REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MERALCO FOUNDATION, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5256

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 01 1998

x - x

DECISION

This is a judicial claim for the refund of 5% expanded withholding tax in the amount of ₱810,000.00 which allegedly was erroneously paid to respondent's Bureau during the year 1993.

Petitioner is a domestic corporation organized and existing under Philippine laws, with principal office at MFI Building, Ortigas Avenue, Pasig, Metro Manila.

The facts are simple.

On May 4, 1993, a deed of sale was entered into by and between the sellers, Ms. Aida C. Garcia and Ms. Lourdes C. Garcia, and the buyer, herein petitioner, over a parcel of agricultural land located at Brgy. Pulo, Calamba, Laguna in the amount of ₱16,200,000.00. Said real property has an area of 89,988 square meters and is registered under Transfer of Certificate of Title No. (T-64010) T-24893 of the Register of Deeds of Laguna.

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On subsequent dates, petitioner correspondingly paid to the sellers the aforestated purchase price minus, the 5% expanded withholding tax amounting to ₱810,000.00, which petitioner remitted to respondent's Bureau on May 27, 1993.

On June 7, 1993, petitioner paid another amount of ₱810,000 to respondent's Bureau.

On May 17, 1995, or nearly two years thereafter, petitioner filed a claim for refund for the alleged second payment made on June 7, 1993. Petitioner asserts that such second payment was erroneous as it had already deducted, withheld and earlier paid the correct amount of ₱810,000.00 on May 27, 1993 as required by Section 1(j) of Revenue Regulations No 6-85, amended by Revenue Regulations No. 1-90.

On May 26, 1995, petitioner filed the instant petition for review on the ground that respondent has not acted upon its claim for refund and that the statutory period of two years within which to file a claim for refund or tax credit of erroneously collected taxes, pursuant to Section 230 of the Tax Code, was about to prescribe.

At bar, petitioner reasserts its stance *a quo*. Respondent, on the other hand, contends in her Answer, that in an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally

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collected and the failure to do so is fatal to its action. She adds that claims for refund are strictly construed against the taxpayer and that herein taxpayer has no cause of action.

Records show that petitioner was able to file its memorandum while respondent failed to do so within the time given by the Court. In its memorandum, petitioner claims that although it paid the ₱810,000.00 on June 7, 1993 in its capacity as a withholding agent, such amount does not represent an advance payment of the seller's income tax liability as said amount was not actually deducted from the purchase price of ₱16,200,000.00, but in fact came out of its own funds and for which no further Certificate of Creditable Income Tax Withheld at Source was issued to the sellers.

Beforehand, this Court observes that the case at bar merely involves the determination of the evidence offered by the petitioner as there is no dispute insofar as the legal milieu of this case is concerned.

The sole issue to be resolved in this case is simply whether or not petitioner is entitled to its claim for refund.

After a careful scrutiny and examination of the facts and the asseverations of the parties, as well as the evidence adduced by them, this Court rules in favor of the respondent.

In its attempt to prove that it paid the amount of ₱810,000.00 for the second time on June 7, 1993, petitioner presented the following evidence, to wit:

Exhibit "A" - BIR Form No 1743 W duly stamped "received" copy and machine validated by Traders Royal Bank on 7 June 1993;

Exhibit "B" - Returned DBP Check No. 054914 drawn in favor of respondent in the amount of ₱810,000.00 paid to Traders Royal Bank (BIR Pasig Branch);

Exhibit "O" - Certification issued by respondent (Revenue Accounting Division) of receipt of the amount of ₱810,000.00 on 7 June 1993 from petitioner; and

Exhibit "Q" - Certification issued by respondent (Document Processing Division of the Information Systems Operations Service) of receipt of BIR Form No. 1743 W filed by petitioner on 7 June 1993.

In her Comment to Exhibit "O", respondent objected to the purpose for which the exhibit is being offered on the ground that the certification itself states that the kind of tax paid is not indicated in the source documents. She averred thus that such fact only shows that one cannot conclude that the payment indicated in said certification is the one made by the petitioner for the tax refund requested by it.

This court is convinced by respondent's ratiocination. Indeed, upon a painstaking review of petitioner's evidence and the records as well, there is no proof that can be found to support petitioner's allegation that the second payment of ₱810,000.00 representing 5% Expanded Withholding Tax was really made for the *same* Deed of Sale consummated on May 4, 1993. As it is, the second payment could have been made for other transactions requiring the withholding of taxes. It may well be possible that petitioner was able to buy another property having the same selling price or that an aggregate amount of taxes so withheld and remitted turned out to be of the same figure as the one herein involved. Neither was there an explanation on the part of the petitioner why double payment occurred.

Petitioner should have introduced evidence to rebut respondent's damaging comment but, unfortunately, it did not. It could have submitted any of the supporting papers or documents usually accompanying the preparation of checks in order to prove that the check issued for the second payment was intended for the same sale of real property entered on May 4, 1993. It could have also presented the reconciliation statement of quarterly payments and *list of payees* and income payments, as required under Section 51(d) of the Tax Code (1990 ed.) in order to prove that its second payment was included as part of the withholding taxes it had actually withheld for that particular quarter of the year and that the payees are the same sellers involved herein.

"It must be stressed at this point that a refund (or tax credit) of taxes partakes the nature of a tax exemption and is construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority" (**Associated Sugar, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 2944, May 6, 1994, p. 4, citing **Insular Lumber Co. vs. Court of Tax Appeals**, 104 SCRA 710; and **Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corp.**, 207 SCRA 549)

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DISMISSED** for insufficiency of evidence.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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

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