REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TIERRA INTERNATIONAL CONSTRUCTION CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5626

COMMISSIONER OF INTERNAL REVENUE,
Respondent

Promulgated:
JUN 07 2000

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DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on April15, 1998, seeking for a refund of the amount of P1,472,625.00 representing alleged excess and unused creditable taxes withheld on income for the taxable period 1996.

The antecedent facts of the case giving rise to the controversy at bar are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is primarily engaged to undertake overseas construction, repair and maintenance projects and operations. It is registered with the Bureau of Internal Revenue as a VAT Taxpayer and as a withholding agent under Certificate of Registration No. 94-490-000-428 dated June 17, 1994.

Records show that on April 15, 1997, petitioner filed with the Bureau of Internal Revenue its 1996 Corporation Annual Income Tax Return declaring a net loss of P4,731,918.00 and excess unutilized creditable withholding taxes of P4,973,586.00 which petitioner opted to carry over as tax credit to the succeeding year. The latter amount represents the sum of the prior year's excess tax credits of P3,500,961.00 (1995) and the 1996 creditable withholding taxes in the amount of P1,472,625.00. (Exh. CC).

On August 7, 1997, petitioner amended its 1996 Corporation Annual Income Tax Return to indicate its intention of claiming as refund the alleged unutilized tax credits instead of carrying them over as tax credit to taxable year 1997. (Exh.R).

Since petitioner has already filed a separate claim for refund of its alleged excess tax credits for 1995 in the amount P3,500,961.00, petitioner filed with the respondent on October 16, 1997 an administrative claim for refund of only P1,472,625.00 corresponding to its 1996 creditable withholding taxes. (Exh. EE).

Unable to obtain an affirmative response from the respondent, petitioner elevated its grievance to this Court via Petition for Review on April 15, 1998 where it reiterates its stance *a quo*.

In an Answer filed on May 19, 1998, Respondent denied petitioner's assertions and advanced the following Special and Affirmative Defenses, to wit:

> "7. The petition states no cause of action as it does not alleged the dates when the taxes sought to be refunded were actually paid;
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> 8. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 9. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended;
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> 10. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund."

To prove its stance, petitioner offered in evidence, among others, the following relevant documentary exhibits:

1) Monthly Remittance Returns (with petitioner as the payor, amounting to P1,072,750.00) Exhs. C to N-3 inclusive;

2) Capital Gains Tax Return (with petitioner as the payor) amounting to P125,000 (Exhs. O to O-3, inclusive); and

3) Certificate of Creditable Tax Withheld at Source issued by EPOCH Properties, Inc. amounting to P274,875.00 (Exhs. P to P-5, inclusive).

On March 14, 2000, this case was considered submitted for decision sans the memorandum of the respondent. Respondent attempted to offer in evidence two (2) documentary exhibits but the same were not considered by this Court for his failure to submit the BIR Records of which these exhibits allegedly formed part. (See Court's resolution dated June 30, 1999, p. 262, CTA records).

The center of the controversy lies in whether or not the petitioner was able to prove through documentary and testimonial evidence, its entitlement to the refund sought.

We grant the claim.

Time and again, this Court has consistently held that for the grant of refund, of excess creditable withholding taxes, the taxpayer must show, among others, that it has complied with the following requirements, to wit:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;

2) That the fact of withholding is established by a copy of a statement (duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3) That the income upon which the taxes were withheld were included in the return of the recipient.

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

We now discuss petitioner's compliance with the aforesaid requirements *ad seriatim.*

A sedulous scrutiny of the records readily reveals that petitioner satisfactorily complied with the first requirement. As could be gleaned from the factual background of this case, petitioner seasonably filed its administrative claim for refund with the respondent bureau on October 16, 1997 and its Petition for Review with this Court on April 15, 1998, well within the two-year prescriptive period provided under the Tax Code, reckoned from its filing of its original 1996 annual income tax return on April 15, 1997.

Clear and explicit likewise is petitioner's compliance with the second requirement when it submitted in evidence its Certificate of Creditable Tax Withheld at Source issued by EPOCH Properties, Inc. amounting to P274,875.00 (Exhs. P to P-5). To bolster its claim of the fact of withholding of the aforesaid amount, petitioner even presented its 1996 Annual Information Return of Income Tax Withheld on Expanded Withholding Taxes with the corresponding 1996 Schedule of Expanded Withholding Tax, and

Monthly Remittance Returns filed by EPOCH Properties, Inc. (Exhs. HH, HH-1, KK to WW, inclusive).

While it is true that Revenue Regulations No. 6-85 provides for the presentation of the Certificate of Tax Withheld at Source as evidence of the fact of withholding, the same does not preclude the taxpayer from submitting other proofs of actual payment/remittance of creditable withholding taxes. In the case at bar, petitioner was able to convince this Court that the taxes paid in 1996 reflected in its 1996 Monthly Remittance Returns (Exhs. C to N-3, inclusive) and Capital Gains Tax Return (Exhs. O to O-3, inclusive) pertain to the creditable taxes it paid on behalf of its buyers of real properties as evidenced by its duly registered deeds of absolute sale and as testified to by Ms. Merla F. Hife, petitioner's Treasurer and Vice-President for Finance during the hearing held on July 21, 1998 (pp. 12-16 TSN) where she explained in this wise:

> "Q. Ms. Witness, how did you know that the whole amount of P1,472,625.00 was actually remitted to the BIR?
>
> A. With regards to the proceeds of our construction contracts, the client furnished us with the original copy of the Certificate of Income Tax Withheld at Source. As to our sale of real property, we took charge of withholding and remitting the taxes by ourselves.
>
> Q. Ms. Witness, you mentioned that in your sale of real property, you were the one also in-charge of withholding and paying the taxes due, why did you adopt this procedure?
>
> A. Although, the buyers should be the one withholding the taxes, most of our customers are individuals who are not normally aware of the requirements for withholding and remitting of tax to the BIR. So our company undertook to withhold the taxes ourselves and remitted it to the BIR to avoid any problem as far as withholding and payment of the correct taxes are concerned.
>
> Q. So Ms. Witness, how did you remit the amount to the BIR?

A. We accomplish the tax return of the withholding taxes and filed it with the authorized agent bank and pay the tax.

Q. Ms. Witness, I am presenting to you a document previously marked as Exhibits C to D, could you go over them and kindly tell to the Honorable Court what is the relation of this document if any to your previous statement?

A. These are the tax returns for the remittance of income taxes withheld and the Certificate of Creditable Tax Withheld at Source.

Q. Ms. Witness, I noticed that in your remittance returns, there is a capital gains tax return that was included, why is this so?

A. This is also a return for the withholding tax paid. We were insisting on filing the income tax withheld using BIR Form 1743W or the Monthly Remittance of Income Tax Withheld, but the BIR district office of Baclaran Paranaque stated that we should use the Capital Gains Tax Return and not the Monthly Return of Income Taxes Withheld.

Q. And Ms. Witness, how did the BIR consider the payment?

A. The BIR considered our payment as valid.

Q. Why do you say so?

A. Because the same BIR office issued the certificate authorizing registration which was also accepted by the Registry of Deeds and we were able to transfer title under the name of the particular payer.

Q. Ms. Witness, in these remittances returns, where does it show that the taxes were actually remitted?

A. The figures are shown at the bottom of the document which was machine validated. The machine validation marked corresponds to the actual amount of tax paid to the BIR.

Q. Ms. Hife, how much was the creditable withholding tax for the year 1996?

A. The creditable withholding tax for the year 1996 was P1,472,625.00.

Q. As treasurer of the petitioner, do you know the source of excess creditable withholding tax for the year 1996?

A. Yes, the excess creditable withholding tax for the year 1996 arose from the sale of real property and the construction service."

Anent the third requirement, We find compliance on the part of the petitioner when it declared in its 1996 amended annual income tax return/audited financial statements its gross revenues from sale of real properties of P17,435,681.00 and service fees of P6,956,511 or a total of P24,392,192.00 (Exh. XX, XX-1). However, this Court notes that the said gross income of P24,392,192.00, as reflected in petitioner's return is lesser than the total gross income of P30,852,500.00, from which the creditable taxes of P1,472,625.00 were withheld as shown in Exhibit DD as follows:

As Summarized in Exhibit DD

Exh.	Tax Base	Rate	Withholding Tax
C to C-3	P 2,100,000.00	5%	P 105,000.00
D to D-3	2,000,000.00	5%	100,000.00
E to E-3	1,520,000.00	5%	76,000.00
F to F-3	2,000,000.00	3%	60,000.00
G to G-3	2,100,000.00	5%	105,000.00
H to H-3	2,200,000.00	5%	110,000.00
I to I-3	2,200,000.00	5%	110,000.00
J to J-3	1,585,000.00	5%	79,250.00
K to K-3	1,500,000.00	5%	75,000.00
L to L-3	2,000,000.00	5%	100,000.00
M to M-3	2,150,000.00	5%	107,500.00
N to N-3	1,500,000.00	3%	45,000.00
O to O-3	2,500,000.00	5%	125,000.00
P to P-5	5,497,500.00	5%	274,875.00
Total:	P 30,852,500.00		P 1,472,625.00

Except for the noted discrepancy of P6,460,308.00 between the amounts of gross income as declared in its 1996 amended annual return and as shown in its Schedule of Creditable Tax, We find the petitioner to have substantially complied with the requirements of the law. Hence, as a matter of course, the claim for refund must be granted, but in a reduced amount computed as follows:

Amount of Claim	P 1,472,625.00
Less: Proportionate adjustment for undeclared gross income of P6,460,308.00 (P6,460,308.00/P30,852,500 x P1,472,625.00)	308,357.87
Amount Refundable	P 1,164,267.13

WHEREFORE, in view of all the foregoing, the respondent is **HEREBY ORDERED** to **REFUND** or in the alternative, to **ISSUE a TAX CREDIT CERTIFICATE** in the amount of ONE MILLION ONE HUNDRED SIXTY FOUR THOUSAND TWO HUNDRED SIXTY SEVEN AND 13/100 PESOS **(P1,164,267.13)** in favor of the Petitioner representing overpaid creditable withholding tax for the year 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge