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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITICENTER BUILDING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5244

Promulgated:

DEC 09 1997

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DECISION

This case involves a claim for refund of petitioner in the amount of P746,278.00 representing excess income tax payment for the taxable year ended December 31, 1992.

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 at the 6th Floor, Citibank Center, Paseo de Roxas, Makati City.

On May 29, 1992, petitioner filed its Quarterly Income Tax Return for the first quarter of 1992, reflecting a payable amount of P314,264.75 (Exhibit "A", p. 74, CTA records) which it paid on the same date through respondent's authorized agent bank, Citibank N.A. (Exhibit "A-1").

For the second quarter of 1992, petitioner filed its Quarterly Income Tax Return with respondent's authorized agent bank, Citibank N.A. on August 31, 1992 (Exhibit "B", p. 75, CTA records) indicating a refundable income tax in the amount of ₱586,191.33, computed by the petitioner, thus:

Gross Income		₱7,609,734.00
Less: Deductions		7,235,939.00
Taxable Income		₱ 373,795.00
Tax Rate		35%
Income Tax Due		₱ 130,828.00
Less: Quarterly Payments	₱314,264.75	
Creditable Tax Withheld:		
1st Quarter	₱211,897.25	
2nd Quarter	190,857.33	
	₱402,754.58	₱ 717,019.33
		(₱ 586,191.33)

For the third quarter of 1992, petitioner filed its Quarterly Income Tax Return on December 1, 1992 which showed a refundable income tax in the amount of ₱730,287.90 (Exhibit "C", p. 76, CTA records).

On April 15, 1993, petitioner filed its Annual Income Tax Return for taxable year ended December 31, 1992, showing a net loss of ₱1,345,848.00 and a refundable amount of ₱746,278.00, computed by the petitioner as follows:

Gross Income	₱15,431,746.00
Less: Deductions	16,777,594.00
Net Loss	(₱ 1,345,848.00)
Tax Rate	35%
Income Tax Due	NIL
Less: Tax Credits	746,278.00
	(₱ 746,278.00)

(Exhibit "D" and "D-1", p. 77, CTA records)

Petitioner alleged that a portion of its income tax payments consisted of creditable income tax withheld at source for the year 1992 by its various withholding agents.

The refundable income tax of petitioner for the year ended December 31, 1992 was not applied as tax credit against any of its income tax liability for the succeeding year as shown in its Annual Income Tax Return for taxable year ended December 31, 1993 (Exhibit "F" and "F-1") which was filed on April 15, 1994.

On March 7, 1995, petitioner filed its administrative claim for refund with the respondent of the amount of ₱746,278.00 representing excess or refundable income tax for taxable year ended December 31, 1992.

In order to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code, as amended, petitioner instituted the instant petition for review.

For her part, respondent asserted that petitioner failed to present any concrete evidence to prove its net loss for the year 1992, by reason of which net loss, the amount of ₱746,278.00 was not utilized as creditable tax withheld for the said year. According to respondent, the investigation conducted in relation to petitioner's claim for refund disclosed that petitioner did not actually incur a net loss in 1992. The alleged net loss was due to the inclusion by the petitioner of certain expenses which were found to be disallowable like condominium dues and depreciation (Exhibits "3-8" and "3-9", p. 148, CTA records).

The condominium dues were not allowable because petitioner did not produce valid proof to support that said claim was actually paid or incurred during the same taxable year. On the other hand, the rate of depreciation applied by petitioner which allegedly is thrice the normal rate, per the findings of respondent (Exhibit "3" and submarkings), is clearly unreasonable. Further, the method of computing depreciation followed by petitioner was not properly described in its 1992 income tax return.

Moreover, respondent declared that there were certain expenses which were not subjected to the expanded withholding tax, i.e., building installation, legal and janitorial fees, and land rentals, which is in contravention of the requirements prescribed under Revenue Regulations No. 6-85, thus resulting to a deficiency expanded withholding tax assessment in the amount of ₱520,058.10. Above all, petitioner was discovered to be deficient in its tax payment for the year 1992 in the total sum of ₱6,259,995.74. Such being the case, respondent's revenue officer who conducted the investigation recommended that the claim for refund of the petitioner in the amount of ₱746,278.00 will not be refunded but instead credited as part of payment for its deficiency income tax (Exhibit "3-6", p. 149, CTA records).

Respondent invoked the well-settled rule that all doubts must be resolved in favor of the taxing authority and that tax exemptions (or tax refunds for that matter) must be strictly construed and can only be given force when the grant is clear and categorical (**Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, 202 SCRA 137**).

The only issue to be resolved in this case is whether or not petitioner is entitled to its claim for refund of alleged excess income tax paid in the year 1992 amounting to ₱746, 278.00.

We rule in favor of the petitioner.

Section 69 of the Tax Code provides as follows :

> **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 quarter of the succeeding taxable year.

Petitioner presented as evidence its corporate annual income tax return for the taxable year ended 1992 (Exhibit "D") which showed that it had excesss income tax payments in the amount of P 746,278.00 (Exhibit "D-1"). As discussed earlier, such excess income tax payments made in 1992 was not carried over to the succeeding taxable year of 1993 as seen by its annual corporate income tax return for 1993 (Exhibit " "F"). A large part of this excess income tax payments of 1992 consisted of creditable taxes withheld by its various withholding agents on its rental income earned during said taxable year, thus it was essential to determine if petitioner had satisfactorily complied with the requirements provided under Revenue Regulations No. 6-85, to wit :

> 1. That it (petitioner) filed a claim for refund within the two year period as prescribed under Section 292 (now 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. The fact of withholding is established by a copy of a 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.

In a recently decided case entitled **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,** the Supreme Court affirmed the foregoing requirements when it ruled, thus:

> In general there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[1] Tax refunds, like tax exemptions, are construed strictly against the taxpayer. The mechanics of a tax refund is provided in Rev. Reg. No. 13-78:
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> > "Section 8. *Claims for tax credit or refund.* - 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 was declared as part of the gross income and the fact of withholding is established by a copy of the statement, duly issued by the payor to the payee (BIR Form No. 1743-A) showing the amount paid and the amount of tax withheld therefrom."

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[1] Commissioner of Internal Revenue vs., Tokyo Shipping Co., Ltd., 244 SCRA 332, 336, May 26, 1995, per Puno, J.

The evidence presented by the petitioner has proven that it has substantially complied with the aforementioned requirements.

Petitioner filed its administrative claim for refund with the Bureau of Internal Revenue (BIR) as well as this judicial claim for refund with this Court within the two-year prescriptive period prescribed under Section 230 of the Tax Code. It filed its Corporate Annual Income Tax Return for the taxable year ended 1992 on April 15, 1993 (Exhibit "D") and consequently filed its claim for refund with the BIR on March 7, 1995 (Exhibit "G"). Finally it filed this petition for review reiterating its claim on April 12, 1995, all within the two-year prescriptive period. Records also show that petitioner declared in its annual corporate income tax return of 1992, as part of its income,, the rental fees it earned from which the creditable withholding taxes were withheld (Exhibits "D" and "D-4").

Petitioner also presented as evidence Exhibits "E" to "E-7" representing Certificates of Creditable Withholding Tax At Source showing that income taxes were withheld from its rental income earned during the taxable year of 1992. However, in the appreciation of the aforementioned evidence, we had to eliminate Exhibit E-4 as the payee therein is not the petitioner but Citibank, N.A., therefore the amount stated in said Exhibit was not included in this Court's final computation, nevertheless, the total amount of creditable taxes withheld as well as the amount already paid by petitioner during the first quarter of 1992 is more than the amount claimed for refund by the petitioner, thus we can only grant the latter and lesser amount, detailed as follows:

Withholding Agent	Amount of Income Payment	Amount of Tax Withheld	Exh.
1. Agcaoili and Associates	P1,209,300.00	P 60,465.00	"E"
2. Citibank N.A.	6,827,700.60	341,385.00	"E-1"
3. Citibank Overseas Investment Corp.	19,600.00	980.00	"E-2"
4. Del Monte Phils., Inc.	15,000.00	750.00	"E-3"
5. MBS Paseo Realty Dev't., Inc.	333,743.20	16,687.16	"E-5"
6. Niigata Philippines, Inc.	188,773.20	9,438.66	"E-6"
7. Vital Ventures Management Corp.	448,330.00	22,416.50	"E-7"
Sub-total		452,122.32	
Add: 1st Qtr. Income Tax Payment		314,264.75	
Total Taxes Paid		P766,387.07	
Amount claimed for refund		P746,278.00	

In the face of this overwhelming evidence provided by the petitioner, respondent seeks to prevent the grant of the instant claim by advancing the argument that petitioner has no excess income tax payments for the taxable year of 1992 and is even deficient in its tax payment for said year as some of its claimed deductions are not allowed such as its condominium dues which were not supported by documents.

The argument advanced by the respondent cannot serve as an obstacle to the grant of the instant claim for refund because petitioner's alleged tax deficiencies for the taxable year 1992 is not the issue presented before Us in this petition for review. By bringing up the issue of petitioner's alleged tax deficiencies, respondent seeks to block the grant of the refund by presenting the argument that no refund of taxes is possible because after all the petitioner has an outstanding debt due the government, suggesting the possibility of legal compensation or set-off of taxes.

It is already well-settled that internal revenue taxes cannot be the subject of set-off or compensation (**Republic vs. Mambulao Lumber Company 4 SCRA 622**). The reason is that the government and taxpayer are not mutually "creditors and debtors of each other" under Article 1278 of the Civil Code and a "claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off" (**Cordero vs. Gonda, 18 SCRA 331**). In the instances where the Supreme Court allowed legal compensation or set-off of taxes, such taxes were already due and demandable, thus compensation under Article 1279 of the Civil Code, took place by operation of law. In **Domingo vs. Garlitos, 8 SCRA 443**, the Supreme Court ruled, thus :

> "Under the above circumstances, both the claim of the Government for inheritance taxes and the claim of the intestate for services rendered have already become overdue and demandable as well as fully liquidated. Compensation therefore takes place by operation of law, in accordance with provisions of Articles 1279 and 1290 of the Civil Code."

Similarly, in **Francia vs. Intermediate Appellate Court, 162 SCRA 753,** the Supreme Court disallowed legal compensation or off-setting of taxes for the following reason:

> "The circumstances of the case do not satisfy the requirements provided by Article 1279, to wit "1) that each one of the obligors be bound principally and that he be at the same time a principal creditor of the other; xxx xxx 3) that the two debts be due."

In the instant case, it does not appear from the records of the case that said assessment was approved by the Revenue District Officer more so by the Commissioner of Internal Revenue, therefore such deficiency taxes are not yet due and demandable, hence no legal compensation or set-off can take place. Furthermore, in the event that respondent shall issue a final assessment against the petitioner for said tax deficiencies, the Tax Code has provided the taxpayers the remedy of protest in the administrative level to question such an assessment. To address such issue in this decision without allowing the petitioner this particular remedy would be tantamount to depriving the petitioner due process of law in direct contravention of the Constitution.

WHEREFORE, in view of the foregoing, respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner the sum of ₱746,278.00 representing overpaid income tax for the year 1992.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate 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
Court of Tax Appeals