for refund with the BIR on April 14, 1999 (Annex B, as admitted by parties) and with this Court on the same date. While it is remarkable at the onset that the dates of filing of both the administrative and judicial claim for refund is one and the same, this does not have a negative effect on Petitioner's action. What is important is that both dates are within the two-year prescriptive period mandated by Section 230 (now Section 229) of the Tax Code. This two-year prescriptive period commences to run at the earliest on the date of filing of the adjusted final tax return **(CIR vs. Asia Australia Ltd., G.R. No. L-85956, April 10, 1989).** In the instant case, Petitioner filed its Corporate Annual Income Tax Return for taxable year 1997 on April 15, 1998. Thus, using this as the reckoning date from which the two-year period is to be counted, it would show that the two-year reglementary period had not yet lapsed, thereby showing compliance with the aforementioned requirement number one.

Petitioner's submission of the various certificates of creditable income tax withheld at source indicates compliance with the second requirement. The proof of withholding is well-established by these certificates which show that the amount, subject of the claim was in fact withheld by the withholding agents and remitted to the BIR.

However, we are inclined to consider only the amount which is properly substantiated by corresponding certificates duly submitted to this Court, thus:

TAXABLE YEAR 1996

Exhibit	Payor		Income Payment		Tax Withheld
H	First Philippine Holdings Corp.	P	131,250.00	P	6,562.50
G	Philippine Growth Fund Manager		12,500.00		625.00
F	Dharmala Wise Insurance		256,845.00		12,842.25
I	Metro Pacific Corporation		461,845.78		23,092.28
J	Refractories Corp. of the Philippines		1,250,000.00		62,500.00
K	Dharmala Philippines		2,020,974.00		20,209.74
	SUB – TOTAL	P	4,133,414.78	P	125,831.77

TAXABLE YEAR 1997

Exhibit	Payor		Income Payment		Tax Withheld
L	Cagayan Electric Power	P	4,552,631.58	P	227,631.58
M	Dharmala Securities		1,332,205.00		66,610.25
N	Metro Pacific Corp.		411,500.00		20,575.00
O	Investment Capital		115,000.00		5,750.00
P	Dharmala Philippines		250,000.00		12,500.00
R	Dharmala Wise Insurance		16,000.00		6,099.25
S	Dharmala Wise Insurance		12,000.00		600.00
T	Equitable Banking Corporation		119,984.70		5,999.24
	SUB - TOTAL	P	6,809,321.28	P	345,765.32
	TOTAL CREDITABLE TAXES			P	471,597.09

It is to be noted that we disallowed the amount of the tax withheld by the payor Belson Primecast Capital Asia of P13,750.00 for the reason that its certificate of creditable tax withheld was not submitted to this Court. Mere testimony attesting to the fact of withholding is not sufficient to cure the absence thereof, thus, we are inclined to disallow said amount.

As to whether or not Petitioner included the income from which the taxes were withheld in its gross income, We are convinced that Petitioner sufficiently met this requirement. A perusal of Petitioner's 1996 and 1997 Corporate Annual Income Tax return reveals that the income payments from which the excess income taxes were withheld are included in Petitioner's gross income. For the year 1996, the income payment of P4,133,414.78 is within the range of Petitioner's gross income of P102,879,551.00 as reflected in Petitioner's return (Exhibit A). As for the taxable year 1997, Petitioner's income tax return (Exhibit B) would clearly show a gross income of P151,938,404.00 which is more than enough to cover Petitioner's income payment of P6,809,321.28. As held by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and CIR, G.R. No. 107434 dated October 10, 1997,** "A refund claimant is required to prove the inclusion of the income payments which were the bases of the withholding taxes and the fact of withholding." In the instant case, Petitioner was able to prove said requirement through their annual income tax returns which for all intents and purposes are presumed to be made in good faith and are true and correct considering that they were made and executed under the penalties of perjury **(Paseo Realty and Development Corporation vs. CIR, CTA Case Nos. 4693 and 4439, July 29, 1993 and July 5, 1993).**

And finally, Petitioner established that it did not carry-over to the succeeding year (1998) the claimed excess tax credits of 1997 since no amount was indicated as Prior Year's excess credit in its 1998 annual income tax return (see Exhibit C).

Therefore, it is only proper that a refund be granted to Petitioner in the amount of P466,173.09 representing the excess creditable withholding taxes for taxable year 1997 which is computed as follows:

For Taxable Year 1996

Income Tax Due per 1996 ITR			P	5,425.00
Less: Tax Credits				
(1) Creditable taxes withheld in 1996 with proper withholding tax certificate				125,831.77
TAX REFUNDABLE			(P	120,407.77)

For taxable year 1997

Income Tax Due per 1997 ITR				N I L
Less: Tax Credits				
(1) Prior year's excess credit	P	120,407.77		
(2) Creditable taxes withheld during the year with proper withholding tax certificate		345,768.32	P	466,173.09
TAX REFUNDABLE			(P	466,173.09)

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or in the alternative **ISSUE A TAX CREDIT CERTIFICATE** in favor of the Petitioner in the reduced amount of P466,173.09 representing the excess unutilized creditable taxes withheld at source for taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
Associate Judge

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