REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ROXAS LAND CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6063

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

AUG 29 2002

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DECISION

This case involves a claim for refund of alleged excess or unutilized creditable withholding taxes withheld from petitioner's income derived from the sale of condominium units for the taxable years 1997 and 1998 in the aggregate amount of P16,073,141.00.

The facts of the case are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, authorized to engage in business as a realty company, with principal place of business located at 31^{st} Floor, Tower One, Ayala Triangle, Ayala Avenue, Makati City (*par. 1, Joint Stipulation of Facts*).

On April 14, 1998, petitioner filed its Corporation Annual Income Tax Return for calendar year ended December 31, 1997, reflecting an overpaid or refundable income tax in the amount of Two Million Four Hundred Forty Two Thousand Two Hundred

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Seventeen Pesos (P2,442,217.00) (*par. 3, Joint Stipulation of Facts; Exhibit A*), detailed as follows:

Realized Gross Profit			P	62,292,546.00
Other Income				7,619,345.00
Gross Income			P	69,911,891.00
Less: Deductions				18,422,746.00
Taxable Income			P	51,489,145.00
Tax Due			P	18,021,201.00
Less:				
(a) Quarterly payments	P	4,430,902.00		
(b) Creditable Tax Withheld		16,032,516.00		20,463,418.00
Amount Refundable			P	2,442,217.00

On April 15, 1999, petitioner filed its Corporation Annual Income Tax Return for calendar year ended December 31, 1998, reflecting an overpaid or refundable income tax in the amount of P16,073,141.00 (*par. 4, Joint Stipulation of Facts*).

On August 24, 1999, petitioner filed its Amended Corporation Annual Income Tax Return for calendar year ended December 31, 1998, reflecting an overpaid or refundable income tax in the amount of P16,073,141.00 (*par. 5, Joint Stipulation of Facts*). In both the original and amended income tax returns (*Exhibits C and D, respectively*), petitioner made the following declarations:

Net Loss	P	(22,852,544.00)
Tax Due		
Less: Tax Credits		
Prior Year's Excess Credits	P	2,442,217.00
Tax Credits for the First Three Quarters		10,962,715.00
Tax Credits for the Fourth Quarter		2,668,209.00
Amount Refundable	P	16,073,141.00

Petitioner maintains that the 1998 income tax return was amended solely for the purpose of indicating its choice to refund the excess income tax payments which it failed to do in the original income tax return (*page 22, TSN, October 23, 2000*).

On April 4, 2000, petitioner filed with the Bureau of Internal Revenue an application for the refund of the amount of P16,073,141.00 as unutilized creditable withholding tax paid, in accordance with Section 204(C) of the Tax Code (*par. 6, Joint Stipulation of Facts; Exhibit G*).

Since respondent has not yet acted on the aforesaid claim for refund, this Petition for Review was filed on April 12, 2000 to preserve petitioner's right to a judicial claim for refund.

The issues in this case are as follows:

1) Whether or not the claim for refund was filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax as required under Section 204 of the Tax Code;

2) Whether or not the income tax return of the recipient showed that the income payment received was declared as part of the gross income; and

3) Whether or not the fact of withholding was established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Petitioner finds legal anchor on Section 69 of the then Tax Code, quoted below for clarity:

> **"Section 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."

To buttress its case, petitioner submitted several documents and witnesses to identify the same.

Respondent, on the other hand, raised the following Special and Affirmative Defenses, to wit:

a) The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

b) Claims for refund are construed strictly against the claimant, the same being in the nature of exemption of taxes (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35*);

c) One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (*Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304*);

d) In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

e) It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code; and

f) Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence not refundable.

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However, respondent submitted the case for decision without presenting any evidence (*page 206, CTA records*), nor did he file a memorandum.

Section 69 of the Tax Code earlier cited serves as legal basis for the tax refund of excess or unutilized income taxes paid for the year 1997. But for the 1998 tax claim of petitioner, the pertinent provision is Section 76 of the 1997 Tax Code, *viz:*

> **"Section 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."

Time and again, this Court has held that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. (*Reliance Commercial Enterprises, Inc. vs. CIR*, CTA Case No. 6377,

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resolution promulgated on April 10, 2002; *BPI Family Savings Bank vs. CIR*, CTA Case No. 6277, resolution promulgated on September 17, 2001; *PL Management International Phils., Inc. vs. CIR*, CTA Case No. 6292, resolution promulgated on September 14, 2001; *Santiago Land Development Corporation vs. CIR*, CTA Case No. 6278, resolution promulgated on September 6, 2001).

In the case at bar, petitioner amended its 1998 income tax return on August 24, 1999 (*Exhibit D*) for it failed to indicate in its original 1998 income tax return its option to claim the excess or unutilized income tax payments. It bears stress that petitioner has not exercised its option yet at the time the amendment was made. Moreover, in its 1999 income tax return (*Exhibit F*), Line 26A showing petitioner's prior year's excess credits was left blank, which clearly showed that the amount subject of this claim was no longer carried over. In other words, no contravention of the law was ever done by herein petitioner.

Furthermore, a close scrutiny of the records would reveal that the amount of P16,073,141.00 remained unutilized. The excess tax credits for the year 1997 in the sum of P2,442,217.00 was carried over by the petitioner to the year 1998 (*Exhibits A and C*). In 1998, petitioner declared a net loss, thus, the prior year's excess tax credit of P2,442,217.00 was not utilized. Petitioner also reported tax credits for the first three quarters of 1998 totalling P10,962,715.00 and tax withheld for the fourth quarter in the amount of P2,668,209.00 (*Exhibit C*). As already discussed, petitioner elected to claim for a refund of the amount of P16,073,141.00 (*Exhibits D and F*). Since said amount remained unutilized, it appears that petitioner is entitled to a refund thereof.

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Nonetheless, petitioner must first comply with the substantiation requirements laid down by the Supreme Court in the case of ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434,*** dated October 10, 1997, as follows:

> (1) That the claim for refund was filed within the two-year reglementary period pursuant to Section 230 [now Section 229] of the Tax Code, as amended;
>
> (2) That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient;
>
> (3) That the fact of withholding is established by a copy of the statement duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

Relative to the first requirement, Section 229 of the Tax Code, as amended, is hereunder quoted for easy reference:

> **SEC. 229**. ***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 excessively or in 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 filed after the expiration of two (2) 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 the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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Clearly evidenced by the records in this case, the first requisite was met by the petitioner. Both the administrative and judicial claims were filed within the two-year prescriptive period. The written claim for refund was filed with the Bureau of Internal Revenue on April 4, 2000 (*Exhibit G*) while the instant petition was filed on April 12, 2000. The two-year period commenced to run from April 14, 1998 and April 15, 1999 for the 1997 and the 1998 claims for refund, respectively, the dates when the original final adjustment returns were filed by petitioner.

Anent the second requirement, petitioner plainly established compliance therewith.

Considering that petitioner is primarily engaged in the sales of condominium units, its income are mostly derived from these sales. For the taxable year 1997, petitioner declared as realized gross profit the amount of P62,292,546.00 and total creditable taxes withheld in the amount of P16,032,516.00. For the year 1998, petitioner reported as realized gross profit the sum of P64,488,268.00. The total creditable taxes withheld for the period was P13,630,924.00. This was attested to by the commissioned independent certified public accountant in his testimony (*pages 11 and 12, TSN, July 4, 2001*) and in his report dated June 28, 2001 (*Exhibit N*). In addition, we found said report to be in order after verification and analysis of the summaries of collection (*Exhibits Q and R*), the official receipts *(Exhibits S and T, inclusive of submarkings*) and the computation therein.

The third and last requirement was likewise complied with by the petitioner.

Being in the real estate business, petitioner is responsible for the remittance of creditable withholding taxes from its sales of condominium units. Hence, instead of the

Certificates of Creditable Taxes Withheld at Source, petitioner presented its various Monthly Remittance Returns of Income Taxes Withheld – BIR Form 1743W (*Exhibits L and M, inclusive of submarkings*). After due verification, the same were found to be supportive of petitioner's claim. However, as noted by the independent CPA in his first report dated April 17, 2001 (*Exhibit J*), only the following creditable taxes are valid:

		1997		1998
A. Monthly Remittance Returns of Income Taxes Withheld were not stamped "Received" by the BIR authorized signatories, however, these returns have been machine validated				
1. Joanne De Asis	P	73,854.55		
2. Superior Cane Plantation Inc.			P	79,595.45
3. Golden ridge Realty & resources, et.al.				2,198,250.46
4. Li, Penny, et.al.				232,165.76
B. Monthly Remittance Returns of Income Taxes Withheld which were stamped "Received" by the BIR authorized signatories and have been machine validated		18,318,006.07		8,761,551.08
TOTAL – Creditable Withholding Taxes *per Schedule*	P	18,391,860.62	P	11,271,562.75
December '97 CWT*		(2,359,361.41)		2,359,361.41
TOTAL – Creditable Withholding Taxes *per Returns*	P	16,032,499.21	P	13,630,924.16

* December 1997 CWT remitted on January 23, 1998 from sale of real properties to Buxani, Sham K., et.al.

In sum, petitioner has complied with the legal requirements in claiming for a tax refund but only with respect to the creditable withholding taxes.

As to its quarterly income tax payments in the amount of P4,430,902.00 forming part of the present claim for refund, petitioner failed to present its quarterly income tax

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returns. Thus, this court could not verify the quarterly payments allegedly made by petitioner. Consequently, the same amount should be deducted or disallowed from its total claim.

Accordingly, petitioner is entitled to a refund in the reduced amount of P11,642,222.37, computed as follows:

1997 Creditable Withholding Taxes	P16,032,499.21
1998 Creditable Withholding Taxes	13,630,924.16
Total Creditable Withholding Taxes	P29,663,423.37
Less: 1997 Income Tax Due	18,021,201.00
Amount Refundable	**P11,642,222.37**

WHEREFORE, in view of all the foregoing, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P11,642,222.37 representing its excess or unutilized creditable taxes for the taxable years 1997 and 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

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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

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