REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

JLJ PROPERTIES, INC.
Represented by AILEEN G. HERRERA,
Petitioner,

- versus -

C.T.A. CASE NO. 6161

BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 30 2003

x - x

DECISION

This case involves a claim for refund in the amount of P747,000.00 allegedly representing accumulated unutilized creditable withholding taxes as of December 31, 1998.

Petitioner is a corporation duly registered under existing laws and licensed to do business under Philippine laws, with capacity to sue and be sued and with office address at 25 Samar Avenue, Quezon City. It is allegedly engaged in the business of leasing real properties, together with its improvements, one of which is a lot and building located at No. 6, 21st Avenue, Cubao, Quezon City. According to petitioner, starting from 1996, said property was leased to Atlas Publishing Company, Inc.

Petitioner averred that for the lease payments it received from Atlas Publishing Co., Inc. from 1996 to 1998, the latter withheld and remitted to the BIR the corresponding creditable income taxes totalling P747,000.00. Since petitioner allegedly incurred losses during the said years, the creditable withholding taxes of P747,000.00 remained unutilized as of December 31, 1998. Thus, in its 1998 annual income tax return filed on April 7, 1999, petitioner reflected an overpaid income tax of P747,000.00, computed as follows (*Annex C, Petition for Review; pages 12 & 13, CTA records*):

Gross Income		P 6,933,428.66
Less: Deductions		8,915,631.79
Net Loss		P 1,982,203.12
Tax Due		P -
Less: Tax Credits/Payments		
1.) Prior year's excess credits	P 400,500.00	
2.) Tax Credits/Withheld/Payments For the first three quarters	259,875.00	
3.) Tax Withheld per BIR Form No. 2307	86,625.00	747,000.00
Overpayment		P 747,000.00

On April 27, 1999, petitioner filed a letter with the Revenue District Office (RDO) No. 39, South Quezon City of the Bureau of Internal Revenue (BIR), addressed to Revenue District Officer Corazon Pangcog, requesting for the refund of at least 700,000.00 out of its reported unutilized creditable withholding taxes of P747,000.00 as of December 31, 1998. The letter-request was subsequently forwarded to the office of the Commissioner of Internal Revenue on July 9, 1999 (*Annex E, Petition for Review; page 18, CTA records*).

In response to said letter, a memorandum dated July 21, 1999 was issued for a factual investigation to be conducted on petitioner's claim for tax refund. In turn, petitioner was required to submit two (2) documents, namely (1) Certification from the Revenue Accounting Division that the taxes sought to be refunded were remitted to the government and (2) Certification whether or not the taxpayer has any outstanding internal revenue tax liabilities which after a long and tedious effort on the part of the petitioner were secured by the latter (*pars. 4 & 5, Joint Stipulation of Facts*)

On May 15, 2000, petitioner submitted the aforesaid documents with an accompanying letter addressed to the assigned Examiner, Mr. Marianito Sabana, and were received by RDO 39's Supervisor, Mr. Benjamin Ranchez (*Annex I, Petition for Review; p. 24, CTA records*).

Thereafter, on May 23, 2000, June 26, 2000 and July 28, 2000, petitioner sent follow-up letters to RDO 39 of the BIR relative to its refund claim (*Annexes J to L, Petition for Review; pages 25 – 27, CTA records*).

Still unable to obtain an affirmative response despite the lapse of more than a year from the filing of its administrative claim, petitioner appealed before this court on September 8, 2000.

Respondent, in his Answer filed on November 22, 2000, interposed the following Special and Affirmative Defenses:

> "5. That the herein petitioner is not entitled to the refund of the amounts prayed for in the instant petition for review;
>
> 6. That the instant petition for review was prematurely filed as petitioner has not exhausted the administrative remedies required by law and jurisprudence on the actions of this nature as no decision has as yet been rendered by the respondent;
>
> 7. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 8. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

During the trial, petitioner presented some documents for marking which, were identified by its lone witness, Ms. Aileen G. Herrera. On March 5, 2002, petitioner's request for ten (10) days from March 5, 2002 within which to file its Formal Offer of Evidence was granted in open court. However, petitioner failed to file its Formal Offer of Evidence within the said ten-day period and the court set the case for hearing for the respondent's presentation of evidence (*page 125, CTA records*). After failure to appear for three (3) consecutive trial dates, respondent submitted his case for decision *sans* his evidence (*page 135, CTA records*). On January 28, 2003, the court submitted the case for decision without the parties' memoranda (*page 140, CTA records*).

As jointly stipulated by the parties, the issues to be resolved in this case are:

1. Whether or not a Lease Contract was signed between Atlas and petitioner, the withholding tax for said lease being paid for by the lessee, Atlas, and this has accumulated starting from 1996 until the present;

2. Whether or not petitioner has excess or accumulated creditable withholding tax as of 1996;

3. Whether or not said creditable withholding tax are substantiated by documentary evidence;

4. Whether or not the excess or accumulated creditable withholding tax was applied as tax credit against petitioner's tax liability for the succeeding years; and

5. Whether or not the petitioner is entitled to a refund representing excess or accumulated withholding creditable tax.

All of the above issues are centered on: Whether or not, on the basis of the evidence presented, petitioner is entitled to a refund in the amount of P747,000.00 representing unutilized creditable withholding taxes as of December 31, 1998.

We rule against petitioner.

As stated earlier, petitioner filed no Formal Offer of Evidence within the ten-day period given by the court upon the former's request. Neither did petitioner attempt to seek for an extension of the said deadline in order to be able to file its Formal Offer of Evidence. Well-settled is the rule that evidence not formally offered, even if identified during trial, is of no value and cannot be considered by the court. In the case of ***PBC Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6068, dated May 23, 2002***, this court ruled:

> "Central to the dispute is **Section 34, Rule 132** of the Revised Rules of Court which provides:
>
> > "**Section 34. Offer of Evidence. — The Court shall consider no evidence which has not been offered.** The purpose for which the evidence is offered must be specified." (Emphasis supplied)
>
> Under the aforesaid rule, it is quite clear that an evidence not formally offered even if identified during the trial is of no value and cannot be considered by the Court.
>
> This has been our ruling in a number of similar cases brought before Us such as the case of **Tatle Apparel Manufacturing vs. Commissioner of Customs, CTA Case No. 5029, promulgated on May 30, 1995,** where this Court ruled:
>
> > "The Rules of Court in Rule 132 Section 34 thereof is quite clear that "the court shall consider no evidence which has not been formally offered" (Veran vs. Court of Appeals, G.R. No. L-41154, January 29, 1988). Under this rule, evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case (Martin, Revised Rules of Evidence, p. 589). It should be noted that the proceedings before the Court of Tax Appeals is a trial de novo and if petitioner desires to present evidence, it should do so (C.F. Sharp, Inc. vs. Commissioner of Customs, G.R. L-23803, February 26, 1968)."
>
> The aforesaid decision was upheld by the Court of Appeals through a resolution dated July 31, 1995, CA-G.R. 37856 and finally, by the

Supreme Court in G.R. No. L-124454, promulgated on May 27, 1996, with Entry of Judgment dated July 1, 1996.

Likewise, in the case of **Benguet Corporation vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 5452, promulgated on April 27, 1998**, with Entry of Judgment dated May 15, 1998, this Court also passed upon the same issue, thus:

> "It is crystal clear then that evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of a case. x x x
>
> Furthermore, the Supreme Court, in Tabuena vs. Court of Appeals, G.R. No. 85423, May 6, 1991, ruled, "The mere fact that a particular document is marked as an exhibit does not mean it has thereby been offered as part of the evidence of a party."
>
> Moreover, in the case of Interpacific Transit, Inc. vs. Aviles, G.R. No. 86062, June 6, 1990, the Highest Tribunal had eloquently declared, thus:
>
>> "The mere fact that a particular document is identified and marked as an exhibit does not mean it will be or has been offered as part of the evidence of the party. The party may decide to formally offer it if it believes this will advance its cause, and then again it may decide not to do so at all. In the latter event, the trial court is, under Rule 132, Section 35, not authorized to consider it."

Mr. Justice Ricardo Francisco, in his book "Rules on Evidence" (1996, Third Edition, pages 537-538), discussed the rationale behind the rule in this wise:

> "Any evidence which a party desires to submit for the consideration of the Court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial. The offer may be made in any form sufficient to show that the party is ready and willing to submit the evidence to the Court."

Even assuming, for argument's sake, that petitioner's marked exhibits were formally offered in evidence, the same are not sufficient to warrant the granting of the refund claim.

As can be seen in its 1998 income tax return (*Annex C, Petition for Review; pages 12 & 13, CTA records*), petitioner's reported excess tax credits of P747,000.00 consisted of the following:

Prior year's excess credits		P 400,500.00
Creditable taxes withheld in 1998		
for the first three quarters	P 259,875.00	
for the fourth quarter	86,625.00	346,500.00
Total Tax Credits		P 747,000.00

Since the lessee, Atlas Publishing Company, Inc., allegedly started withholding creditable income taxes from its lease payments to petitioner in 1996, it may then be assumed that the prior year's excess credits of P400,500.00 declared in petitioner's 1998 income tax return pertain to taxable years 1996 and 1997. Accordingly, the law applicable thereto is Section 69 of the Tax Code, prior to its amendment under Republic Act No. 8424, otherwise known as the Tax Reform Act of 1997, which provides, thus:

> "**Sec. 69.** ***Final adjustment return.*** — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable 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.
>
> 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**." (Emphasis supplied)

The foregoing clearly allows the refund of excess tax credits or overpaid income tax of a given taxable year which were not likewise utilized/applied against the taxpayer's tax liability in the succeeding taxable year. Based on the said provisions, petitioner's excess tax credits for 1996 can only be carried-over/applied in the succeeding year of 1997. Since it was unable to utilize the 1996 excess tax credits as it allegedly suffered a net loss in 1997, petitioner, instead of carrying-over the 1996 excess tax credits in 1998, should have filed a corresponding claim for refund within the two-year period provided for under Sections 204(3) and 230 of the Tax Code, prior to its amendment under Republic Act No. 8424, which are all quoted hereinbelow:

> "**SEC. 204.** ***Authority of the Commissioner to compromise, abate and refund/credit taxes.*** —The Commissioner may –
>
> xxx xxx xxx
>
> "(3) x x x x 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 (2) years after the payment of the tax or penalty."
>
> "**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 of Internal Revenue; x x x."
>
> "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: x x x."

The same holds true with the 1997 excess tax credits. Since it failed to apply the 1997 excess tax credits in 1998 as it incurred a net loss, petitioner should have filed a claim for refund within the two-year prescriptive period. On the assumption that petitioner filed its 1997 income tax return on April 15, 1998, the last day prescribed by law for the filing thereof, petitioner had only until April 14, 2000 within which to file its claim both in the administrative and judicial levels. Considering that only the administrative claim was timely filed on April 27, 1999 and that the Petition for Review filed on September 8, 2000 falls outside of the two-year prescriptive period, petitioner's claimed 1997 excess tax credits included in the amount of P400,500.00 had already prescribed.

Proceeding now to the claimed creditable taxes withheld in 1998 of P346,500.00, the same are covered by Section 76 of the 1997 Tax Code, which became effective on January 1, 1998, to wit:

> "**SEC. 76.** ***Final Adjustment Return***. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 balance of tax still due; or
> "(B) Carry-over the excess credit; or
> "(C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable

> years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

Based on the aforequoted law, the taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against the income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a refund or issuance of a tax credit certificate.

A perusal of its 1998 income tax return shows that petitioner did not mark any option insofar as the 1998 excess tax credits of P346,500.00 is concerned. However, in a letter dated September 13, 2001, the BIR informed petitioner of the denial of its claim for refund because petitioner carried-over all of its accumulated withholding tax as of December 31, 1998 of P747,000.00 to the succeeding year 1999 (*page 105, CTA records*). It is quite clear from the provisions of Section 76 of the 1997 Tax Code that if the claimed 1998 excess tax credits of P346,500.00 were in fact carried-over to the succeeding year 1999, petitioner can no longer claim a refund therefor. Accordingly, the presentation of petitioner's 1999 income tax return is necessary for this court to determine whether or not the amount of P346,500.00 may be validly claimed by petitioner as refund either in the form of cash or tax credit certificate. Moreover, the Certification from the BIR Chief, Revenue Accounting Division dated May 4, 2000 as to the withholding tax remittances of Atlas Publishing Co., Inc. (*Annex G, Petition for*

Review; pages 20 & 21, CTA records) does not in any way prove the actual withholding or remittance of the claimed amount of P346,500.00.

WHEREFORE, in view of the foregoing, petitioner's claim for refund in the amount of P747,000.00 is hereby **DENIED.**

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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