REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLIDBANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5501

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 12 1999

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate amounting to P1,478,164.00, allegedly representing overpaid creditable withholding tax for the calendar year ending December 31, 1994.

Petitioner is a domestic banking corporation duly organized and existing under and by virtue of Philippine laws. On April 17, 1995, Petitioner filed its Corporation Annual Income Tax Return for the year ended December 31, 1994, reflecting a net loss of P37,252,999.00 (Exh. A). For the said year, however, several income tax payments arising from the rental income of Petitioner have already been withheld at source by various withholding agents totalling P1,341,997.09. Aside from this, Petitioner's income from foreclosure or sale of real properties, were subjected to 5% withholding tax, which totalled P2,742,397.22. These creditable taxes withheld at source were utilized to pay the income tax liability of Petitioner's foreign currency deposit unit (FCDU) in the amount of P2,606,230.00. Thus out of the P4,084,394.31, creditable taxes withheld from Petitioner, P1,478,164.00 was left unused, which it intended to apply to its tax liability for the following year 1995.

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For calendar year 1995, however, Petitioner again suffered a loss of P16,008,772 (Exh. B). Consequently, its P1,478,164.00 1994 tax credit remained unutilized. Likewise, during the said year, Petitioner had a total creditable withholding tax of P2,681,086.00 against which its 1995 FCDU tax liability of P680,353.00 was charged.

Petitioner opted to carry-over to the next taxable year (1996) its 1995 excess creditable withholding tax in the amount of P2,000,733.00. Petitioner, however, sought the refund or tax credit of its 1994 unutilized creditable withholding tax by filing on April 11, 1997 a letter-claim for refund of the P1,478,164.00 with the Bureau of Internal Revenue (Exh. D). Petitioner anchored its claim on Section 69 of the 1994 National Internal Revenue Code, to state:

> **Sec. 69.** ***Final Adjustment Return.***-Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:
>
> (a) Pay the 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.

As there was no immediate action on the part of herein Respondent, the instant petition for review was elevated before this Court on April 14, 1997.

Respondent, in his Answer, claimed by way of Special and Affirmative Defenses that:

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4. The alleged application or claim for the refund of the amount of P1,478,164.00 is yet pending administrative investigation by Respondent's bureau;

5. The aforestated amount being claimed as alleged excess creditable withholding tax for the year 1994 was not properly documented;

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

7. In an action for tax refund/credit the burden of proof is upon the taxpayer to establish its right to the refund and failure to sustain the same is fatal to the action;

8. It is incumbent upon the Petitioner to show compliance with the provisions of Section 204 in relation to Section 230 both of the Tax Code, as amended;

9. Well-settled is the rule that claims for refund are construed strictly against taxpayers/claimants, since the same partake of the nature of exemption from taxation. (Resins, Inc. vs. Auditor General, 25 SCRA 754, 1968).

The sole issue we are tasked to resolve is whether or not Petitioner has complied with all the requirements of the law for a valid claim for refund or tax credit so as to be entitled to the relief sought.

Petitioner, to support its case, presented the following:

Exhibits	**Description**
A, B, and C	Annual Corporate Income Tax Returns of Petitioner for the taxable years 1994, 1995 and 1996 with attached audited financial statements
D	Letter claim for refund of Excess Creditable Income Taxes Withheld at source in the amount of P1,478,164.00 for taxable year 1994
E-1 to H-2	Certificates of Creditable Tax Withheld at Source issued by various withholding agents to Petitioner for the taxable

	year 1994 re: rental of real property
I to M	Certificates of Creditable Tax Withheld at Source issued by various withholding Agents to Petitioner for the taxable year 1994 re: purchase of real property

Respondent's counsel, on the other hand, manifested that he could not get hold of the records of the instant case despite his communication and follow-up with the office concerned, and so, he was left with no recourse but to rest his case and submitted only a memorandum (CTA Records, p. 273)

After examining the evidence presented by the Petitioner, this Court rules in its favor.

To be entitled to a refund, the following requirements have to be met:

1. That the claim for refund was filed within the two (2) year period prescribed under Section 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. That 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. (see **Citytrust Finance Corporation vs. The Commissioner of Internal Revenue**, CTA Case No. 4134, November 11, 1991; **Citytrust Finance Corporation [formerly Investor's Finance Corporation/FNCB Finance] vs. Commissioner of Internal Revenue**, CTA Case No. 4046, February 24, 1993; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5353, August 22, 1997; **Benguet Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5323, August 25, 1997; **Shangri-la Plaza Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5346, January 9, 1998; **Nestle Philippines, Inc. (formerly, Magnolia Nestle Corporation) vs. Hon. Liwayway Vinzons-Chato, Commissioner of Internal Revenue**, CTA Case No. 5350, January 20, 1998; **Bank of Commerce vs. The Commissioner of Internal Revenue**, CTA Case No. 5101, March 17, 1998; **Oranbo Realty Corporation vs. Commissioner of Internal Revenue**, CTA Case No. 5335, July 24, 1998; **AGP Industrial Corporation (formerly AGP Investment Corporation) vs. Commissioner of Internal Revenue**, CTA Case No. 5239, April 13, 1999; The Philippine Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No.

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5507, April 30, 1999; **Philippine National Bank, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 5511, April 30, 1999; **Shimizu Philippine Contractors Inc. vs. The Commissioner of Internal Revenue**, CTA Case No. 5544, May 12, 1999).

It is important to point out that the aforementioned requirements for the refund of excess creditable withholding taxes was affirmed by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue 280 SCRA 459**.

Petitioner's claim for refund filed with the Bureau of Internal Revenue on April 11, 1997 as well as its Petition for Review filed with this Court on April 14, 1997 are both within the two-year period from the date of payment of the tax.

Second, the income tax return of Petitioner for 1994 (Exh. A) likewise revealed that the income upon which the taxes were withheld was included in said return. During the hearing of September 16, 1998, Mr. Eduardo Oliveros, the Assistant Accountant of the Accounting Department of Petitioner, testified that its income from rent and sales of real property upon which the taxes were withheld were included in its 1994 return, thus,:

"ATTY. VILLAREAL:

Q. And also as for this Schedule how much is the total income payment received by Solidbank Corporation, Mr. Witness?

MR. OLIVEROS:

A. The Total Income received by Solidbank Corporation on the rent of real properties was P36,499,785.00 and the total income/gain on sale of foreclosed or sale of real properties was P54,847,944.00, Sir.

ATTY. VILLAREAL:

Q. Where these income payments as appearing in this Schedule, were these amounts reported in the Petitioner's 1994 Annual Income Tax Return, Mr. Witness?

MR. OLIVEROS:

A. These various income were reported in 1994 Income Tax Return under Section C of Gross Income which form part of Miscellaneous Income amounting to P107,365,645.00, Sir."

And third, the fact of withholding was also established by Petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source (Exhs. E-1 to H-2, I to M).

Moreover, since in this case Petitioner is seeking for the refund of its creditable taxes withheld for 1994 which it was not able to apply against its tax liability for the said year and in the succeeding year, as it ended up in both years in a net loss position, its 1996 Income Tax Return was likewise submitted by Petitioner to prove that during that year, Petitioner did not utilize the amount sought to be refunded.

Finally, not a single piece of evidence was presented by Respondent to controvert Petitioner's claim, thereby, leaving this Court with no recourse but to decide the case solely on the basis of the evidence submitted by Petitioner which is more than adequate to grant the refund sought. In view, however, of the absence of some Certificates of Creditable Taxes Withheld, we are constrained to reduce the amount of claim by P43, 684.46, broken down as follows:

Withholding Agent	**Nature**	**Amount**	**W/tax**
Mega World Properties	Rent	307,088.53	P14,398.32
COLF	Rent	76,608.00	3,830.40
SIBI-CEBU	Rent	45,614.80	2,280.74
Rogelio Manalo	Sale of Real Property	463,500.00	23,175.00
			P43,684.46

WHEREFORE, in view of all the foregoing, this Court finds the instant petition meritorious and in accordance with law. Respondent is hereby **ORDERED** to **REFUND**

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or to **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P1,434,479.54 representing unutilized 1994 creditable withholding tax.

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 this 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

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