REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ENJAY HOTELS, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5359

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 05 1998

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DECISION

This case involves petitioner's claim for refund or issuance of tax credit certificate in the amount of P810,468.00 representing overpaid or excess income taxes paid for calendar year 1994.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines.

On April 15, 1994, petitioner filed its annual income tax return for calendar year 1993 showing a net loss of P5,138,424.00 and a Nil income tax liability (Exh. A). However, petitioner had a quarterly income tax payment of P950,882.00 during said calendar year (Exh. D). This payment was not utilized in the same calendar year 1993 because petitioner had no income tax liability for this particular period, thus, it resulted to an over payment, computed as follows:

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Income		P5,138,424.00
Tax Due		NIL
Less:		
a) Prior Year's Excess Credit		
b) Quarterly Payment P950,882		P 950,882.00
c) Creditable Tax Withheld		
Total Refundable Tax		P 950,882.00

Petitioner, pursuant to Section 69 of the Tax Code, signified its intention in the return to refund the overpaid income tax. It marked (x) in the box "to be refunded" on the face of the return. However, records show that petitioner opted not to file a claim for refund for the refundable amount of P950,882.00 but instead applied the same as tax credit to the succeeding taxable year.

For the following calendar year (1994), petitioner filed its annual income tax return showing an income tax due of P10,416,309.00 (Exh. E). The return also shows total tax credit of P11,226,777.00 which was applied against its income tax due which resulted in the refundable amount of P810,468.00, computed as follows:

Taxable Income		P29,760,885.00
Tax Due		10,416,309.00
Less:		
a) Prior Year's Excess Credit	P 950,882.00	
b) Quarterly Payment	P9,604,984.00	
c) Creditable Tax Withheld	P 670,911.00	P11,226,777.00
Total Refundable Tax		P 810,468.00

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On April 11, 1996, petitioner filed a letter with the respondent requesting for a tax refund or issuance of tax credit certificate in the amount of P810,468.00 representing its alleged overpaid income tax for the calendar year 1994 (Exh. JJ).

Since no action was taken by the respondent and the two (2) year period was about to expire, petitioner filed a petition for review with this Court on April 12, 1996.

Respondent, in her Answer raised the following Special and Affirmative defenses:

> 1. Petitioner's claim for refund of alleged excess income tax paid is still under administrative investigation by the BIR;
>
> 2. In a claim for refund, it is incumbent upon petitioner to prove that he is entitled to it. He must be able to point to a positive provision of law granting such right;
>
> 3. Claims for refund of taxes are construed strictly against the claimant, the same being in the nature of exemption from taxes (CIR vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. CIR, 67 SCRA 35)
>
> 4. It is incumbent upon petitioner to show that he has complied with the provisions of Section 230 of the Tax Code.

The sole issue to be resolved by this Court is whether or not petitioner is entitled to the refund or tax credit in the amount of P810,468.00 representing overpaid or excess income tax for calendar year 1994.

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In support of its case, petitioner presented in evidence various documents which, among others, consist of the following:

> 1. Annual Income Tax Returns for calendar years 1993, 1994 and 1995 (Exhs. A, E, 11)
>
> 2. Quarterly Income Tax returns pertaining to said calendar years (Exhs. B, C, D, F, G, H inclusive of submarkings)
>
> 3. Certificate of creditable withholding tax at source (Exhs. I, K, L, M, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, inclusive of submarkings)
>
> 4. Administrative claim for refund duly filed with the BIR (Exh. JJ)

On the other hand, respondent's counsel failed to submit any controverting evidence. Petitioner submitted its memorandum while respondent did not.

After a careful scrutiny of all the evidence presented before Us, We rule in favor of the petitioner.

Section 69 of the Tax Code provides as follows:

> Section 69. *Final adjustment return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or

> (b) Be refunded the excess amount paid, as the case may be;
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid. The refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarter of the succeeding taxable year.

A portion of the excess income tax payments for the years 1993 and 1994 consist of creditable taxes withheld by various withholding agents, therefore it was also essential to determine whether or not petitioner complied with the requirements provided under Revenue Regulations No. 6-85, to wit:

> 1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax 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; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, CA-G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (Formerly Investor's Finance Corporation/FNCB Finance)**

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> 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 Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].

This Court finds that petitioner has substantially complied with the aforementioned requirements.

Petitioner filed its administrative as well as judicial claims for refund within the two-year prescriptive period provided by Section 230 of the Tax Code.

Petitioner filed its 1993 Annual Corporate Income Tax return on April 15, 1994 (Exhibit "A") and its 1994 Annual Corporate Income Tax return on April 17, 1995 (Exhibit "E"). It then filed its claim for refund for the taxable years 1993 and 1994 with the Bureau of Internal Revenue on April 11, 1996 (Exhibit "JJ"). Finally, the petition for review covering the taxable years 1993 and 1994 was filed on April 12, 1996.

Petitioner also presented the Certificates of Creditable Withholding Tax at Source (Exhibits "I" to "HH", inclusive) to show that income taxes were withheld during the taxable years 1993 and 1994 by its various withholding agents. The records also show that petitioner declared in its annual corporate income tax returns of 1993 and 1994 the income it earned from which

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the creditable withholding taxes were withheld (Exhibits "D" and "E").

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of the petitioner the sum of P810,468.00 representing overpaid income tax for the years 1993 and 1994.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

C E R T I F I C A T I O N

I hereby certify that this 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
Court of Tax Appeals