REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL AND INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5371

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 05 1998

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to Three Hundred Twenty Seven Thousand Seven Hundred Forty Pesos (₱327,740.00) representing unused creditable withholding taxes remitted in 1993.

Petitioner is a domestic corporation organized and existing under and by virtue of the laws of the Philippines. During the taxable year 1993, petitioner's withholding agents allegedly remitted to the Bureau of Internal Revenue (BIR) creditable withholding taxes amounting to ₱327,740.00, as follows:

1) AHSI	P 3,761.11
2) Abacom	
3) Anscorland Mgnt. & Dev't.	11,613.50
4) Asianbank Corporation	90,890.28
5) CD Group, Inc.	7,209.23
6) Celestino's International	20,686.32
7) Dolphin, Inc.	10,977.70
8) ESCA, Inc.	9,100.09
9) Ergonomics	13,485.45

10) Far Travel, Inc.	38,523.96	
11) Foamcraft, Inc.	6,410.13	
12) Dr. Luz Apolinario	3,447.00	
13) MM International	7,356.69	
14) New Directions		
15) Pestrol, Inc.	14,981.25	
16) Phil-Am Life	18,233.74	
17) Reed Philippines	7,790.65	
18) Salvante, Lanuza	7,320.27	
19) Shimex Trading	14,385.09	
20) Total Ventures, Inc.	14,916.00	
	₱301,088.46	
Abacom	₱ 18,739.57	
New Directions	7,766.77	
Total	26,506.34	
Grand Total	₱327,594.80	
Per Income Tax Returns	₱327,740.00	(Exh. B)

For the said year, however, petitioner incurred a net loss of P7,747,658.00 as reflected in its 1993 Income Tax Return (Exhibit "A"). As a consequence, petitioner was not able to utilize the said amount as tax credit for 1993.

The following year, 1994, petitioner likewise suffered a net loss of ₱520,957.00 (Exhibit "NN"), the reason why it failed again to use the same tax credit. Thus, on April 3, 1996, petitioner filed with the BIR a letter-claim for the refund of the unused creditable taxes withheld in the amount of ₱327,740.00 (Exhibit "PP") and a follow-up letter-claim on April 12, 1996 (Exhibit "QQ").

Since there was no action on the part of herein respondent and the two-year prescriptive period was about to expire, the instant petition was filed on April 15, 1996.

Respondent, in her Answer, set up the following special and affirmative defenses:

> 7. Petitioner's claim for refund of alleged unused creditable withholding taxes paid in 1993 in the amount of P327,740.00 is still under investigation/examination by the BIR. The claim was filed on April 3 and 12, 1996 whereas the instant Petition for Review was filed on April 15, 1996;
>
> 8. Claim for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (CIR vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. CIR, 67 SCRA 35);
>
> 9. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 10. In an action for tax credit/refund 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. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code;
>
> 12. Consequently, petitioner is not entitled to the claim herein sought to be refunded.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund sought.

Petitioner, to prove its case, presented the following exhibits:

Exhibits	**Particulars**
A to A-12	BIR Form No. 1702 - Corporation/ Partnership Annual Income Tax Return of AB Leasing for calendar year ending December 31, 1993
B	Schedule of Prepaid Taxes for the Year Ended 1993
C, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V	Various Certificates of Creditable Withholding Tax Withheld at Source
D	Expanded Withholding Tax List of Anscorland
W	ABACOM Systems Reconciliation Statement
X	AB Capital Official Receipt no. 18342 issued to Abacom Systems
Y	AB Capital Journal Voucher No. 333357
Z	New Directions Reconciliation Statement
AA-LL	Official receipts of petitioner issued to New Directions
MM to MM-8	Audited Financial Statements of AB Capital for calendar year ending December 31, 1993 and 1992

NN to NN-9	Corporation/Partnership Annual Income Tax Return of AB Capital for calendar year ending December 31, 1994 and attachments thereto
OO to OO-8	Audited Financial Statements of AB Capital for calendar year ending December 31, 1994 and 1993
PP to PP-1	2 April 1996 letter claim of Bautista Picazo Buyco Tan & Fider, in behalf of AB Capital
QQ to QQ-1	12 April 1996 letter claim of Bautista Picazo Buyco Tan & Fider, in behalf of AB Capital
RR to RR-28	Corporation/Partnership Annual Income Tax Return of AB Capital for calendar year ending December 31, 1995 and attachments thereto

Respondent, on her part, submitted the following exhibits as evidence:

1 Memorandum of the BIR Examiner who processed petitioner's claim;

2-2f Schedule of Disallowances and accompanying Certificates of Creditable Withholding Tax Withheld at Source.

After a careful scrutiny of the facts and evidence attendant to the case at bar, this Court finds that indeed petitioner is entitled to be refunded or issued a tax credit certificate. Section 69 of the National Internal Revenue Code provides:

> **Sec. 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return

> covering the total taxable 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 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. (Underscoring supplied)

Clearly from the above-quoted provision, petitioner may rightfully claim for the refund of the taxes withheld and remitted during the year 1993. There is not even an excess amount paid to speak of because to begin with, petitioner has no tax liability for that year as it incurred losses amounting to P7,747,658.00. Petitioner also was not able to utilize its 1993 "excess tax payments" as tax credit for the succeeding year 1994 because it was again in a net loss position.

The question that is left for Our determination is the amount to which petitioner is entitled on the basis of the evidence presented.

It bears emphasis that one of the requisites in claims for refund of income tax under Revenue Regulations 6-85 is that "the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

The Court noted that petitioner failed to submit the Certificates of Creditable Tax Withheld at Source to prove the fact of withholding (and remittance) by the following agents:

	Withholding Agent	Amount	Exh.
1.	Anscorland Management and Development Corp.	P11,613.50	D
2.	Abacom	18,739.57	W, X, Y
3.	New Directions	7,766.77	Z, AA-LL
		P38,119.84	

Moreover, as correctly pointed out by respondent when she offered the following in evidence, the payee appearing in the Certificates of Creditable Tax Withheld at Source is Asian Bank Corporation with TIN No. 320-000-436 and not AB Capital and Investment Corporation with TIN No. 320-000-841-331:

	Withholding Agent	Amount	Exh.
1.	Celestino's Int'l. Inc.	P20,686.32	G
2.	Ergonomic Systems Phils., Inc.	13,485.45	J
3.	Foamcraft, Inc.	6,410.13	L
4.	Luz O. Apolinario Dental Clinic	3,447.00	N
5.	MM International	1,775.84	O
6.	Reed Philippines, Corp.	7,790.65	S
		P53,595.39	

Thus, while this Court is convinced of petitioner's entitlement to the refund sought, We can only grant such amount that has been duly proven, which in this case is P235,879.57, computed as follows:

Total Amount of Claim (per certification)		P327,594.80
Less: Disallowances		
1. No accompanying certificates of creditable tax withheld at source	P38,119.84	
2. Payee in the certificates is not the petitioner	53,595.39	91,715.23
Total Amount of Refundable Claim		P235,879.57

WHEREFORE, in the light of the foregoing, respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE to petitioner in the reduced sum of P235,879.57 representing unutilized creditable income tax withheld at source for the year 1993.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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
Court of Tax Appeals