Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

ORANBO REALTY CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4975

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 31 1995

x - x

D E C I S I O N

This case involves a claim for refund or tax credit in the amount of ₱845,235.00 representing overpaid creditable income tax withheld at source for calendar year 1990.

Petitioner is a domestic realty corporation organized and existing under Philippine laws.

Petitioner allegedly received rental income from its sole lessee Aris Philippines, Inc. the amount of ₱17,914,869.00, representing delayed payments of 1989 rentals, adjustments and 1990 rentals and realty tax paid by the lessee.

Respondent withheld the 5% expanded withholding tax in the amount of ₱895,743.45 from Aris Philippines.

On April 15, 1991, petitioner filed its corporate income tax return for taxable year 1990 wherein it declared the total rental income it received in 1990 in the amount of ₱14,485,869.00 and an alleged refundable tax in the amount of ₱845,235.00 which is computed as follows:

Rental Income		₱ 14,485,869
Miscellaneous Income		14,872
		₱ 14,500,741
Less: Deductions		13,960,753
Net Taxable Income		₱ 539,988
Tax Due		₱ 188,966
Less:		
Prior Years Excess Credit	56,778	
1st Quarter Income Tax Payment	81,710	
Creditable Income Tax Withheld at Source	895,743	(1,034,231)
Refundable Tax		(₱ 845,235)

Furthermore, petitioner alleged that the refundable tax for 1990 was not utilized by it.

Thereafter, petitioner filed with the respondent its claim for refund of excess creditable withholding tax in the amount of ₱845,235.00.

To this date, respondent has not acted upon petitioners claim for refund.

The issues posed before this Court are:

1. Whether or not petitioner is entitled to the refund of overpaid income tax in the amount of ₱845,235.00 for taxable year 1990.

2. Whether or not petitioner was able to prove by sufficient evidence its claim for refund.

Petitioner asserts that its 1990 unutilized creditable income tax withheld at source is anchored on Section 69 of the Tax Code in reference to Revenue Memorandum Circular Nos. 7-85 and 32-76.

Furthermore, petitioner invoked the case of CIR vs. Standard Chartered Bank and the CTA (CA G.R. SP 27671; CTA Case 4272) wherein pertinent portion of the decision is herein quoted for reference:

> "From the above provisions of law and implementing rule, there is no doubt that private respondent is entitled to the refund of its overpaid income tax for the taxable year 1986, as found by the respondent court, and which recommendation was even earlier made by petitioner's Regional Director Perfector T. Domingo but which recommendation was not acted upon by petitioner (pp.39-40, Rollo). x x x
>
> But petitioner would make an issue of the correct interpretation of the phrase 'erroneously or illegally assessed or collected' as the taxes subject of refund under Section 292 of the Code also aforequoted, insisting that it is only where there is an erroneous or illegal assessment or collection of tax that tax refund is allowed under said provision, and that as there had been no erroneous or illegal assessment or collection of taxes in the instant case, no tax refund can be allowed the private respondent. <u>Such strained and restrictive interpretation of said provision of the Tax Code is, however, clearly unwarranted and Section 292 of the Tax Code should beread and applied together with Section 69 thereof which expressly provides</u>

> that excess taxes paid by a corporation may be refunded to the latter. Besides, Section 292 allows tax refunds for 'any sum alleged to have been excessive', which obviously refers to the payment of excess tax by the taxpayer, and the facts of this case indeed show that there was excess payment of income tax on the part of private respondent for the taxable year 1986." (CA Decision, pp. 4-5)

The requirement set by law in claims for refund of excess creditable withholding taxes are the following:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue;

2. that the income upon which the taxes were withheld were included in the 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; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993.)

As borne by the records, petitioner was able to file its claim for refund within the two-year period pursuant to Section 230 of the NIRC.

Petitioners filing of its claim for refund with the respondent on March 30, 1993, and the filing of the petition for review with this Court on April 12, 1993 are well within the two-year limit provided for in Section 292 (now Section 230) of the Tax Code. The two-year period for filing a claim for refund commences to run only from the filing of the final return and not from the dates the quarterly payments were made. Since respondent's final return for 1990 was filed on April 15, 1991, the two-year limit would have lapsed only in April 14, 1993. Thus the filing of the claim and petition on March 30, 1993 and April 12, 1993, respectively are well within the two-year prescriptive period.

As cited in the case of Asia Australia Express, Ltd. v. CIR (G.R. No. 85956, April 10, 1989), the reason behind the reckoning of the prescriptive period after the last installment payment is that only after such time can a tax liability be construed as completely paid. Thus, the quarterly payments are mere parts or portions of respondent's income tax liability for 1986 and payment is not deemed made until the final return is filed and the tax is paid.

Inorder to gain better ground by way of evidences, petitioner presented the following:

Exhibit "A-1"	-	Schedule 4 of Exhibit A (1990 Corporate Annual Income Tax Return)
Exhibit "D"	-	BIR Form 1743-1 Certicate of Creditable Income Tax Withheld at Source.
Exhibit "F"	-	1991 Corporate Annual Income Tax Return.
Exhibit "G"	-	letter claim for refund dated March 29, 1993, received by the BIR on March 30, 1993.

On the second requisite, petitioner presented a reconciliation statement to prove that the amount of ₱3,429,000.00 was reported as income in the 1989 income tax return.

Going over the third requisite, petitioner presented Exhibit "D" which is BIR Form 1743-1 more particularly its Certificate of Creditable Tax Withheld at Source.

It is likewise observed that respondents counsel is not zealous enough, to guard the governments interest on the case. This is manifested by her frequent non-appearance during the hearings which results to waiver on her part to present evidence. Respondents counsels failure to present evidence proves fatal to her cause while petitioner exhibited overwhelming proof to his cause.

After a thorough review of the case at bar, the Court arrived at the following computations:

Rental Income		₱ 14,485,869
Miscellaneous Income		14,872
		₱ 14,500,741
Less: Deductions		13,960,753
Net Taxable Income		₱ 539,988
Tax Due		188,996
Less:		
Prior Year's Excess Credit	₱ 56,778	
1st Quarter Income Tax Payment	81,710	
Creditable Income Tax Withheld at Source	895,743	(1,034,231)
Refundable Tax		845,235
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In view of the foregoing, respondent is hereby ordered to refund to petitioner the amount of ₱845,235.00 representing overpaid withholding tax for the year 1990.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among 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