REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SHANGRI-LA PLAZA CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5346

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 09 1998

x - x

DECISION

This is a petition for review instituted by petitioner, Shangri-la Plaza Corporation to seek from respondent a Tax Credit Certificate in the amount of P4,251,768.00 representing alleged excess withholding tax for the taxable year 1993.

It appears from the records of the case that on November 12, 1992, petitioner acquired the Shangri-la Plaza shopping mall through a property-for-shares swap transaction with Shangri-la Properties, Inc. (SLPI)(TSN dated August 21, 1996, pp. 14-15, Exhibit "D"). On January 1993, petitioner commenced its operations, assumed the obligations of SLPI entered into with different store operators at the mall. Accordingly, the lessees paid their rentals and withheld the tax due therefrom in favor of the petitioner. However, although the tenants of the shopping mall were notified of the agreement between Shangri-la Properties, Inc. and Shangri-la Plaza Corporation, most of them still issued a certificate in the name of the former so it appears that some of the documents presented were in the name of

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Shangri-la Properties, Inc. and not in the name of the petitioner Shangri-la Plaza Corporation, (TSN dated August 21, 1996, pp. 14-15).

From the financial audit conducted by Sycip Gorres Velayo and Co., petitioner alleges that its allowable deductions of P157,603,202.00 exceeded the total gross income earned during the taxable year 1993 which is P115,242,439.00, thereby incurring a net loss of P42,360,763.00.

Pursuant to Revenue Regulations No. 6-85, petitioner's lessees withheld and remitted during the first quarter of 1993 the total creditable income tax withheld at source in the amount of P4,251,768.00. Inasmuch as there was no tax due in view of the net loss from operations, petitioner alleges that it paid excess income taxes in the amount of P4,251,768.00 which it chose to be refunded in its favor.

On March 1, 1996, petitioner filed its written request for issuance of Tax Credit Certificate for the net creditable income taxes withheld at source in the amount of P4,251,768.00 for taxable year 1993 (Exhibit E).

On April 11, 1996 as respondent had not granted nor acted upon petitioner's request or claim for tax credit certificate, petitioner was constrained to elevate its

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case to this Honorable Court by way of Petition for Review.

Petitioner reasserts its stance *a quo* and adds that it has not claimed the overpaid income tax as credit against income tax liabilities for any succeeding taxable quarters or taxable year.

Respondent, on the other hand, asseverates in her Answer, *inter alia*, the special and affirmative defenses that petitioner's claim for refund/tax credit are strictly construed against the taxpayer and petitioner has no cause of action.

The lone issue to be resolved before Us is whether or not petitioner is entitled to its claim for issuance of tax credit certificate in the amount of P4,251,768.00 for the taxable year 1993.

We answer in the affirmative.

Under Section 230 of the National Internal Revenue Code, the claim for refund/tax credit must be filed with the Bureau of Internal Revenue (BIR) within two years from the payment of the tax. It further provides that when the two year period is about to expire and the claim for refund/tax credit with the Commissioner of Internal Revenue has not been acted upon, the taxpayer should file a petition for review with the Court of Tax Appeals within the said two-year period, otherwise, if the decision of the Commissioner is adverse to the taxpayer

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and it was made after the reglementary period he can no longer appeal the same to the Court of Tax Appeals (Martinez, Summary of 1995 Supreme Court Rulings, January to June, 1995 part I p. 651, citing Gonzalez and Gonzalez, National Internal Revenue Code, 1988 ed., p. 384, Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil. 232; Johnston Lumber Co. vs. CTA 101 Phil. 151).

Revenue Regulations No. 6-85 provides the following requirements for the refund of excess creditable withholding taxes, to wit:

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

A perusal of the evidence presented by petitioner revealed that it has satisfactorily proven its claim for refund/tax credit. Petitioner has filed its claim for refund/tax credit within the two-year period with the Bureau of Internal Revenue and with this Court. Petitioner filed its Final Adjustment Return on April 15,

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1994 and subsequently filed its claim for refund/tax credit with the respondent on March 1, 1996. Finally, this petition was filed on April 11, 1996, both claims filed within the two-year reglementary period. Obviously, the petitioner filed this petition on time. Numerous evidence were presented by petitioner that showed that it did file with respondent Bureau, a request for issuance of tax credit certificate. The letter claim for Tax Credit Certificate was filed with the BIR on March 1, 1996 (Exhibit "E", p. 21, CTA records). It is unrebutted that petitioner incurred a loss in its business operations for the taxable year 1993, thus, has no tax liability. (Exhibits "A" and "B"). As such, the Annual Tax Return for taxable year 1993 reflected that the total amount to be refunded is P4,251,768.00 (Exhibit "A"). The total amount of creditable income taxes withheld at source was supported by the BIR Form 1743-1 submitted by petitioner's lessees and duly reported with the BIR (Exhibits "C-1" to "C-108", inclusive, pp. 86-209, CTA records). Furthermore, as testified by petitioner's witness, Mr. Edgardo Laylo, the income upon which these creditable withholding taxes were paid were included in petitioner's income tax return (TSN, Hearing on August 21, 1996, pp. 9-13). Thus, petitioner has satisfactorily proven its claim for refund/tax credit. Therefore, there is no reason why we should not grant

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petitioner's prayer. However, after computing the total amount of creditable income taxes withheld at source excluding Exhibit "C-65" since a period was not indicated therein and Exhibit "C-85" because the payee indicated therein is not the petitioner, We made a conclusion that the total amount withheld was only P4,216,819.23 as opposed to the original claim of P4,251,768.00. The computation of the final refundable amount is detailed as follows:

Withholding Agent	Exh.	Amount of Income Payment	Amount of Tax Wittheld
2001 Flavor Creator, Inc.	C-1	P 326,781.80	16,339.09
Mary Grace R. Potenciano	C-2	574,000.00	28,700.00
Alfredo P. Guerrero Jr.	C-3	60,313.00	3,015.65
Almeda Vision Specialists,Inc.	C-4	592,704.00	29,635.20
Ambassador Appliances, Inc.	C-5	452,570.22	22,628.51
Andy & Karen Fashion Trading	C-6	412,800.00	20,640.00
Azcor Lighting Systems, Inc.	C-7	399,600.00	19,980.00
Backstage, Inc.	C-8	1,283,046.06	64,152.30
Bank of Philippine Island	C-9	656,208.00	32,810.40
Bento Go	C-10	132,785.00	6,639.25
Better Than Ice Cream, Inc.	C-11	21,000.00	1,050.00
Better Than Ice Cream, Inc.	C-12	21,000.00	1,050.00
Better Than Ice Cream, Inc.	C-13	23,333.33	1,166.66
Better Than Ice Cream, Inc.	C-14	48,000.00	2,400.00
Cala Foods Corporation	C-15	1,648,992.20	82,449.61
Casa De Moda Inc.	C-16	220,125.00	11,006.25
Chippy Chews Foods, Inc.	C-17	72,000.00	3,600.00
Chowcity Foods Corporation	C-18	908,497.80	45,424.89
CIDI Jewelry	C-19	297,000.00	14,850.00
Cindy Carol Collection	C-20	358,419.80	17,920.99
Citifashion Specialty Store	C-21	625,183.91	31,259.19
Cosmo Fashion, Inc.	C-22	98,700.00	4,935.00
Crispino Aquino	C-23	98,400.00	4,920.00
Crispino Aquino	C-24	1,180,800.00	59,040.00
Expression Fabric Square Br. I	C-25	30,208.40	1,510.42
Far East Bank & Trust Co.	C-26	11,000.00	550.00
Fil-American Hardware Co., Inc.	C-27	245,015.00	12,250.79
Fragrant Green Inc.	C-28	244,166.60	12,208.33
Frances L Corporation	C-29	269,610.00	7,353.00
Fun Field Amusement Center	C-30	278,924.80	13,946.24

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Games Corporation	C-31	2,887,579.80	144,378.99
Gifts, Gadgets & Collectible	C-32	430,417.50	21,970.88
Golden Arches Development Corp.	C-33	175,811.25	8,790.56
Gourmet Cookery & Services Corp	C-34	453,598.20	22,679.90
Groom Pad	C-35	344,467.80	17,223.39
Han's Infinite Tools-Br. II	C-36	420,000.00	21,000.00
Jacinte Jewelry Intl. Co., Inc.	C-37	85,977.71	3,715.73
Jeanetics Industrial Corp.	C-38	324,478.00	16,223.90
Jeanette V. Tan	C-39	461,908.27	23,095.41
Ji-pan Corporation	C-40	178,560.00	8,928.00
Joseph S. Paredes	C-41	358,334.80	17,916.74
K. Velayo Pawnshop & Jewelry	C-42	826,231.46	41,311.57
Kameraworld, Inc.	C-43	381,672.00	19,083.60
Kito Food Corporation	C-44	778,233.00	38,911.65
Koguryo Korean Grill House	C-45	195,291.52	9,764.59
Kusina Sa EDSA	C-46	472,981.60	23,649.08
La Mirabella, Inc.	C-47	839,629.00	41,981.45
Lea Fashion (Phils.) Inc.	C-48	104,663.80	5,233.19
Lincoln L. Yao	C-49	136,950.00	6,947.50
Lugawan sa Makati, Inc.	C-50	194,310.00	9,715.50
Maison D'Horloges Suisses, Inc.	C-51	717,600.00	35,880.00
Makati Skyline, Inc.	C-52	77,277.00	3,863.85
Marissa Espartero (Quilin)	C-53	115,500.00	5,775.00
Marylindbert International Inc.	C-54	855,874.80	42,793.74
Rujo Link Food Corp.	C-55	907,253.37	45,362.64
Mico Group of Co., Inc.	C-56	111,720.00	5,586.00
Mondragon Group Sales, Inc.	C-57	427,500.00	21,375.00
National Book Store, Inc.	C-58	5,639,059.26	281,952.98
Food & Commercial Ent.	C-59	72,000.00	3,600.00
Oceanic Escolta Gifts & Jewel.	C-60	168,912.67	8,445.63
Omnivision Inc.	C-61	278,400.00	13,920.00
One Stop Photo Center Corp.	C-62	1,022,223.77	51,111.19
Panciteria At the Mall	C-63	217,809.80	10,890.49
Pangon Trading Corporation	C-64	197,400.00	9,870.00
Edgar Ortega/Paripassu & Co.	C-66	875,354.59	43,767.72
PCIB	C-67	128,355.00	6,417.75
Andrew Michael S. Sevilla	C-68	191,100.00	9,555.00
PNB Shangri-La Plaza Branch	C-69	2,024,949.91	101,247.54
Philippine Nationa Bank - ATM	C-70	33,638.71	1,681.93
Philmola Marketing Corp.	C-71	1,682,856.00	84,142.80
Platinum Comics	C-72	300,000.00	15,000.00
Plum Boutique, Inc.	C-73	366,366.00	18,318.30
Podden Intl. Phils., Inc.	C-74	54,000.00	2,700.00
Prime Tech Ent. Phils., Inc.	C-75	309,600.00	15,480.00
Proline Sports Center, Inc.	C-76	445,520.30	22,276.00
Quorum International Inc.	C-77	713,279.00	35,663.95
Retail Specialist, Inc.	C-78	479,871.41	23,993.58
Reyes Development Corporation	C-79	208,740.00	10,437.00
Rizal Comml. Banking Corp.	C-80	1,518,335.00	75,916.75
Roasts at Jem St. Corp.	C-81	316,061.60	15,803.08
Rustan Commercial Corporation	C-82	18,562,106.70	928,105.36
Rustan Supermarket	C-83	5,674,084.74	283,704.23

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Salad Days	C-84	241,766.43	12,088.32
Sandei Food Corporation	C-86	289,668.00	14,483.40
Sandosenang Halo/Sarap	C-87	301,717.20	15,085.86
Sandosenang Halo/Sarap	C-88	87,231.40	4,361.57
Sizzler Barbecue Restaurant	C-89	672,685.86	33,634.24
Sizzling Seafoods	C-90	597,445.80	29,872.29
Smack Food Corporation	C-91	1,308,224.80	65,411.24
SME Food Corporation	C-92	882,917.25	44,145.86
Steak & Spahetti Factory	C-93	367,867.85	18,393.39
Stores Specialists, Inc.	C-94	4,891,974.21	244,598.70
Susana Securities & Dev. Corp.	C-95	1,293,600.00	64,680.00
Tesoro's Marketing Corporation	C-96	1,205,319.60	60,265.98
TFB, Inc.	C-97	423,644.80	21,182.24
The Big & Small Co.	C-98	482,160.00	24,108.00
Manuel R. Paterno Jr.	C-99	675,648.00	33,782.40
Ma. Aurora S. Tanseco	C-100	353,430.00	17,671.50
Trigem, Inc.	C-101	251,076.00	12,553.80
Trimec Trading Corporation	C-102	72,000.00	3,600.00
Tropical Stitch, Inc.	C-103	137,143.30	6,857.18
United Coconut Planters Bank	C-104	1,341,141.21	67,057.06
Universal Far East Corporation	C-105	640,802.58	32,040.13
Venezia Art Glass	C-106	43,050.00	2,152.50
Victoria Marketing	C-107	885,000.00	44,250.00
Wenphil Corporation	C-108	679,053.20	33,952.66
T O T A L		P84,459,597.75	P4,216,819.23

Respondent failed to manifest any reasonable effort to rebut or controvert the oral and documentary evidence presented by petitioner's counsel. Respondent's defense which is anchored as usual on the principle that claims for refund are strictly construed cannot possibly withstand as it is always vulnerable to overwhelming evidence which petitioner was able to present before this Court to prove its claim. As has always been stated in the number of cases decided by this Court, respondent cannot be allowed to defeat an otherwise valid claim for refund on the strength alone of her denials of petitioner's allegations in its petition. More so, when the evidence presented by the petitioner were not

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disputed by the Commissioner (Van Melle [Phils.], Inc. vs. Commissioner of Internal Revenue, CTA Case No. 4783, February 6, 1995, citing Sanitary Wares Mfg. vs. Commissioner of Internal Revenue, CTA Case No. 4150, August 21, 1992; SunLife Insurance Office Ltd. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3205, June 23, 1989).

In conclusion, We find that petitioner has adequately proven its case before this Court.

WHEREFORE, premises considered, finding the petition meritorious and in accordance with law, justice and equity, the same is hereby **GRANTED** and respondent is hereby **ORDERED** to **ISSUE** a Tax Credit Certificate in the amount of P4,216,819.23 representing overpaid income taxes for the taxable year 1993.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

AMANCIO Q. SAGA
Associate Judge

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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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