REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5511

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 30 1999

x - x

DECISION

This is a petition for review seeking for the refund or issuance of a tax credit certificate amounting to ₱5,675,511.18, representing unutilized creditable income taxes withheld at source for the calendar year ended December 31, 1994.

The factual backdrop of the case are as follows:

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. On November 29, 1995, Petitioner filed an amendment to its Corporation Annual Income Tax Return for the year ended December 31, 1994, reflecting a net loss of ₱1,408,915,544.41. For the said year, however, several income tax payments which were withheld at source by various withholding agents have already been made for the Petitioner, totalling ₱5,675,511.18. Since Petitioner failed to apply the aforesaid amount to any tax liability for that year, it intended to do so on the next taxable year.

For calendar years 1995 and 1996, Petitioner again suffered losses amounting to ₱1,326,692,040.72 (Exhs. NN) and ₱936,657,989.00 (Exh. OO), respectively, thus, the ₱5,675,511.18 creditable taxes withheld during the year 1994 remained unutilized.

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On April 14, 1997, a letter-claim for the refund of the ₱5,675,511.18 was filed with the Bureau of Internal Revenue (Ehx. B). Petitioner anchored its claim on Section 69 of the National Internal Revenue Code in relation to Section 204(3) of the same Code, to state:

> **Section 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.
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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.
>
> **Section 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:
>
> x x x x x x x x x
>
> (3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction, No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

Likewise, on the very same day, the instant petition for review was elevated before this Court.

Respondent, in his Answer, claimed by way of Special and Affirmative Defenses that:

> 4. Petitioner's herein claim for tax credit/refund is still undergoing administrative investigation/examination by respondent's Revenue District No. 51, Pasay City;
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> 5. Taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations;
>
> 6. Claims for tax refund/credit are construed strictly against the claimants thereof as they are in the nature of exemption from payment of tax. Hence, it is incumbent upon petitioner to prove that it is entitled thereto;
>
> In an action for tax credit/refund the burden is upon the taxpayer to establish its right thereto and failure to sustain this burden is fatal to said claim for tax credit/refund (Surigao Consolidated Mining Co. vs. CIR SCRA 728-734 [1963]);
>
> 7. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 in relation to those of Section 230 of the Tax Code, as amended;
>
> 8. Mere allegations by petitioner of negative taxable income(loss) do not ipso facto merit the tax credit/refund of creditable withholding tax paid. Petitioner still has to substantiate the same by documentary evidence as required under existing BIR regulations on the matter.

The sole issue for determination 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 bolster its claim, submitted the following documents:

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Exhs.	Description	Purpose
A	Amended Corporation Annual Income Tax Return of Petitioner for the year ended December 31, 1994.	To prove the filing of the amended income tax return of Petitioner for the year and the results of its operations.
B	Letter of Petitioner to the Commissioner of Internal Revenue dated April 14, 1997.	To prove that Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue on April 14, 1997.
C to MM-4 QQ, RR & SS	Certificates of Creditable Income Tax Withheld at Source	To prove the withholding tax remitted by the withholding agents to the Bureau of Internal Revenue
C-3-a, C-4-a, D-4-a, E-1-a, F-2-a, G-a, P-4-a, V-4-a, BB-4-a, DD-4-a, EE-a, EE-1-a, FF-2-a, GG-3-a & RR-1	Deeds of Absolute Sale of property executed by and between Petitioner and various withholding agents	To prove that the parties entered into a transaction involving sale of property of Petitioner which was subject to withholding tax.
NN, OO	Amended Corporation Annual Income Tax Returns of Petitioner for the years ended December 31, 1995 and December 31, 1996, respectively.	To prove that Petitioner duly filed its annual income tax returns for the said years which reflected the results of its business operations; To prove that petitioner did not apply the creditable withholding tax it generated for the year 1994 against its income tax liability for the succeeding years 1995 and 1996.

Respondent, on his part, submitted the case for decision without presenting any evidence as there are allegedly no BIR records in this case.

After examining the evidence submitted by the Petitioner, We rule 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.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on April 14, 1997 as well as its Petition for Review filed with this Court on the same day are both within the two year period from the date of payment of the tax.

Second, the income tax return of Petitioner for 1994 (Exh. A) likewise revealed that the income upon which the taxes were withheld were included in said return.

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. C to MM-4, QQ, RR & SS).

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1994 which it was not able to apply against its tax liability for the said year as it ended up in a net loss position, its 1995 and 1996 Income Tax Returns were likewise submitted by Petitioner to prove that during those years, Petitioner also suffered losses and consequently was not able to 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. A number of disallowances, however, were made for reasons stated hereunder:

Exh.	Withholding Agent	Nature of Transaction	Tax Withheld	Reason for Disallowance
Exh. G-2	Feliciano Abesamis	sale of real property	₱ 885.50	Certificate of Tax W/held covers 1993
Exh. G-4	Maria Tubban	sale of real property	7,911.75	Certificate of Tax W/held covers 1992
Exh. H-4	Ruperto C. Arcillas	sale of real property	861.00	Certificate of Tax W/held covers 1993
Exh. L-2	PNB Mgt. & Dev't. Corp.	sale of real property	425.00	Certificate of Tax W/held covers 1993
Exh. CC-4	Rolando Edades	sale of real property	3,363.50	Not offered
			325,377.75	No supporting documents
			₱338,824.50	

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 in the alternative, **ISSUE** a TAX CREDIT CERTIFICATE in favor of Petitioner the sum of ₱5,336,686.68, representing unutilized creditable income tax withheld at source for the taxable year 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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CERTIFICATION

I hereby certify that the above 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