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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AF HOLDINGS AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5099

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 09 1996

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DECISION

This case involves petitioner's claim for refund of overpaid income tax in the amount of P18,608.00, resulting from excess creditable withholding taxes for taxable year 1991.

On April 15, 1992, petitioner filed with the Bureau of Internal Revenue its Corporate Annual Income Tax Return for the year ending December 31, 1991, showing a tax refundable amount of P18,608.00, computed as follows: (Exh. A)

Gross Income (1991)	P1,080,000.00
Less: Deductions (Exh. A-11)	1,010,887.00
Net Taxable Income (Exh. A-4)	P 69,113.00

Tax Due (Exh. A-5)		P 24,189.00
Less: a) Prior year's excess credit (Exh. A-7)	P30,158.00	
b) Quarterly payments (Exhs. A-8, B & B-1)	6,139.00	
c) Creditable Tax Withheld (Exhs. A-9 & C)	6,500.00	42,797.00
* Tax Refundable		P 18,608.00

(*) To be applied as Tax Credit to succeeding taxable year.

For the year 1992, petitioner suffered a loss and therefore showed a NIL income tax liability when it filed its Corporate Annual Income Tax Return on April 15, 1993 (Exh. D-1). However, the Income Tax Return for 1992 showed a refundable amount of P25,108.00 due to the following tax credits, computed as follows: (Exh. D)

Gross Income (1992)		P 630,000.00
Less: Deductions		1,495,105.00
Net Loss		(P865,105.00)
Tax Due		- N I L -
Less: a) Prior year's excess credit (Exh. D-2)	P18,608.00	
b) Quarterly payments (Exhs. E-9, E-8, & E-7)	-	
c) Creditable Tax Withheld (Exh. E-11 for only P3,250.00)	6,500.00	25,108.00
* Tax Refundable		P 25,108.00

(*) To be applied as Tax Credit to succeeding taxable year.

Unable to apply the amount refundable of P18,608.00, representing the alleged overpaid income tax for 1991 to its income tax for the succeeding taxable year (1992), petitioner filed a written claim for refund on February 23, 1994 (Exh. E-1) with the Revenue Regional Director of the BIR. Petitioner is asking for the refund of the aggregate amounts of P18,608.00 and P25,108.00, representing excess creditable withholding taxes resulting to the overpayment of income tax for the years 1991 and 1992, respectively (Exh. E).

Respondent did not act on such claim for refund. Hence, petitioner filed a petition for review with this Court, on April 15, 1994, in order to enforce by way of judicial action its claim for refund. The petition is however limited only to the amount of P18,608.00, allegedly representing excess creditable withholding taxes for the year 1991.

In response, respondent stated that the claim for refund of P18,608.00 is not properly documented. In an action for refund or tax credit the burden of proof is on the taxpayer to prove entitlement thereto otherwise, the claim will be fatal. In this case, petitioner failed to submit its 1990 Income Tax Return to prove its prior year's excess credit of P30,158.00.

Petitioner replied that its 1990 Income Tax Return was attached to its 1991 Income Tax Return when it filed said (1991) Return with the BIR as shown in the BIR records submitted by respondent. Petitioner presented as evidence its 1991 Income Tax Returns with attachments, consisting of: its Third Quarter

Income Tax Return for 1991, showing payment of the amount of P6,139.00 (Exh. B) and its Certificate of Creditable Income Tax Withheld At Source in the amount of P6,500.00, withheld by Paseo Realty & Development Corporation (Exh. C) and also its 1992 Income Tax Return (Exh. D) for the proper evaluation of this Court.

Is petitioner entitled to the refund of P18,608.00, covering the alleged overpaid income tax for 1991, resulting from excess creditable withholding taxes?

The BIR records forwarded to this Court form part of the records of this case. In said BIR records, it showed the original 1991 Income Tax Return of petitioner, filed on April 15, 1992. The following documents were attached to said return, namely: (1) Audited Financial Statements; (2) Schedule of Taxes and Licenses; (3) Photocopy of first page of prior year's return (1990); (4) Certificate of Creditable Tax Withheld (Exh. C); and (5) Schedule of refundable income tax.

As correctly put by petitioner, respondent has a copy of its 1990 Income Tax Return. The original is in the custody and control of the respondent against whom the evidence is offered. We, therefore, see no cogent reason why petitioner should still submit a copy of its 1990 Income Tax Return when the same already forms part of the documents (BIR records) submitted by respondent.

On the matter of the refund sought for in the amount of P18,608.00, it appears that petitioner although it suffered a loss in 1992, tried to credit said amount of P18,608.00 with its creditable withholding tax for 1992 in the amount of P6,500.00. Thus, a total tax refund of P25,108.00 appears in its 1992 Income Tax Return. Emphasis should be made on the mark (X) indicating that the amount of P25,108.00 shall be applied as a tax credit to the succeeding taxable year. However, petitioner failed to present its 1993 Income Tax Return for verification whether or not the same has actually been applied as a tax credit in its income tax liability for the year 1993 or whether it suffered a loss for that same year. This document is vital for the resolution of petitioner's claim for refund having opted to use the remedy of carry-over. As we have ruled in our Resolution, dated October 21, 1993, in a Motion for Reconsideration presented by the Commissioner of Internal Revenue in the case of **Paseo Realty Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4693**, pertinent portion of which are quoted as follows:

> "A punctilious study of the case at bar, reveals that indeed there is a cause to reconsider Our previous Decision. We have overlooked the fact that petitioner's 1989 Corporate Income Tax Return (Exh. A) indicated that the amount of P54,104.00 subject of petitioner's claim for refund has already been included as part and parcel of the P172,477.00 which the petitioner automatically applied as tax credit for the succeeding taxable year 1990.
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> x x x
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> Note should be taken that the amount of P54,104.00 is already part and parcel of

P172,477.00 which presumptively was already applied as tax credit to the succeeding taxable year 1990. Such presumption, of course, could have been overturned had the petitioner submitted its 1990 Corporate Income Tax Return showing that it did not automatically credit the said amount for the said taxable year 1990. Unfortunately, petitioner failed to submit that vital document which could have unlocked his entitlement for the elusive claim for refund sought for. Failure on the part of the petitioner to sustain his claim is fatal to its cause following the time-tested doctrine that claims for refund are construed strictly against claimant **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-17509, January 30, 1970, 31 SCRA 95).**

As correctly put by the Respondent, to grant petitioner's refund despite the fact that said amount was applied as tax credit by petitioner in the taxable year 1990, is detrimental to the interest of the Government as the same is tantamount to granting petitioner twice the refund of the same amount."

In a more recent case decided by the Court of Appeals, it was held:

"It is incumbent upon the petitioner to show proof that it has not credited to its 1990 Annual Income Tax Return, the amount of P297,492.00 (including P112,491.00), so as to refute its previous declaration in the 1989 Income Tax Return that the said P297,492.00 (including P112,491.00) will be applied as a tax credit in the succeeding year of 1990. Having failed to submit such requirement, there is no basis to grant the claim for refund. xxx." **(BPI Family Savings Bank, Inc., vs. Hon. Court of Tax Appeals, and Commissioner of Internal Revenue, CA-G.R. SP No. 34240, March 31, 1995;** Petitioner's Motion for Reconsideration was denied by the Court of Appeals in a Resolution, dated November 8, 1995).

Thus, the Court cannot be left to speculate as to whether the amount of P25,108.00 (inclusive of P18,608.00) was actually credited or not to the succeeding taxable year (1993). For if so, then the amount of P18,608.00 cannot be granted in favor of petitioner. Failure on the part of the taxpayer to sustain his claim is fatal to its cause of action. Taxes are presumed to have been collected in accordance with laws and regulations. **[Caltex (Phil.) Inc. v. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986.]** A refund partakes of the nature of an exemption, and the same are construed strictly against the claimants. **(Commissioner of Internal Revenue v. Ledesma, 31 SCRA 95.)**

WHEREFORE, in view of the foregoing, the petition is hereby **DISMISSED** for insufficiency of evidence. Accordingly, petitioner's claim for refund is hereby **DENIED**, without special pronouncement as to costs.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

C E R T I F I C A T I O N

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
Court of Tax Appeals