REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERMAC, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5510

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 02 1998

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DECISION

This case involves a judicial action for the refund of the sum of P200,840.00, representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the calendar year ended December 31, 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located at 35th Flr., Tower One, Ayala Triangle, Ayala Avenue, Makati City. It is engaged in the business as a holding company for the purpose among others, of acquiring and investing in stocks of other corporations.

On April 17, 1995, petitioner filed its 1994 Corporation Annual Income Tax Return reflecting a refundable amount of P309,979.00, computed as follows: (Exhs. A, A-1 to A-9, inclusive)

Gross Income		
Sale of Services (Sch. 2)	₱ 260,529.00	
Rent (Sch. 3)	6,275,757.00	
Interest earned on loans (Sch. 3)	442,387.00	
Sales of property (Sch. 5)	929,946.00	
Total		₱ 7,908,619.00
Less: Deductions		25,801,550.00
Net Loss		₱17,892,931.00

Tax due		₱ nil
Less:		
a. Prior years excess credit	₱ 109,139.00	
b. Quarterly payments made this year	-	
c. Creditable tax withheld	200,840.00	
Total		309,979.00
Amount Refundable		₱ 309,979.00

Petitioner opted to refund the amount of ₱309,979.00 by marking the appropriate box in the lower portion of the 1994 income tax return. However, it changed its course and chose instead to have the sum of ₱200,840.00, representing creditable tax withheld during the year 1994, to be carried over as automatic tax credit in the succeeding taxable year 1995. (Exh. C)

On November 8, 1995, petitioner filed a letter claim for refund with the Bureau of Internal Revenue covering its 1994 overpaid creditable withholding tax at source in the amount of ₱200,840.00 (Exh. B).

The inaction of respondent on its letter compelled petitioner to file the instant petition for review on April 14, 1997 in order to preserve its right to

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judicially claim for the refund of said amount pursuant to Section 230 of the Tax Code.

The issues posed before Us are as follows:

1. Whether or not petitioner is legally entitled to the claim for refund; and

2. Whether or not petitioner was able to substantiate its entitlement thereto.

Petitioner is firm on its stand that it is entitled to the refund sought. It cites as legal bases Sections 69 and 230 of the Tax Code. For easy reference Sections 69 and 230 are hereby quoted:

> **Sec. 69. Final adjustment return.** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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
>
> <u>(b) Be refunded the excess amount paid, as the case may be</u>.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, <u>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</u>. (Underlining supplied).

> "**Sec. 230.** *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for

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> 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. (Underlining supplied).
>
> x x x x x x x x x."

Petitioner further submitted various documents in support of its claim for refund (Exhs. A, B and C, inclusive of submarkings).

Respondent, on the other hand, is convinced that petitioner is no longer entitled to the refund of P200,840.00. She presented in evidence the memorandum submitted by Revenue Officer, Rudy P. Carandang, dated November 7, 1997, recommending the denial of the instant claim on the ground that the amount sought to be refunded has already been applied by petitioner in the calendar year 1995 (Exh. 3).

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After a perusal of the evidence submitted by both parties, this Court favors petitioner's cause. The 1995 income tax return of petitioner shows that the amount of P200,840.00 subject of the present claim, was not utilized by petitioner as automatic tax credit in the year 1995 because in the year 1995 petitioner suffered net loss from operations. And pursuant to Sec. 69 of the Tax Code, a refundable amount of a given year can only be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Thus, the refundable 1994 income tax of petitioner can only be applied against its income tax liabilities of the succeeding taxable year 1995. Since petitioner did not utilize the 1994 overpayment in the year 1995, the same is refundable.

What is now left for the Court to consider is petitioner's compliance with the following requisites in order to be entitled to the refund sought:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3. 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. [Sec. 10, Rev. Reg. 6-85; see **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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

A careful examination of all the evidence presented by the petitioner revealed that:

First, petitioner filed within the two-year period its claim for refund with the Bureau of Internal Revenue and with this Court. It filed on November 8, 1995, its letter-claim for refund with the Bureau of Internal Revenue and the instant petition for review on April 14, 1997. The two-year period commenced to run on April 17, 1995, the date when petitioner filed its 1994 annual income tax return (**Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 837736, January 15, 1992**).

Second, as testified by petitioner's witness, Mr. Bernardino Casanova, the income payments subject to withholding tax were reported in the gross income portion

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of petitioner's annual income tax return. (TSN, July 3, 1997, pp. 14 to 16). And, as verified, was reflected on petitioner's 1994 income tax return (Exhs. A-8, and A-9).

Lastly, petitioner was able to substantiate the total amount of ₱200,840.00 as certified by the following withholding agents:

Withholding Agent	Exh.	Amount of Income Payments	Amount of Tax Withheld
Stephen D. Williams	A-10	₱ 792,000.00	₱ 39,600.00
Toyota Motor Phils. Corp.	A-11	724,800.00	36,240.00
Ayala Corporation	A-12	1,600,000.00	32,000.00
Sedco Forex Int'l. Drilling Corp.	A-13	960,000.00	48,000.00
Caltex (Philippines) Inc.	A-14	900,000.00	45,000.00
T o t a l		₱4,976,800.00	₱200,840.00

Having complied with the requirements We have herein set forth, petitioner is entitled to the refund sought.

WHEREFORE, in view of the foregoing, the petition for review is hereby **GRANTED**. Respondent is ordered to **REFUND** in favor of petitioner the sum of ₱200,840.00, representing overpaid income tax for the calendar year 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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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

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