REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MAKATI SUPERMARKET CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5294

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 08 1999

x - x

D E C I S I O N

This case involves a judicial action for the refund and/or issuance of a tax credit certificate in the sum of ₱1,142,417.00, representing overpaid income tax for the fiscal year ended June 30, 1993.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the retail business and in leasing real properties.

For the fiscal year ended June 30, 1993, Petitioner filed its Corporation Annual Income Tax Return on October 15, 1993 declaring an income tax due in the amount of ₱294,688.00 but with a refundable income tax payment in the sum of ₱1,142,417.00, arising from its quarterly income tax payments and creditable withholding tax at source, detailed as follows: (Exh. D)

Income	
Sale of Goods	₱59,683,288.00
Rentals/Leases	6,474,143.00

Miscellaneous Income			629,228.00
Total			₱66,786,659.00
Less: Deductions			65,944,693.00
Taxable Income			₱ 841,966.00
Tax Due			₱ 294,688.00
Less:			
a. Prior Year's Excess Credit			₱ -
b. Quarterly Payments			
Qtr.	Date	Amount	
1st	12-01-92	₱375,367.00	
2nd	03-01-93	467,348.00	
3rd	05-31-93	374,856.00	1,217,571.00
c. Creditable Tax Withheld			219,534.00
Total			₱ 1,437,105.00
TOTAL AMOUNT REFUNDABLE			₱ 1,142,417.00

Petitioner sought to apply this 1993 income tax refundable amount of ₱1,142,417.00 as tax credit to the succeeding taxable fiscal year 1994. However, the intended application became nugatory due to the fact that in the fiscal year 1994, Petitioner suffered net loss from its operations in the amount of ₱9,498,496.00 leaving no income tax liability from which the said overpayment could be applied.

On July 14, 1995, Petitioner, through SGV & Company, filed a letter claim for refund with the Bureau of Internal Revenue seeking the amount of ₱1,142,417.00, representing overpaid income tax for fiscal year ended June 30, 1993 (Exhs. V and W).

Since Respondent had neither granted nor acted upon the claim for refund, Petitioner filed the instant Petition for Review on October 14, 1995 in order to toll the running of the two-year prescriptive period allowed under Section 230 of the Tax Code, as amended.

Respondent, in her Answer, raised as special and affirmative defenses that the claim for refund of Petitioner is pending administrative investigation and was not properly documented; taxes paid are presumed to have been collected in accordance with law and regulations; in an action for refund, the burden of proof is on the taxpayer; it is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended; and claims for refund are construed strictly against the claimants since it partakes of the nature of an exemption from taxation (**Resins, Inc. vs. Auditor General, 25 SCRA 754 [1968]**).

In order to support its entitlement to the said claim, Petitioner presented the following documents:

a. The final income tax returns for fiscal years ended June 30, 1993, June 30, 1994, June 30, 1995 and June 30, 1996. (Exhs. D, D-1 to D-10, U, U-1 to U-3, X, X-1 to X-6, and Y, Y-1 to Y-5);

b. The Corporation Quarterly Income Tax Returns for fiscal year 1993 (Exhs. A, B, and C);

c. The various certificates of creditable withholding tax at source [BIR Form 1743.1] (Exhs. E to T); and

d. The letter-claim for refund with the Bureau of Internal Revenue (Exhs. V and W).

Respondent, on the other hand, presented the following documentary exhibits:

a. Letter of Authority, dated August 7, 1995 (Exhs. 1 to 1-a);

b. Certification issued by the Chief, Revenue Accounting Division of the Bureau of Internal Revenue regarding Petitioner's payments of tax (Exh. 2); and

c. Memorandum report of the revenue officer recommending the approval of the claim for refund (Exh. 3).

Eventually, this case was submitted for decision sans the memorandum of the Respondent.

The only issue to be resolved by this Court is whether or not Petitioner is entitled to the refund of the sum of ₱1,142,417.00, representing alleged overpaid income tax for fiscal year 1993.

The records show that Petitioner's claim falls within the two-year prescriptive period provided by law for claiming the refund of overpaid income taxes.

Section 230 of the Tax Code provides that the claim for refund, both in the administrative and judicial level, must be filed within two years from the date of payment of the tax. For easy reference, Section 230 of the Tax Code is hereby quoted as follows:

> 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 hereinafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have bee collected without authority, or of any sum alleged to have been excessive or i any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> 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; **Provided, however,** that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Underlining supplied)

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following three requisites:

> 1. That it filed a claim for refund within the two (2) year period from the date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
>
> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
>
> 3. 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.

> [Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The 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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].

A perusal of the evidence submitted by Petitioner reveal that it satisfactorily complied with the foregoing requirements.

First, the claim for refund was seasonably filed within two years from the date of payment of the tax. It filed the claim for refund with the Bureau of Internal Revenue on July 14, 1995 (Exhs. V and W) and the instant petition with this Court on October 14, 1995. The two-year period, in the instant case, commenced to run on October 15, 1993, the date when the annual income tax return of Petitioner for fiscal year 1993 was filed **(Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc. and The Court of Tax Appeals, G.R. No. 837736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court**

of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989).

Secondly, the quarterly income tax payments were duly proven to have been paid and remitted to the Respondent's bureau as certified by the Revenue Accounting Division (Exh. 2) which tally with the machine validations on the quarterly income tax returns of Petitioner for fiscal year 1993.

Lastly, Petitioner also showed that the income upon which the creditable withholding taxes for 1993 were paid was included in its gross income as shown in Schedule 4, Section D of the 1993 annual income tax return of petitioner (Exh. D-5). However, upon scrutiny of the amounts reflected on the certificates of creditable withholding tax at source, the summation of the amounts reflected therein is lesser than the amount reflected in the final adjustment return. Thus, only those creditable taxes withheld which were certified by the withholding agents as tax payments of Petitioner should be given credence.

Thus, Petitioner is entitled to a lesser sum of P1,141,204.02 which is validly supported by evidence.

Below is the computation of Petitioner's allowable income tax refund:

Tax Due for 1993 (Exh. D-6)				P 294,688.00
Less:				
a. Prior Year's Excess Credit				P -
b. Quarterly Payments Made This Year:				
Qtr.	Exh.	Date	Amount	
1st	A	12-01-92	P375,367.00	
2nd	B	03-01-93	467,384.00	
3rd	C	05-31-93	374,856.00	1,217,607.00

c. Creditable Tax Withheld:

Withholding Agent	Exh.	Amount of Tax Withheld	
Golden Bakery, Inc.	E	P112,500.00	
Marivic Padilla	F	14,700.00	
Rizal Commercial Banking Corp.	G	12,292.51	
Far East Bank & Trust Company	H	12,292.51	
Mom' Catering	I	8,640.00	
Sea Beauty Treats	J	8,640.00	
Binan Delicacies	K	7,920.00	
Florex (Orchids & Flowers)	L	7,200.00	
Milano Gems & Jewels	M	7,200.00	
Santa Cruz Drug & Chemical Co.	N	5,760.00	
Alberto R. Ramos	O	5,760.00	
Long Distance Trading	P	3,750.00	
Serramonte Trading (First Key Dup.)	Q	2,880.00	
Siegfredo R. Contreras/The House of Stereo	R	2,750.00	
Lil Orbit	S	2,400.00	
Prestige Watch & Jewelry	T	3,600.00	218,285.02
T o t a l			P1,435,892.02
AMOUNT REFUNDABLE			P1,141,204.02

WHEREFORE, finding the Petition for Review meritorious, Respondent is hereby **ORDERED** to **REFUND,** or in the alternative, to issue a TAX CREDIT CERTIFICATE in favor of Petitioner in the amount of P1,141,204.02, representing overpaid income tax for fiscal year ended June 30, 1993.

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