REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST REALTY CORPORATION,
Petitioner,

- versus - C.T.A CASE NO. 4727

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PROMULGATED:
SEP 14 1994

x - x

DECISION

This is a claim for refund or in alternative, issuance of a tax credit certificate for the amount of P410,026.02 representing unutilized/unapplied creditable withholding tax payments for taxable year ending December 31, 1989.

Petitioner is a duly registered domestic corporation engaged in real state business particularly in the leasing of its buildings and pieces of real estate specifically to Citytrust Banking Corporation.

In calendar year 1989, Citytrust Banking Corporation paid rentals of real property to petitioner in the total amount of P8,200,520.58 from which it withheld the equivalent of 5% or P410,026.02 pursuant to Revenue Regulations No. 6-85 or the Expanded Withholding Tax Regulations.

A net loss of P44,346.00 was incurred by petitioner in the year 1989 as reflected in the Annual Income Return filed with the Bureau of Internal Revenue. This resulted in a refundable amount of P410,026.02 representing the unutilized/unapplied 5% creditable withholding tax on rental fees paid by Citytrust Banking Corporation. Petitioner opted to apply as tax credit to the succeeding taxable year (1990) the aforementioned refundable amount as indicated by the "X" mark on the box pertaining to such choice.

The tax credit intended to be applied to the following year however, was not allegedly credited by herein petitioner against any other internal revenue tax liability for 1990 or any period or year for that matter. Petitioner claimed to have again incurred a loss in taxable year ending December 31, 1990.

On December 6, 1991, petitioner filed a claim for refund with the Bureau of Internal Revenue for the unutilized/unapplied creditable withholding tax as at December 31, 1989 in the amount of P410,026.02.

Respondent has neither granted nor acted upon said claim for refund.

The instant petition for review was filed with this Court on March 19, 1992 as the two(2) years from the date of payment of the tax is about to expire as provided under Section 230 of the Tax Code.

The issue to be resolved in the case at bar is whether petitioner is entitled to the refund claimed.

In support of its case, petitioner presented the following exhibits, to wit:

Exhibits "A", "A-1"	Written claim for refund of creditable withholding tax for CY 1989 in the amount of P410,026.02 stamped received by the BIR-Appellate Division on 12-06-91.
Exhibits "B"	Lease agreement between Citytrust Banking Corp. and petitioner.
Exhibits "C" "C-1 to C-3"	Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743.1) showing that for CY 1989 Citytrust Banking Corp paid petitioner rental fees of P7,746,243.98 from which 5% or P387,312.19 was withheld.
Exhibits "D" "D-1 to D-3"	Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743.1) showing that for CY 1989 Citytrust Banking Corp. paid petitioner rental fees of P454,276.60 from which 5% or P22,713.83 was withheld.
Exhibit "E"	Petitioner's 1989 Income Tax Return together with supporting schedules showing a net loss of P44,346.00, refundable income tax of P410,026.02 and declaration of rental income received from Citytrust Banking Corp. in the amount of P8,206,414.00.

The Court admitted all exhibits formally offered as evidence by petitioner inasmuch as respondent failed to file his comment thereto within the time given to him. Respondent waived presentation of evidence and did not file any memorandum. The case was submitted for decision with the filing of petitioner's memorandum.

The issue before Us is not of first impression. A number of cases raising the same question have already been decided by this Court. The basic requirements set forth in claiming for refund of excess creditable withholding tax are the following:

> (1) that it filed a claim for refund within the two(2) year period as prescribed under Section 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) that the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payer (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.[1]

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[1]. **SEC. 10,** Rev. Regs. No. 13-78; **Citytrust Finance Corp. vs. CIR,** CTA Case No. 4134, Nov. 11, 1991; **Citytrust Finance Corp. (Formerly Investors Finance Corp./FNCB Fiance) vs. CIR,** CTA Case No. 4046, Feb. 24, 1993; **Paseo Realty and Dev. Corp. vs. CIR,** CTA Case No. 4528, April 30, 1993; **Paseo Realty and Dev. Corp. vs. CIR,** CTA Case No. 4439, July 5, 1993; **Filipinas Mngt. and Leasing Corp. vs. CIR,** CTA Case No. 4146, March 11, 1994.)

While it is not disputed that petitioner was able to meet the foregoing requirements, it is noteworthy to point at this juncture that petitioner declared in its income tax return that the refundable amount of P410,026.02 is to be applied as tax credit to the succeeding taxable year - 1990. Weight is given to said intention of petitioner since any declaration, return and other statements required under the National Internal Revenue Code (NIRC) is signed "under the penalties of perjury" if not found true and correct (Section 266, NIRC).

Furthermore, Section 2(a) of Rule 131 of the Rules of Court provides:

> "**SEC. 2.** *Conclusive presumptions.* - The following are instances of conclusive presumptions:
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> (a) <u>Whenever a party has, by his own declaration, act, or omission intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it</u>;" (Underscoring supplied)
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> xxx xxx xxx

In this case, herein petitioner seeks the refund of the refundable income tax as at December 31, 1989 of P410,026.02 which it already declared in its ITR to be applied as tax credit to taxable year 1990. There is allegedly no internal revenue tax liability on which the 1989 tax credit can be credited against by petitioner in 1990 since it allegedly again suffered a loss. However, petitioner failed to include in its written offer of evidence its 1990 Income Tax Return as proof of said loss and to show that the 1989 refundable income tax was not applied as tax credit in 1990. The verbal offer of evidence were at best confusing since the exhibit referred to do not correspond to the evidence on file. (T.S.N. January 4, 1993, pp. 7-9). There is likewise no file of petitioner's 1990 ITR in the records of this case on which the foregoing can be verified.

Section 34 of Rule 132 of the Rules of Court is categorically clear on this matter thus:

> "**SEC. 34.** *Offer of evidence.* - The court shall consider no evidence which has not been formally offered. The purpose for which evidence is offered must be specified." (Underscoring supplied.)

Under this rule, evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case (Martin, R.G., Rules of Court, Volume IV [1989] p. 589).

Claims for refund of taxes are strictly construed against the claimant, the same being in the nature of an exemption from taxation. In an action for refund, therefore, the burden of proof is upon the claimant to establish a right to refund. Failing to overcome this burden, the claim for refund should be denied as in this case.

WHEREFORE, the instant petition for review is hereby dismissed for lack of merit.

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