REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE REALTY & HOLDINGS CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6066

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 27 2003
[signature] Apolinario

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DECISION

This case involves a claim for refund of overpaid creditable withholding taxes in the amounts of P5,913,663.00 and P28,874,007.00 for the taxable years 1996 and 1997, respectively.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office and business address at 5/F Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City.

On April 15, 1997, petitioner filed its Annual Income Tax Return for the taxable year 1996, declaring an income tax due of P115,152,618.00 and creditable withholding tax of P121,066,281.00, resulting to an excess creditable withholding tax in the amount of P5,913,663.00. In said return, petitioner indicated its option to apply this excess

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creditable withholding tax as tax credit to the succeeding taxable year 1997. (Exhibits "J^{8}", "J^{8}-1" to "J^{8}-3")

For the taxable year 1997, petitioner filed its Annual Income Tax Return on April 15, 1998, declaring a net loss of P265,731,215.00 and creditable withholding tax of P28,874,007.00. Due to the net loss incurred during the taxable year 1997, petitioner was not able to apply its 1996 excess creditable withholding tax. Thus, in 1997, petitioner had an accumulated excess creditable withholding tax amounting to P34,787,670.00 consisting of its prior year's excess credit in the amount of P5,913,663.00 and its current creditable withholding tax of P28,874,007.00. The return showed that petitioner opted to claim for the refund of its accumulated creditable withholding tax. (Exhibits "K^{8}", "K^{8}-1" to "K^{8}-3")

On November 23, 1998, petitioner filed with the respondent's Bureau a letter-claim for the refund of its overpaid creditable withholding tax for the taxable years 1996 and 1997 in the aggregate amount of P34,787,670.00 (Paragraph 3, Unconditionally Admitted Facts).

On November 26, 1998, the Chief of the Appellate Division of the Bureau of Internal Revenue (BIR) informed petitioner that its claim for refund was referred to the Revenue District Officer of Revenue District Office No. 43, Pasig City, "for factual investigation, report and recommendation" (Paragraph 4, Unconditionally Admitted Facts).

In a Memorandum dated February 15, 1999, the BIR Revenue District Officer of Revenue District Office No. 43, Pasig City, assigned petitioner's claim for refund to Revenue Officer R. Porlas and Group Supervisor G. Prado for "comment and/or observation" (Paragraph 5, Unconditionally Admitted Facts).

Upon termination of the examination and investigation of petitioner's corporate income tax return for the taxable year 1996, petitioner was assessed for deficiency tax in the amount of P59,394.57. (paragraph 7, Unconditionally Admitted Facts; TSN, December 6, 2000, pp. 24-25) On July 6, 1999, petitioner paid said deficiency assessment. (Exhibit "L[8]")

For the year 1997, petitioner was assessed the amount of P20,008.07 representing deficiency expanded withholding tax. Payment for the said assessment was made on February 23, 2001. (pp. 6-8, 8-14, TSN, May 29, 2001; Exhibits I-[23] and J-[23])

Due to respondent's inaction over petitioner's claim for refund, the latter filed its judicial claim with this court on April 13, 2000.

In his Answer filed on May 15, 2000, respondent raised the following Special and Affirmative Defenses, to wit:

> "3. The claim for refund is subject to investigation by the Bureau of Internal Revenue;
>
> 4. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed strictly against the claimant as they partake of the nature of an exemption from tax **(Commissioner Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95)** and it is incumbent upon the petitioner to prove that it is entitled thereto under the

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law **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)** and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law.

5. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204 (C) and 229 of the Tax Code, as amended, which are quoted as follows:

> "**Section 204**. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may – x x x
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit of refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."
>
> "**Section 230.** ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for 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 excessively 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 (2) 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 written claim therefor, refund or credit any tax,

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> where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid."

The sole issue to be resolved is: Whether or not on the basis of the evidence presented, petitioner is entitled to the refund of the amounts of P5,913,663.00 and P28,874,007.00 representing excess creditable withholding taxes for the taxable years 1996 and 1997, respectively.

Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85), as affirmed by jurisprudence, laid down the following three basic requirements for the refund of excess creditable withholding taxes, thus:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204 (C)] in relation to Section 230 [now 229] of the Tax Code, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient *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, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors 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 Corp. FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union*

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> *Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].*

As to whether or not petitioner's claim for refund of excess creditable withholding tax for the taxable year 1996 was filed within the two-year prescriptive period, the court rules in the negative.

Section 230 (now 229) of the NIRC provides, viz:

> "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected. -***
>
> xxx xxx xxx
>
> 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the aforequoted provision of law, petitioner had until April 15, 1999 within which to file both its administrative and judicial claims for refund, its 1996 Annual Income Tax Return having been filed on April 15, 1997. While petitioner's letter claim for refund was filed on November 23, 1998, its judicial claim was filed only on April 13, 2000 or after the lapse of the two-year prescriptive period.

Since petitioner's claim for refund in the amount of P5,913,663.00, representing its excess creditable withholding tax for the taxable year 1996 has been barred by

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prescription, we find it no longer necessary to discuss petitioner's compliance with the second and third requirements.

We proceed to petitioner's claim for refund of its excess creditable withholding tax for the taxable year 1997. For the said taxable year, petitioner filed its Annual Income Tax Return on April 15, 1998. The administrative and judicial claims for refund were filed on November 23, 1998 and April 13, 2000, respectively. Clearly, petitioner was able to meet the first requirement since both the administrative and judicial claims for refund were filed within the two-year prescriptive period.

To prove the fact of withholding, petitioner submitted various certificates of creditable withholding taxes. However, out of the total 1997 creditable withholding taxes of P28,874,007.00, petitioner was only able to substantiate the amount of P28,744,808.15, to wit:

WITHHOLDING AGENT	EXHIBIT	NATURE OF INCOME	INCOME PAYMENT	TAX WITHHELD
A BROWN	A	Sale of real property	241,247,045.45	12,062,352.27
ACCURATECH MACHINE	B	Sale of real property	87,222.40	43,861.12
ADRIANA HU	C	Sale of real property	1,497,580.00	74,875.00
AMADO MANUEL	D	Sale of real property	3,155,528.55	80,208.88
ANNIE LAO FERRER	E	Sale of real property	4,491,940.00	224,592.00
ANTONIO MARTY	F	Sale of real property	2,481,818.18	124,090.91
BARBARA VARGAS	G	Sale of real property	786,103.00	39,305.15
BELEY CHUA	H	Sale of real property	1,197,582.00	59,879.10
BELLE CORP	I	Sale of real property	6,185,454.60	309,272.73
BREPAC DEVT CORP	J	Sale of real property	1,187,723.20	59,386.16
BROADCAST & COMM	K	Sale of real property	1,335,467.50	66,773.37
CENTURY CANNING	L	Sale of real property	10,437,998.60	521,899.93
CHESTER CO	M	Sale of real property	2,104,772.80	105,238.64
CHM TRDG	N	Sale of real property	1,200,876.60	60,043.83
CHU KEN GIAP	O	Sale of real property	4,334,232.00	216,711.60
CORAZON CLAUDIO	P	Sale of real property	816,942.00	40,847.10
DAKILA FONACIER	Q	Sale of real property	2,331,382.20	116,569.11

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DILIP SHRIVASTAVA	S	Sale of real property	983,704.00	49,185.20
DIANA SHRIVASTAVA	T	Sale of real property	784,512.00	39,225.60
DIZON COPPER SILVER	U	Sale of real property	1,797,170.00	89,858.50
DOMINION PROPERTY	V	Sale of real property	3,330,031.20	166,501.56
DOMINION PROPERTY	W	Sale of real property	4,762,000.00	238,100.00
ELIZALDY CO	X	Sale of real property	792,701.00	39,635.05
ENRICO TENSUAN	Y	Sale of real property	6,912,500.00	345,625.00
FIRST ABACUS	Z	Sale of real property	2,061,818.20	103,090.91
FLORENCIA NEVALGA	AA	Sale of real property	4,217,500.00	210,875.00
GBW HOLDINGS CORP	BB	Sale of real property	714,520.00	35,726.00
GBW HOLDINGS CORP	CC	Sale of real property	714,320.00	35,726.00
GBW HOLDINGS CORP	DD	Sale of real property	720,562.40	36,028.12
GBW HOLDINGS CORP	EE	Sale of real property	714,320.00	35,726.00
GBW HOLDINGS CORP	FF	Sale of real property	714,320.00	35,726.00
GBW HOLDINGS CORP	GG	Sa0le of real property	714,320.00	36,028.12
GILT EDGED PROPERTY	HH	Sale of real property	983,482.00	49,174.10
GOLD CREST INTL	II	Sale of real property	3,990,000.00	199,500.00
GRANIN PROPERTIES	JJ	Sale of real property	403,363.80	20,168.19
GREEN ACES HOLDINGS	KK	Sale of real property	1,601,640.00	90,082.00
DEVT CORP	LL	Sale of real property	4,209,545.40	210,477.27
HENRY UY	MM	Sale of real property	398,629.60	19,931.48
HOME CREATION	NN	Sale of real property	1,115,100.00	55,755.00
ITSHAK HAREL	OO	Sale of real property	527,187.40	26,359.37
J-LO REALTY	PP	Sale of real property	1,225,100.00	61,225.00
JAME DE JESUS	QQ	Sale of real property	4,905,500.00	245,275.00
JANUS MATUTA MGT	RR	Sale of real property	1,180,000.00	59,000.00
JENNIFER ENRIQUEZ	SS	Sale of real property	1,790,684.80	89,534.24
LU, GEREMIAH	TT	Sale of real property	4,527,000.00	226,350.00
JONATHAN LU	UU	Sale of real property	4,217,500.00	210,875.00
JOSEPHINE NG LO	VV	Sale of real property	3,951,780.00	197,589.00
LANDMINER'S INC	WW	Sale of real property	944,824.00	47,241.23
LANDMINER'S INC	XX	Sale of real property	944,824.00	47,241.23
LC LOPEZ RESOURCES	YY	Sale of real property	1,599,434.20	79,971.71
MEI SU LEE	ZZ	Sale of real property	2,303,408.40	115,170.42
LEONARDO CHUA LIAN	AAA	Sale of real property	1,008,032.00	50,401.60
LEWIS EDWARDS	BBB	Sale of real property	3,756,082.00	187,804.10
LIAN, CHING CHENG	CCC	Sale of real property	1,700,870.00	85,043.50
LIRIO ANGELA CORP	DDD	Sale of real property	1,556,250.00	77,812.95
LITTMAN DRUG CORP	EEE	Sale of real property	1,083,128.00	54,156.40
MA ANGELINE ESQUIVEL	FFF	Sale of real property	4,715,500.00	235,775.00
MANUEL CHUA	GGG	Sale of real property	4,329,192.00	216,459.60
MARCEL ALBARACIN	HHH	Sale of real property	744,863.80	37,243.19
MARK LEROY YU	III	Sale of real property	1,107,814.20	55,390.71
MARILOU MONASTERIO	JJJ	Sale of real property	1,779,915.20	88,995.76
MAXIMO BALAJADIA	KKK	Sale of real property	9,326,000.00	466,300.00
MAXIMO KALAW	LLL	Sale of real property	4,546,460.00	227,325.00
MELTIP REALTY	MMM	Sale of real property	4,083,450.00	204,172.50

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MERIDIAN ASSURANCE	NNN	Sale of real property	960,212.40	48,010.62
MERIDIAN ASSURANCE	OOO	Sale of real property	960,212.40	48,010.62
MERIDIAN ASSURANCE	PPP	Sale of real property	1,548,785.00	77,439.25
MERIDIAN ASSURANCE	QQQ	Sale of real property	492,969.60	24,648.48
MERIDIAN ASSURANCE	RRR	Sale of real property	673,200.00	33,660.00
MLC-NOL REALTY	SSS	Sale of real property	62,824,681.82	3,141,234.09
ONNA NG SY	TTT	Sale of real property	1,485,906.60	74,295.33
HUNG PAI	UUU	Sale of real property	1,240,586.20	62,029.31
PERPETUA MANALO	VVV	Sale of real property	1,342,025.00	67,101.25
PETER YANG	WWW	Sale of real property	2,077,316.40	103,865.82
PHIL GENETICS INC	XXX	Sale of real property	607,200.00	30,360.00
PHIL GENETICS INC	YYY	Sale of real property	631,305.40	31,565.27
POB CORP	ZZZ	Sale of real property	8,013,664.91	400,683.25
PROBITY SECURITY	AAAA	Sale of real property	375,000.00	18,750.00
RBL FISHING	BBBB	Sale of real property	45,157.20	2,257.86
ROBERTO SY	CCCC	Sale of real property	2,029,927.00	101,496.35
SANTOS BAYLE	DDDD	Sale of real property	2,673,131.80	133,656.59
SANTOS ,PARUNGAO	EEEE	Sale of real property	4,288,750.00	214,437.50
SEACAUCUS DEVT	FFFF	Sale of real property	4,209,545.40	210,477.27
SHADWELL LTD	GGGG	Sale of real property	2,063,253.80	103,162.69
SPS ANTONIO LIM	HHHH	Sale of real property	1,812,589.00	90,629.49
SPS DOMINADOR LOPEZ	IIII	Sale of real property	1,666,700.00	83,335.00
SPS EDGAR SALCEDO	JJJJ	Sale of real property	1,267,625.00	63,381.25
SPS E. MACAIBAY	KKKK	Sale of real property	1,608,200.00	84,910.00
SPS H. TAGAYSAY	LLLL	Sale of real property	3,756,082.00	187,804.10
SPS MANUEL YNGSON	MMMM	Sale of real property	1,297,891.40	64,894.57
SPS MANUEL YNGSON	NNNN	Sale of real property	4,266,496.00	213,324.80
SPS RICALDE	OOOO	Sale of real property	1,120,933.00	56,046.65
SPS R. CALIMBARIN	PPPP	Sale of real property	901,255.60	45,062.78
SPS R. CALIMBARIN	QQQQ	Sale of real property	901,255.60	45,062.78
SPS ROBERT TY	RRRR	Sale of real property	1,278,028.00	63,901.40
SPS RODOLFO TAN	SSSS	Sale of real property	666,005.00	33,300.25
ST MARY ESTATE CORP	TTTT	Sale of real property	1,186,630.00	59,331.50
ST MARY ESTATE CORP	UUUU	Sale of real property	1,186,630.00	59,331.50
SUAN YUYITANG	VVVV	Sale of real property	4,480,000.00	224,000.00
SUNNYVALE DEVT	WWWW	Sale of real property	437,500.00	21,875.00
SYS PROPERTY	XXXX	Sale of real property	1,304,362.40	65,218.12
SYS PROPERTY	YYYY	Sale of real property	1,304,362.40	65,218.12
TERESITA DAZA	ZZZZ	Sale of real property	522,682.00	26,134.10
THREE'S CO	AAAAA	Sale of real property	818,840.00	40,942.00
VENTURE COMML	BBBBB	Sale of real property	781,725.00	39,086.25
VENTURE COMML	CCCCC	Sale of real property	4,467,000.00	223,350.00
VILSONS & CO	DDDDD	Sale of real property	1,061,610.00	53,080.50
VISTA HOLDINGS	EEEEE	Sale of real property	4,123,636.40	206,181.82
WEALTH SECURITIES	FFFFF	Sale of real property	541,227.20	27,061.36
IGNACIO	GGGGG	Sale of real property	1,485,925.00	74,296.25
WONG LAI MING	HHHHH	Sale of real property	2,957,062.40	147,853.12

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WONG LAI MING	IIIII	Sale of real property	2,956,562.40	147,828.12
ZEUS SYSTEMS	JJJJJ	Sale of real property	2,168,250.00	108,412.50
GREENHILLS PROP.	KKKKK	Sale of real property	5,844,312.71	292,215.63
GREENHILLS PROP.	LLLLL	Sale of real property	5,156,742.60	257,837.34
GREENHILLS PROP.	MMMMM	Sale of real property	3,437,831.02	171,891.50
KINGSONS ENTRP	NNNNN	Sale of real property	902,580.00	45,129.00
KINGSONS ENTRP	OOOOO	Sale of real property	601,580.00	30,079.00
QUORUM INTL	PPPPP	Sale of real property	696,243.20	34,812.16
TV REALTY HOLDINGS	QQQQQ	Sale of real property	2,205,000.00	110,250.00
BAKERS NINE REALTY	RRRRR	Sale of real property	134,468.55	6,723.42
PLO SHARES INC	SSSSS	Sale of real property	134,468.55	6,723.42
A BROWN	TTTTT	Lease	7,500.00	375.00
A SORIANO CORP	UUUUU	Lease	36,000.00	1,800.00
BANKARD	WWWWW	Lease	75,227.20	3,761.36
CAPITOL SECURITIES	YYYYY	Lease	18,000.00	900.00
CHOPSTIX EXPRESS	ZZZZZ	Lease	56,057.20	2,802.86
CHOPSTIX EXPRESS	ZZZZZ	Lease	196,200.00	9,810.00
CHOPSTIX EXPRESS	ZZZZZ	Lease	196,200.00	9,810.00
COUNTRY HOUSE	BBBBBB	Lease	8,448.00	422.40
COUNTRY HOUSE	BBBBBB	Lease	54,982.80	2,749.14
CRUMBS	CCCCCC	Lease	111,139.00	5,556.95
DEL MONTE PHILS	DDDDDD	Lease	10,000.00	500.00
FAR EAST BANK	EEEEEE	Lease	533,168.00	26,658.40
FIL-ESTATE REALTY	FFFFFF	Lease	3,750.00	187.50
FRIGOS	GGGGGG	Lease	16,800.00	840.00
FRIGOS	GGGGGG	Lease	56,774.20	2,838.71
GAMMOX FOODS	HHHHHH	Lease	109,001.00	5,450.05
GAMMOX FOODS	HHHHHH	Lease	107,171.60	5,358.58
GAMMOX FOODS	HHHHHH	Lease	79,775.80	3,988.79
GDC REALTY	IIIIII	Lease	108,000.00	5,400.00
GOLDEN MAPLE	JJJJJJ	Lease	108,000.00	5,400.00
GRILL & BROIL	KKKKKK	Lease	206,995.20	10,349.76
HOUSE OF MINIS	LLLLLL	Lease	75,000.00	3,750.00
HOUSE OF MINIS	LLLLLL	Lease	50,000.00	2,500.00
JOCRISON	MMMMMM	Lease	36,000.00	1,800.00
LG COLLINS	NNNNNN	Lease	12,500.00	625.00
MAE CHOW LINE	OOOOOO	Lease	36,935.60	1,846.78
MAE CHOW LINE	OOOOOO	Lease	68,127.60	3,406.38
MAE CHOW LINE	OOOOOO	Lease	98,632.00	4,931.60
MARINO OLONDRIZ	PPPPPP	Lease	36,000.00	1,800.00
MBF CARD	QQQQQQ	Lease	7,500.00	375.00
MCRP CONSTRUCTION	RRRRRR	Lease	72,000.00	3,600.00
ML & H CORP	SSSSSS	Lease	18,000.00	900.00
NORTHERN TELECOM	TTTTTT	Lease	20,000.00	1,000.00
OKAMURA-UBIX	UUUUUU	Lease	1,641,600.00	82,080.00
PACIFIC ONLINE	XXXXXX	Lease	72,000.00	3,600.00
PARENT FOR EDUC	YYYYYY	Lease	4,000.00	200.00

PSEI	ZZZZZZ	Lease	10,000.00	500.00
PUNO LAW OFFICE	AAAAAAA	Lease	108,000.00	5,400.00
SAINT CINNAMON	BBBBBBB	Lease	24,247.40	1,212.37
SAINT CINNAMON	BBBBBBB	Lease	23,077.80	1,153.89
SAKI JAP	CCCCCCC	Lease	52,932.60	2,646.63
SAKI JAP	CCCCCCC	Lease	102,652.00	5,132.60
SAKI JAP	CCCCCCC	Lease	50,814.80	2,540.74
SAKI JAP	CCCCCCC	Lease	140,428.00	7,021.40
SIZZLING SEAFOODS	DDDDDDD	Lease	217,970.60	10,898.53
SPRINT FITNESS	EEEEEEE	Lease	34,470.00	1,723.50
SPRINT FITNESS	EEEEEEE	Lease	133,383.60	6,669.18
SPRINT FITNESS	EEEEEEE	Lease	78,000.00	3,900.00
SUGBAAN	FFFFFFF	Lease	58,373.20	2,918.66
SUGBAAN	FFFFFFF	Lease	59,844.40	2,992.22
TAN LAW OFFICE	GGGGGGG	Lease	72,000.00	3,600.00
TASTE OF ASIA	HHHHHHH	Lease	6,908.80	345.44
TEKTITE TECH	IIIIIII	Lease	72,000.00	3,600.00
ULTRALAND PROP	JJJJJJJ	Lease	36,000.00	1,800.00
UNIVERSAL LEISURE	KKKKKKK	Lease	7,500.00	375.00
UNIVERSAL RIGHTFIELD	LLLLLLL	Lease	7,500.00	375.00
VIA MARE	MMMMMMM	Lease	1,893,677.00	94,683.85
W BROWN & CO	NNNNNNN	Lease	40,000.00	2,000.00
WEST LAKE GARDEN	OOOOOOO	Lease	107,394.00	5,369.70
AYUYAO, CARMINA	U-22	Lease	135,679.40	6,783.97
BANKARD	V-22	Lease	8,250.00	412.50
BANKARD	V-22	Lease	22,500.00	1,125.00
CRUMBS	W-22	Lease	104,852.40	5,242.62
DIANA SHRIVASTAVA	X-22	Lease	784,512.00	39,225.60
EGGS, BEANS & GRAINS	Y-22	Lease	24,316.20	1,215.81
FRILLE & BROIL	Z-22	Lease	123,795.00	6,189.75
GS & P FOODS	A-23	Lease	22,590.20	1,129.51
INDAY-INDAY	B-23	Lease	71,848.60	3,592.43
INDAY-INDAY	B-23	Lease	105,501.40	5,275.07
JARDINE CMG LIFE	C-23	Lease	7,500.00	375.00
QUORUM	D-23	Lease	348,121.60	17,406.08
SIZZLING SEAFOODS	E-23	Lease	33,600.00	1,680.00
SIZZLING SEAFOODS	E-23	Lease	57,850.00	2,892.50
SIZZLING SEAFOODS	E-23	Lease	62,870.60	3,143.53
W BROWN & CO	F-23	Lease	40,000.00	2,000.00
W BROWN & CO	F-23	Lease	45,000.00	2,250.00
W BROWN & CO	F-23	Lease	40,000.00	2,000.00
WEST LAKE GARDEN	G-23	Lease	284,299.00	14,214.95
Total			**P 575,361,397.84**	**P 28,744,808.15**

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Finally, with regard to the third requirement, petitioner was able to establish that the income corresponding to the 1997 creditable withholding taxes was declared as part of its gross income in its 1997 Annual Income Tax Return. It bears stressing that the 1997 Income Tax Return of petitioner was examined by respondent's revenue examiner who found no finding of discrepancy of income except for the amount of P20,008.07, representing deficiency expanded withholding tax and penalties which, as stated earlier, was settled by petitioner (page 841-C, BIR records).

In sum, petitioner is entitled to the refund of the amount of P28,744,808.15, representing its excess creditable withholding taxes for the year 1997, computed as follows:

Total Excess Creditable Withholding Taxes for 1997 & 1998		P34,787,670.00
Less: Exceptions		
1. 1996 Excess Creditable Withholding tax	P 5,913,663.00	
2. Not validly supported by certificates of creditable withholding tax	129,198.85	6,042,861.85
Refundable Amount		P28,744,808.15

WHEREFORE, in view of all the foregoing, the instant petition is **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **REFUND** to petitioner the amount of P28,744,808.15 representing its overpaid creditable withholding taxes for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

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WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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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