REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,

Petitioner,

- versus -

C.T.A. CASE NO. 5488

THE COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated: NOV 06 1998

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DECISION

This is a refund case which springs from an alleged overpayment of income taxes in the total amount of P537,937.00 for the year ending December 31, 1994.

Petitioner is a domestic corporation principally engaged in business as a financial consultant and dealer of securities and commercial papers.

For the calendar year ending December 31, 1994, petitioner filed its Corporate Annual Income Tax Return on April 10, 1995 (Exh. A), declaring a net loss and a total refundable income tax in the amount of P962,089.00 consisting of prior year's (1993) excess income tax of P448,698.00 and creditable taxes withheld at source of P513,391.00.

For the calendar year ending December 31, 1995, petitioner filed its Corporate Annual Income Tax Return on April 15, 1996 (Exh. K), reporting a net loss and a total overpaid income tax of P1,031,935.00, computed as follows:

Gross Income	P101,544,155.00
Less: Deductions	147,659,596.00
Net Income (Loss)	(P 46,115,441.00)
Income Tax Due Thereon .	NIL

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Less: Prior year's excess credit	P 513,391.00	
Additional prior years's excess credit	24,546.00	
Creditable taxes withheld	493,998.00	P 1,031,935.00
Tax due/refundable		P 1,031,935.00

The amount which is the subject of this petition, however, is only P537,937.00 representing the total excess credits for the year 1994 which petitioner carried over to the succeeding year 1995 but was unable to utilize because of the loss position allegedly incurred by the petitioner for that year.

On May 8, 1996, petitioner filed a claim for refund with the Bureau of Internal Revenue (Exh. L). Since no investigation had been conducted on petitioner's claim and the two-year prescriptive period was about to lapse, petitioner filed this judicial claim for refund on April 8, 1997.

To support its case, the petitioner submitted the following documents, to wit:

a) Corporate Annual Income Tax Return for 1994;

b) Corporate Annual Income Tax Return for 1995;

c) Certificates of Creditable Taxes Withheld at Source; and

d) Letter Claim for Refund.

Petitioner also presented Miss Mary Anne J. Mantilla who testified and identified the abovementioned documents.

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Respondent, by way of Special and Affirmative Defenses, avers, thus:

1. Assuming without admitting that petitioner filed a claim for refund with the Bureau of Internal Revenue, the same is still subject to administrative investigation and resolution;

2. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

3. Taxes allegedly withheld must be shown to have been remitted to the government;

4. Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 of the Tax Code; and

5. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation.

Respondent did not present any evidence, documentary or testimonial in this case. In fact, she just submitted the case based on the pleadings.

The sole issue to be resolved in this case is whether or not petitioner is entitled to the refund of P537,937.00 representing alleged overpaid income taxes for the calendar year 1994.

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Under Section 69 of the Tax Code, as amended, it is provided that:

> SEC. 69. *Final Adjustment Return.* - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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.
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> 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.

Based on the above provision, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. Considering that herein petitioner incurred a net loss in the succeeding year of 1995, the amount of P537,937.00 appears to be refundable. However, petitioner must prove by substantial evidence its entitlement to the refund sought. Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, requires that:

> Section 10. *Claim for Tax Credit or Refund.* -

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> (a) Claims for Tax Credit or Refund of income tax deducted and withheld as income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Hence, compliance by the petitioner with the following requisites must first be shown, namely:

(1) that it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the NIRC, as amended;

(2) that the income upon which the taxes were withheld were included in the 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 (see **Citytrust Finance Corporation vs. The Commisioner 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 Investments, Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA

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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 Commmerce 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.)

Section 230 of the Tax Code, as amended, provides:

> SEC. 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 excessive 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 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.

In relation thereto, Section 70(b) is quoted, *viz*:

> SEC. 70. (a) x x x

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> (b) *Time of filing the income tax return.* - The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three quarters of the taxable year. The final adjustment return shall be filed on or before the 15th day of April or on or before the 15th day of the 4th month following the close of the fiscal year as the case may be.

As can be gleaned from the records, petitioner filed its 1994 Corporate Annual Income Tax Return on April 10, 1995, the claim for refund with the Bureau of Internal Revenue on May 8, 1996 and the instant Petition for Review on April 8, 1997. The two-year period commenced to run on April 10, 1995, the time when petitioner filed its Corporate Annual (Final Adjustment) Income Tax Return. Petitioner also reported as part of its gross income for the calendar year ending December 31, 1994 the creditable taxes withheld at source. Furthermore, petitioner submitted Certificates of Creditable Income Tax Withheld at Source to prove the fact of withholding. However, this Court noted that some of the said certificates do not pertain to the year involved in this case, or the dates thereof cannot be deciphered. It is also worth stressing that the amount of P24,546.00 declared by the petitioner as additional expanded withholding tax for 1994 and booked only in 1995 was not supported by any evidence.

Consequently, only the following withheld taxes are allowed to be refunded:

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Withholding Agent	Income Payment	Tax Withheld	Exhibit
FEB Stock Brokers, Inc.	P1,842,826.21	P 92,141.31	B
FEB Stock Brokers, Inc.	780,316.74	39,015.84	C
FEB Insurance Brokers, Inc.	467,877.78	23,393.89	E
FEB Insurance Brokers, Inc.	155,580.98	57,779.05	F
Phil. Nat'l. Oil Co.	5,005,288.60	250,264.43	J
Total	**P 8,251,890.31**	**P462,594.52**	

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby **PARTIALLY GRANTED.** Respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the sum of P462,594.52 representing overpaid income taxes for the calendar year 1994.

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
Court of Tax Appeals

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