REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HONGKONG SHANGHAI HOTELS, LIMITED
PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 4979

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 19 1995

x - x

DECISION

This appeal involves petitioner's claim for refund of the sum of P1,165,678.00 representing overpaid creditable withholding tax for the calendar year ended December 31, 1990.

Petitioner is the Philippine branch of a foreign corporation authorized to engage in the business of hotel management and duly licensed to do business in the Philippines, with business address at the corner of Makati Avenue and Ayala Avenue, Makati, Metro Manila.

On April 13, 1993, petitioner filed its amended income tax return for the calendar year 1990 reflecting an operating loss in the sum of P548,782.00 and a nil income tax liability (Exh. "A"). The same income tax return also reflected an overpaid income tax in the amount of P1,165,678.00 representing creditable withholding tax at source. This excess payment arose from a Management Agreement entered into between the petitioner and Manila Peninsula Hotel, Inc. (Exh. "C"). It was alleged by the petitioner that the said amount was withheld by Manila Peninsula Hotel, Inc. from income payments made by the latter in compliance with Revenue Regulations No. 6-85.

Petitioner, believing that it is entitled to the refund, filed a letter claim for refund with the Bureau of Internal Revenue on April 13, 1993 pursuant to Sections 69 and 230 of the National Internal Revenue Code, as amended (Exh. "X").

As this two (2) year period was about to expire, On April 14, 1993, the instant petition for review was filed with this Court.

In her Answer, respondent raised the following, among others, as special and affirmative defenses:

> 1. The petition states no cause of action for failure to state the date the tax sought to be refunded was allegedly paid (*Manufacturer's Bank and Trust Co. vs. Commissioner of Internal Revenue, CTA Case No. 1659, November 29, 1965*);
>
> 2. Petitioner has the burden of proving that is has complied with the mandatory provisions of Section 230 of the Tax Code before an action for tax refund may be filed;

3. The claim for refund of tax paid two (2) years prior to April 14, 1993 is already barred;

4. All allegation of loss does not *ipso facto* merit a tax refund/credit;

5. The amount sought to be refunded is in the nature of creditable income tax withheld at source. Since the certificate does not specify a refundable income tax withheld, the same is deemed to be lost when petitioner does not have any income tax due against which the creditable income tax withheld at source could be applied; and

6. The claim for tax refund, being in the nature of an exemption from taxation, cannot be made to rest on vague implications and must be construed strictly against petitioner (*Insular Lumber Co. vs. Court of Tax Appeals, 104 SCRA 710 [1981]*).

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of ₱1,165,678.00 representing overpaid creditable withholding tax at source for calendar year 1990.

The allegation of respondent that "the petition states no cause of action for failure (of petitioner) to state the date the tax sought to be refunded was allegedly paid" is not wellfounded. This Court has ruled, time and again, that "petitioner is not required to show the date of payment of the tax withheld at source. The rule is that a corporate taxpayer pays on a quarterly basis. The final payment is the last quarter payment at the end of the taxable year or on the 15th day of the fourth month following the close of the calendar or fiscal period. This is the time when it can be finally ascertained that the taxpayers either made profit or suffered a loss in its operations. (**Sun Insurance Office Ltd. v. Acting CIR, CTA Case No. 3205, June 23, 1989; Ateneo de Manila University v. CIR, CTA Case No. 3213, July 28, 1989; Asia Australia Express Ltd. v. Commissioner of Internal Revenue, CTA Case No. 3976, October 18, 1989; and Paseo Realty & Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 45289, April 30, 1993;** *cited* **in Jardine Davies, Inc. v. Commissioner of Internal Revenue, CTA Case Nos. 3839, 4013 and 4124, January 20, 1994**).

Even the argument of respondent that "the claim for refund of tax paid two (2) years prior to April 14, 1993 is already barred" is untenable. The Supreme Court in the case of **Commissioner of Internal Revenue v. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989**, held that "the two (2) year prescriptive period within which to claim a refund commences to run at earliest on the date of filing of the adjusted final tax return". As in this case, the taxable year involved is calendar year 1990. Therefore, the prescriptive period shall begin to run, at earliest, from time petitioner is required to file its final tax return. That is April 15, 1991.

Hence, petitioner had until April 15, 1993 within which to file its claim for refund. Thus, when petitioner filed with the Bureau of Internal Revenue the said claim on April 13, 1993 (Exh. "X") and with this Court of April 14, 1993, the two-year prescriptive period is not yet lapsed.

With regard to the contention of respondent that the mere averment of net loss does not *ipso facto* merit a refund, suffice it to state that in the case of **Citytrust Banking Corporation v. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991** such controversy has already been settled, to wit:

> Respondent's contention that a mere allegation of loss in 1985 does not ipso facto merit a refund, is likewise unmeritorious. As stated, respondent did not present any evidence which will effectively dispute the correctness of the returns and other materials facts therein. Neither did respondent issue any deficiency assessment for said year. Hence, in the absence of contrary evidence the income tax returns should be given credence and thus, coupled by the fact that petitioner was able to present documents to substantiate its income tax returns, provide sufficient proof of a loss sustained by petitioner in 1985. (see also **Bank of the Philippine Islands as Liquidator of Paramount Acceptance Corporation v. Commissioner of Internal Revenue, CTA Case No. 4257, December 20, 1993**)

As to respondent argument that "since the certificate does not specify a refundable income tax withheld, the same is deemed to be lost when the petitioner does not have any income tax due against which income tax withheld at source could be applied" is also unavailing. We believe that it is no longer necessary for the petitioner to do so. In fact, this Court has already laid down the three basic requirements in claiming for the excess creditable withholding tax at source. These are:

> (1) that it filed a claim for refund within the two (2) year period as prescribed under Section 292 (now 230) of the National Internal Revenue Code;
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> (2) that the income upon which the taxes were withheld were included in the return of the recipient; and
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> (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. Regs. 6-85; Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 111, 1991; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; and Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993).

And compliance by the petitioner with the above requirements is paramount to granting for the claim for refund.

Based on the records and evidence of the case, petitioner met all the three conditions.

It filed its claim for refund within two years from the date of payment of the tax. The income upon which the creditable withholding tax at source was deducted was included in the return (Exh. "A-4"). And the proof of withholding is well established by the presentation of Certificate of Creditable Income Tax Withheld At Source (Exh."V").

However, it should be noted that in the certificate given by the withholding agent Manila Peninsula Hotel, Inc. the tax withheld from the total management fee of P19,156,622.00 is only P957,831.10. We can safely say that only this amount which was vouched by the withholding agent is the correct amount paid by the petitioner as reflected in the statement (BIR Form 1743.1) which was signed under the pain of perjury. The fact also remain that petitioner suffered losses for both years 1990 and 1991 (Exhs. "A-1" and ""Z-1") and the excess creditable withholding tax was proven to be unutilized in both years. Hence, there is nothing left for this Court to do but the grant the claim for refund.

It must be emphasized that after petitioner submitted its evidence which were all admitted by this Court, respondent submitted her case on the basis of the records and pleadings, without offering proof as to the truth of her own allegations in her answer. Respondent failed to present her evidence, oral or otherwise in support of her case (**Warner-Lambert Philippines, Inc. v. Commissioner of Internal Revenue, CTA Case No. 3925, April 21, 1992**). Respondent, therefore, may be considered to have no serious objection or opposition to petitioner entitlement to the refund (**Dataprep [Phil.], Inc. v. Commissioner of Internal Revenue, CTA Case No. 3600, March 20, 1984**).

WHEREFORE, in view of all the foregoing, respondent is hereby ordered to refund or to issue a tax credit certificate in favor of petitioner in the amount of P957,831.10 representing overpaid creditable withholding tax at source for the calendar year 1990.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that the 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