REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5624

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 14 2000

x - x

DECISION

This case involves a claim for refund of alleged excess or unutilized creditable income taxes withheld at source for the year ended December 31, 1995 in the amount of four hundred ninety three thousand nine hundred ninety eight (P493,998.00).

The facts are simple.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at Far East Bank Center, Sen. Gil Puyat Avenue, Makati City.

It appears from the records that on April 15, 1996 Petitioner filed with the BIR its Corporate Annual Income Tax Return for the taxable year ended December 31, 1995 (Exh. A, p. 33, CTA records), declaring a taxable loss of P46,115,441.00 and a total refundable amount of P1,031,935.00 consisting of prior years (1994) Excess Tax Credit of P513,391.00, prior year's additional Creditable Withholding Tax (CWT) of P24,546.00 and the current year's CWT of P493,998.00.

On April 15, 1997, Petitioner then filed its Corporate Annual Income Tax Return for the taxable year ended December 31, 1996 (Exh. E, p. 55, CTA records), reporting a taxable loss of P30,612,054.00 and a total overpaid income tax of P1,034,677.00 consisting of prior year's excess CWT of P493,988.00 and the current year's CWT of P540,679.00, computed as follows:

Gross Income		P 87,051,478.00
Less: Deductions		117,663,532.00
Net Income (Loss)		(30,612,054.00)
Income Tax Due thereon		- 0 -
Less: Prior year's excess credit	P 493,988.00	
Creditable taxes withheld	540,679.00	1,034,677.00
Tax Due/Refundable		P 1,034,677.00

The subject of this instant petition however is only the amount of P493,988.00 representing the total excess credits for the year 1995 in which Petitioner intended to carry forward to the succeeding year. But Petitioner was unable to utilize said amount in 1996 because of the loss position it incurred for said year.

On June 3, 1997, Petitioner filed an administrative claim for refund with the BIR (Exh. F, p. 74, CTA records). Since no action was taken by the Respondent on the claim for refund, Petitioner filed a Petition for Review with this Court on April 15, 1998 in order to toll the running of the two-year prescriptive period.

The Petitioner, to substantiate its claim for refund submitted the following documents, to wit:

a) Corporate Annual Income Tax Return for 1995, 1996 and 1997 (Exhs. A, E, G);

b) Certificates of Creditable Tax Withheld at Source for 1994 (Exhs. B, C, D); and

c) Letter-claim for refund (Exh. F)

Petitioner likewise presented its key witness Miss Lilibeth Vallejo, the Tax Supervisor of Far East Bank and Trust Company, to testify and identify the aforementioned documents.

Respondent, by way of Special and Affirmative Defenses raised the following contention in its Answer:

> 5) The Petitioner's claim for refund has already prescribed;
>
> 6) The amount claimed for refund has been applied as credit to the next succeeding years, hence, no longer refundable;
>
> 7) Petitioner is subject to paragraph (a) instead of (b) of Section 69, NIRC, since it failed to substantiate and prove the allowability of the deductions it claimed for the years 1995 and 1996 pursuant to Section 29(a)(b)(c)(d) and (f) of the Tax Code which is necessary in this particular case in view of the affirmative allegation of net loss operation interposed by the Petitioner;
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> 8) The petition states no cause of action as it does not alleged (sic) the date/s when the tax/es sought to be refunded was/were actually paid;
>
> 9) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund/credit;
>
> 10) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 11) Well-settled is the rule that claims for refund are construed against the claimants since it partakes of the nature of an exemption from taxation. (Respondent's Answer, pp. 20-21, CTA records).

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

The sole issue to be resolved is whether or not Petitioner is entitled to the refund of P493,998.00 representing the alleged excess or unutilized creditable income taxes withheld at source for the year ended December 31, 1995.

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

Section 69 of the 1995 National Internal Revenue Code, as amended provides:

> **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.
>
> 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.

It is clear from the above provision that 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 1996, the amount of P493,998.00 appears to be refundable.

However, it is mandated that Petitioner must prove by substantial evidence that it was able to comply with the requirements laid down in Section 10(a) of BIR Revenue Regulations No. 12-94, amending Section 10 of Revenue Regulations No. 6-85, which provides:

> **"Section 10. -** ***Claims for Tax Credit or Refund –***
>
> (a) Claims for tax credit or refund of income tax deducted and withheld on 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 that the 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."

Thus, compliance by the Petitioner with the following requisites must first be shown, namely:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

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

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. [Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable 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, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18,**

1994; FEB Investments, 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].

The 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.**

A perusal of the records shows that Petitioner filed its claim for refund with the BIR on June 3, 1997 and its Petition for Review with this Court on April 15, 1998. The two-year period commenced to run on April 15, 1996, the date when Petitioner filed its Corporate Annual Income Tax Return for the taxable year 1995 (**see ACCRA Investments Corp. vs. CA, G.R. No. 96322, December 20, 1991; CIR vs. TMX Sales, Inc., G.R. No. 837736, January 15, 1992; CIR vs. Philippine American Life Insurance Co., G.R. No. 105208, May 29, 1995).** This shows with certainty that the action for refund is well within the two-year period prescribed by law.

Petitioner likewise reported, as part of its gross income for the said taxable year (1995), the creditable taxes withheld at source from interest income, fees, commissions and service charges and other income (Exh. A, p. 37, CTA records). Furthermore, Petitioner submitted Certificates of Creditable Income Tax Withheld at Source to prove the fact of withholding and nothing irregular has been noted from said certificates, thus:

Exhibits	Withholding Agents	Income Tax Withheld
B	FEB Insurance Brokers, Inc.	P 201,554.70
C	FEB Stock Brokers, Inc.	272,630.29
D	First Far East Dev't. Corp.	19,813.28
		P 493,998.27

Respondent, on his part, failed to present any evidence that would rebut or controvert the documents presented by the Petitioner. Furthermore, Respondent opted not to submit even a memorandum in support of his case.

The contention of Respondent that the amount claimed for refund has already been applied to the next succeeding year is untenable. As a matter of fact, the income tax return submitted by Petitioner as part of its evidence clearly reveals that the refundable amount has not yet been credited to the succeeding taxable year (Exhs. A, E, G).

As to the allegation of Respondent that mere declaration of deductions in the return without proper substantiation that the claimed deductions were really paid and incurred, is likewise untenable. It must be noted that Respondent did not present any evidence showing disallowance of the claimed deductions or that they were highly irregular. Pursuant to Sections 45 and 266 of the 1995 Tax Code, declarations made by the Petitioner in its income tax return were made under oath, hence, the same are presumed to be correct and accurate in the absence of contrary evidence **(Pasco Realty and Development Corporation vs. CIR, CTA Case No. 4528, April 30, 1993)**

Thus, as held by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals (G.R. No. 107434, October 10, 1997):**

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged on the Commissioner of Internal Revenue by the NIRC within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. CIR, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is

founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without Petitioner's tax claim, the commissioner can proceed to examine the books, records of the Petitioner – bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."

Therefore, in the light of all the foregoing, this Court is convinced that Petitioner was able to prove its entitlement to the refund sought for.

WHEREFORE, Respondent Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P493,998.00 representing the excess or unutilized creditable income tax withheld at source for the year ended December 31, 1995.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

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