REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 5606

THE COMMISSIONER OF INTERNAL REVENUE,

Promulgated:

SEP 2 4 1999

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P2,587,050.43, allegedly representing unutilized creditable withholding tax for the year 1995.

Petitioner is a private commercial bank organized and existing under and by virtue of Philippine laws. On April 15, 1996, Petitioner filed its 1995 Tentative Annual Income Tax Return, reflecting a net loss of P450,040,009.82 (Exh. C). On November 19, 1997, 1an amended return was filed by Petitioner covering the same year 1995, this time reflecting a net loss of P1,326,692,040.72 (Exh. A). However, during the year, the total amount of P2,587,050.43 of creditable taxes have already been withheld by various withholding agents, derived from Petitioner's income from sale of real property, rental income, underwriting and agency fees. Since Petitioner failed to apply the aforesaid amount to any tax liability for that year, it filed a claim for the refund in the amount of P2,587,050.43 with the Bureau of Internal Revenue on February 17, 1998 (Exh. RR) Petitioner anchored its claim on Section 69 of the National Internal Revenue Code, (NIRC) to state:

> **Sec. 69.** ***Final Adjustment Return.***-Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the 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 quarters of the succeeding taxable year.

As there was no action on the part of herein Respondent and the two-year prescriptive period provided for under Section 230 of the Tax Code was about to expire, the instant petition was filed on April 8, 1998.

Respondent, in his Answer, raised the following Special and Affirmative Defenses:

> "4. The alleged filing of tentative and final adjustment returns for the taxable year 1995 although may be considered as a written claim for credit or refund under Section 204 of the Tax Code, the same are not considered so under Section 230 (now 229) of the Tax Code whereby it is specifically provided that no suit or proceeding shall be maintained in any court for he recovery of any national internal revenue tax alleged to have been erroneously or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner. Moreover, the said returns are yet subject to and

are undergoing administrative investigation by Respondent's bureau;

5. The amount of P2,587,050.43 being claimed for refund or issuance of tax credit certificate was not properly documented;

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit, the burden of proof is upon the taxpayer to establish its right thereto, otherwise, failure to sustain the same is fatal to the action;

8. It is incumbent upon the Petitioner to show compliance with the provisions of Section 230 (now 229) of the Tax Code;

9. Well-settled is the rule that claims for refund are construed strictly against taxpayers/claimants, since the same partake of the nature of exemption from taxation. (Resin, Inc. vs. Auditor General, 25 SCRA 754, 1968)."

The sole issue We are tasked to resolve is whether or not Petitioner has complied with all the requirements for a valid claim for refund so as to be entitled to the relief sought.

Petitioner, to support its case, presented the following:

Exhibits	**Description**
A to A-6, B to B-10	PNB's Amended Income Tax Return for the year ended December 31, 1995 with attachments
C to C-4, C-5 to C-14	Tentative Annual Income Tax Return for the year 1995 with attachments
D, E, F, G, H, I, J, K, L,	Certificates of Creditable Tax

M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN & OO	Withheld at Source by various withholding agents
D-1, E-1, G-1, I-1, K-1, L-1, R-1, T-1, U-1, V-1, W-1, Y-1, AA-1, CC-1, FF-1, II-1, MM-1, NN-1 & OO-1	Monthly Remittance Returns of Income Taxes Withheld at Source for 1995
D-2, E-2, F-2, G-2, H-2, I-2, J-3, K-3, L-2, N-2, O-2, P-2, Q-2, R-2, S-2 T-2, U-2, V-2, W-2, X-2, Y-2, Z-2, AA-2, BB-2, CC-2, DD-2, EE-2, FF-2, HH-2, II-2, JJ-2, KK-2, LL-3, NN-2, & OO-2	Deeds of Absolute Sale executed by and between Petitioner and various withholding agents.
F-1, H-1, J-1, N-1, O-1, P-1, X-1, Z-1, BB-1, DD-1 EE-1, HH-1, JJ-1, KK-1, LL-1	Capital Gains Tax Returns/ Applications for Certificate Authorizing Registration
J-2, K-2, S-1 & LL-2	Authority to Accept Payment
PP	PNB's Amended Income Tax Return for the year ended December 31, 1996
QQ	PNB's Income Tax Return for the year ended December 31, 1997
RR to RR-2	Claim for Refund dated February 12, 1998
SS to SS-3-a	SGV letter dated December 2, 1998 addressed to Ms. Emerita Diaz, SVP, Phil. National Bank

Respondent, on the other hand, was declared to have waived his right to present evidence after failing to appear for two (2) consecutive hearing dates (p.459, CTA Records)

After examining the evidence presented by the Petitioner, this Court rules in its favor.

To be entitled to a refund, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 230 of the National Internal Revenue Code;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. That 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. (see **Citytrust Finance Corporation vs. The Commissioner of Internal Revenue,** CTA Case No. 4134, November 11, 1991; **Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue,** CTA Case No. 4046, February 24, 1993; **FEB Investment, Inc. vs. The Commissioner of Internal Revenue,** CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5323, August 25, 1997; **Shangri-la Plaza Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5346, January 9, 1998;**Nestle Philippines, Inc. (formerly Magnolia Nestle Corporation) vs. Hon. Liwayway Vinzons-Chato, Commissioner of Internal Revenue,** CTA Case No. 5350, January 20, 1998; **Bank of Commerce vs. The Commissioner of Internal Revenue,** CTA Case No. 5101, March 17, 1998; **Oranbo Realty Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5335, July 24, 1998; **AGP Industrial Corporation (formerly AGP Investment Corporation) vs. Commissioner of Internal Revenue,** CTA Case No. 5239, April 13, 1999; **The Philippine Banking Corporation vs. Commissioner of Internal Revenue,** CTA Case No. 5507, April 30, 1999; **Philippine National Bank, Inc. vs. Commissioner of Internal Revenue,** CTA Case No. 5511, April 30, 1999; **Shimizu Philippine Contractors Inc. vs. The Commissioner of Internal Revenue,** CTA Case No. 5544, May 12, 1999).

These aforementioned requirements were affirmed by the Supreme Court in the case entitled Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on February 17, 1998 as well as its Petition for Review filed with this Court on April 8, 1998 are both within the two-year period from the date of the filing of the return on April 15, 1996.

Second, the Amended Income Tax Return of Petitioner for 1995 (Exh. A) also revealed that the income upon which the taxes were withheld was included in said return. (Exh. C-7, Schedule of Other Income)

And third, the fact of withholding was also established by Petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source (Exhs. D to Z, AA to OO). Likewise, Mr. Ruben Rubio, the duly commissioned certified public accountant, testified during the hearing of December 3, 1998 that the entire amount of P2,587,050.43 was duly supported.

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1995 which it was not able to apply against its tax liability for the said year and in the succeeding years, as it ended up during those years in a net loss position, its 1996 and 1997 Income Tax Returns were submitted by Petitioner to prove that during those years, Petitioner did not utilize the amount sought to be refunded.

Finally, not a single piece of evidence was presented by Respondent to controvert Petitioner's claim, thereby, leaving this Court with no recourse but to decide the case solely on the basis of the evidence submitted by Petitioner which is more than adequate to grant the refund sought.

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P2,587,050.43 representing unutilized 1995 creditable withholding tax.

SO ORDERED.

AMANCIO Q. SAGA
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 with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge