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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STOCK TRANSFER SERVICE,INC.,
Petitioner,

- versus - C.T.A. CASE NO. 5796

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 03 2000

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DECISION

This is a claim for the refund/issuance of tax credit in the amount of ₱40,070.00, allegedly representing excess creditable withholding tax for the calendar year ending December 31, 1996.

Petitioner is a corporation organized and existing under and by virtue of Philippine laws, with principal office address at G/F AsianBank Center, Sen. Gil J. Puyat Avenue, Makati City.

The facts are simple.

On April 15, 1997, Petitioner filed its Corporate Annual Income Tax Return (BIR Form No. 1702) with Respondent's Bureau for the calendar year 1996 declaring a net loss of two hundred three thousand five hundred nine pesos (₱203,509.00) and an excess creditable withholding tax in the amount of ₱40,070.00, which Petitioner opted to be refunded by appropriately marking the box for refunds under Section B(6) of the return (Exhibit A). Likewise, Petitioner suffered a net loss for calendar year 1997 (Exhibit P).

On March 17, 1999, Petitioner filed with Respondent's Bureau a written claim for refund of the amount of ₱40,070.00 as overpaid creditable withholding tax based on

Section 69 in relation to Section 230 (now Sections 76 and 229, respectively) of the Tax Code, as amended. Attached with the claim were the certifications issued by various withholding agents attesting to the remittance to Respondent's Bureau of the amount herein being claimed (Exhibit Q).

On April 15, 1999, the instant Petition was filed allegedly due to Respondent's inaction and the imminent lapse of the two-year prescriptive period for filing a judicial claim for refund reckoned from date of payment, as provided under said Section 230 of the Tax Code, as amended.

At bar, Petitioner repleaded its stance *a quo*. Aside from general averments on principles of law, pendency of administrative investigations and compliance to the Tax Code and its implementing rules and regulations concerning the case at bar, Respondent impleaded as a special and affirmative defense in his answer that the amount of claim being sought by Petitioner has not been properly documented, hence, not refundable.

In his memorandum, Respondent made an issue of Petitioner's Exhibit D (certificate of creditable withholding tax allegedly issued by Dharmala Philippines, Inc. for the account of the Petitioner) as a basis for not granting herein claim for refund. He contended that the same as offered in evidence did not correspond to Dharmala Philippines, Inc. but to the withholding agent/payor in the name of Filinvest Development Corporation. He went thus to state that in view of the wrong person formally proffered in evidence, Exhibit D is a mere scrap of paper.

The sole issue to be resolved is whether or not Petitioner is entitled to the refund of P40,070.00 representing the alleged excess or unutilized creditable income taxes withheld at source for the year ended December 31, 1996.

After a careful scrutiny of all the evidence presented before Us, We rule in favor of the Petitioner.

Section 69 of the 1995 National Internal Revenue Code, as amended 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:
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> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be;
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> 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 quarter of the succeeding taxable year.

It is clear from the above provision that the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Considering that herein Petitioner incurred a net loss in the years 1996 and 1997, with the corresponding annual return for year 1996 showing the amount of P40,070.00 as refundable under Section B(6) thereof, there is no doubt that such amount being claimed for refund has not been utilized or credited to succeeding year 1997.

For a valid refund, it is necessary that Petitioner should be able to prove by substantial evidence its compliance with the requirements laid down in Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, thus:

> "Section 10. - Claims for Tax Credit or Refund -
>
> (a) Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact that the 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."

Evidence wise, Petitioner must thus be able to prove the following requisites (affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459)**, namely:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

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

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; FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997; Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5323, August 25, 1997**].

A perusal of the records shows that Petitioner filed its claim for refund with Respondent's Bureau on March 17, 1999 and its Petition for Review with this Court on April 15, 1999. The two-year period commenced to run on April 15, 1997, the date when Petitioner filed its Corporate Annual Income Tax Return for the taxable year 1996 (see

ACCRA Investments Corp. vs. CA G.R. No. 96322, December 20, 1991; CIR vs. TMX Sales, Inc., G.R. No. 837736, January 15, 1992; CIR vs. Philippine American Life Insurance Co., G.R. No. 105208, May 29, 1995). This shows with certainty that the action for refund has been seasonably filed within the two-year period prescribed under Section 230 of the Tax Code, as amended when the date of payment of the tax on April 15, 1997 is reckoned from the date of filing the instant Petition on April 15, 1999.

On the other requisites of a valid claim for refund of excess creditable withholding tax, the 1996 annual return of the Petitioner (Exhibit A) shows under Section E thereof the amount of ₱40,070.00 being reported as creditable withholding tax. This figure tallies with the present claim of the Petitioner. Hereunder enumerated are the various certificates attesting to the fact of withholding of creditable taxes by Petitioner's payor-withholding agents, to wit:

Withholding Agent/Payor	Amount of Tax Withheld	Exh.
A. Soriano Corporation	P 8,100.00	B
Dharmala Philippines, Inc.	320.00	C
Filinvest Development Corporation	4,240.13	D
Grand Plaza Hotel Corp.	2,250.00	E
Greater Asia Resources Corp.	300.00	F
Greater Asia Resources Corp.	750.00	G
Primetown Property Group, Inc.	550.09	H
Primetown Property Group, Inc.	662.70	I
San Miguel Properties Phils., Inc.	2,103.62	J
SM Prime Holdings, Inc.	1,350.00	K
UCPB Leasing & Finance Corp.	500.50	L
UCPB Leasing & Finance Corp.	1,000.00	M
Hi Cement Corporation	3,182.36	N
Petrofields Exploration & Dev't. Co., Inc.	14,760.97	O
TOTAL	P 40,070.37	

Prescinding from the above, this Court gives scant attention to the argument of the Respondent that Exhibit D should not be appreciated because as offered the withholding agent/payor in the name of Dharmala Philippines, Inc. does not appear on the certificate so adduced in evidence for said exhibit, but instead, the name of Filinvest Development Corporation is the one stated therein. While Respondent may be right in observing the wrong payor, this Court however sees the inconsistency as a simple case of inadvertence that should not work against the Petitioner.

Be it noted that prior Exhibit C is a certificate issued by withholding agent Dharmala Philippines, Inc. covering the period January to December, 1996. It could easily happen that through typographical error, the same agent was also mentioned in the immediately following Exhibit D which covers the *last quarter* of 1996 only. It is likewise quite improbable that the latter exhibit could have been issued by the said agent because as it is, it has issued Exhibit C which already covered the *whole year* of 1996. Lastly, this Court observes that the amount of tax withheld in Exhibit D remained unaltered regardless of its being in the name of Filinvest Development Corporation.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the amount of **₱40,070.00** immediately.

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 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