REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5507

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 30 1999

x - x

DECISION

This case involves a claim for refund in the amount of ₱2,405,458.86 allegedly representing unutilized creditable withholding tax for calendar year 1994.

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Philbank Building, Ayala Avenue, 1226 Makati City.

For calendar year 1994, Petitioner foreclosed a number of real properties previously mortgaged to it. As a result, Petitioner sold several of these real properties wherein the corresponding withholding taxes were allegedly withheld and remitted to the Bureau of Internal Revenue by the buyers - its withholding agents, in the total amount of ₱2,911,178.47, pursuant to BIR

Revenue Regulations No. 6-85 under the Expanded Withholding Tax System (EWT, for brevity).

In the same year, Petitioner likewise claims to have leased certain real properties to several entities wherein the total amount of ₱145,531.93 were allegedly withheld and remitted to the BIR as withholding taxes by the lessees, pursuant to the same Revenue Regulations under the EWT system.

On December 7, 1995, Petitioner filed its Amended Corporation Income Tax Return for calendar year 1994 which shows a "NIL" income tax due and tax refundable in the amount of ₱2,405,459.00. This amount allegedly represents creditable withholding taxes arising from rental income and sale of real properties which cannot be applied against any taxable income for the year 1994 because of Petitioner's claimed net loss in the amount of ₱1,414,170.00 for the same year. Petitioner signified its intention in the return to refund the amount of ₱2,405,459.00 by marking an "x" in the box "to be refunded on the face of the return" (Exh. III).

Subsequently, on January 24, 1996 and April 11, 1997, Petitioner filed written claims for tax credit/refund amounting to ₱2,405,459.00 with the Revenue District Office No. 50 of the Respondent (Exhs. LLL and MMM).

As Respondent did not grant nor act upon Petitioner's claim for tax credit/refund, Petitioner filed the instant Petition for Review on April 14, 1997.

Upon these facts, Respondent advances the following special and affirmative defenses, thus:

> 1. Petitioner's claim for refund is still pending administrative investigation and evaluation;
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> 2. The total amount of P2,405,458.86 claimed by Petitioner allegedly representing creditable withholding taxes for the year 1994 was not properly documented;
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> 3. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 4. In an action for tax refund the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the corresponding action;
>
> 5. It is incumbent upon Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended;
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> 6. Well-settled is the rule that claims for refund are construed strictly against claimants since it partakes the nature of an exemption from taxation.

The only issue to be resolved in this case is whether or not Petitioner has satisfactorily proven its entitlement to the claim for refund of alleged unutilized creditable withholding taxes for the year 1994.

In support of its case, Petitioner presented in evidence various documents which, among others, consist of the following:

a. Certificate of Creditable Withholding Tax at Source (Exhs. A to FFF, inclusive);

b. Tentative, Final and Amended Corporate Income Tax Returns for the year 1994 (Exhs. GGG, HHH and III);

c. Corporate Income Tax Returns for the years 1995 and 1996 (Exhs. JJJ and KKK);

d. Administrative claims for refund duly filed with the BIR (Exhs. LLL and MMM);

e. PBC's Statement of income for the year 1994 (Exh. NNN).

At this point, it is best to review the applicable provision of law and revenue regulations, plus the evidence presented to determine whether there has been compliance with the requirements sufficient to warrant the refund of the amount claimed for taxable year 1994.

Under Section 230 of the Tax Code, as amended, the claim for refund/tax credit must be filed with the BIR within two years from the payment of tax. It further provides that when the two-year period is about to prescribe 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 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 SC rulings, January to June 1995 part I, p. 651, citing Gonzales and Gonzales, NIRC, 1986 ed. p. 384, Gibbs vs, Collector of Internal Revenue and CTA, 107 Phil. 232).**

To be entitled to the refund/tax credit of unutilized creditable withholding tax, a taxpayer must comply with the following basic requirements set forth in Section 10 of Revenue Regulations No. 6-85, 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, NIRC, as amended;
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> 2. That the income upon which the taxes were withheld at source under Section 50 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 the statement duly issued by the payor to the payee (BIR Form No. 1743-1750) showing the amount paid and the amount of tax withheld therefrom.

Compliance with these requirements has been reiterated in a number of cases decided by this Court **(Citytrust Finance Corp. vs. CIR, CTA Case No. 4143, November 11, 1991; Oranbo Realty Corp. vs. CIR, CTA Case No. 5082, January 16, 1997; Ayala vs. CIR, CTA Case No.**

5081, March 31, 1997; PDCP vs. CIR, CTA Case No. 5237, March 23, 1997; 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).

As disclosed by the records of this case, Petitioner filed its administrative claim with the BIR on January 24, 1996 and the instant petition for review on April 14, 1997, well within the two-year period required by law **(Commissioner of Internal Revenue vs. Philippine American Life Insurance Co., G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 837736, January 15, 1992; ACCRA Investments Corp. vs. Court of Appeals, G.R. No. 96322, December 20, 1991).** These dates when reckoned from the date of filing of Petitioner's corporate annual income tax return for taxable year 1994 on April 17, 1995, fall within the two-year prescriptive period provided by Section 230 of the Tax Code, thus fulfilling the aforementioned first requirement.

As to the second requirement, it has been established that Petitioner declared the income from which the taxes were withheld in its income tax return covering the taxable year 1994. The rental income and the income from the sale of real properties form part of the miscellaneous income in the total amount of

P114,508,378.00 referred to in Schedule 2 of Petitioner's corporate income tax return (Exhs. HHH, HHH-2 and HHH-3). This was further proven by Petitioner's Statement of Income for the year 1994 (Exh. NNN) which was duly testified to by Mr. Melencio Vicente (TSN, August 5, 1997, pp. 18 to 19).

With regard to the third requirement, the fact of withholding was established by the copies of the statements duly issued by the withholding agents to the Petitioner as payee showing the amount paid and the amount of tax withheld therefrom. The proof of withholding is well established by the presentation of numerous Certificates of Creditable Income Tax Withheld at Source (BIR Form 1743-1750) showing the amount which is the subject of the herein claim was in fact withheld by the withholding agents (Exhs. A to FFF, inclusive, pp. 109 to 161, CTA records). Thus, Petitioner has satisfactorily proven its claim for refund/tax credit.

It is also unrebutted that Petitioner incurred losses in its business operations for the taxable years 1994 and 1995, thus, has no tax liability upon which to apply the creditable withholding taxes. However, after computing the total amount of creditable income taxes withheld at source excluding Exhibits Y and Z since no period were indicated therein and Exhibit SS since the withholding agent did not sign the certificate, the conclusion is that the total amount withheld is only P2,346,889.36 contrary to the claim of the Petitioner in the amount of P2,405,458.86.

Hereunder is a detailed computation of Petitioner's allowable refund:

Withholding Agent	Amount of Income Payment	Tax Withheld	Exh.
Rita A. Gusto	P 216,000.00	P 5,400.00	A
Henry Villarica	2,000,000.00	165,251.66	B
Amelia Go	2,514,600.00	167,640.00	C
Timothy C. Te	13,000,000.00	325,000.00	D
Gilda Leo Po	860,000.00	21,500.00	E
Ederlina G. Oliveros	90,000.00	2,250.00	F
Jacqueline de Lucia	2,000,000.00	95,050.00	G
Cresencia M. Cruz	11,046.40	552.32	H
Benjamin G. Legaspi	216,000.00	5,400.00	I
Estelito M. Mendoza	627,000.00	15,675.00	J
Aida M. Lucero	1,320,000.00	66,000.00	K
Vivian C. Ramos	120,000.00	8,750.00	L
Ely A. Jamo	162,000.00	9,180.00	M
William E. Caballero	224,000.00	5,600.00	N
Belen T. Lucero	310,650.00	15,532.50	O
Ester M. Co	216,000.00	10,800.00	P
Jacinto J. Decena	92,880.00	11,016.00	Q
Albert Malimban	183,600.00	9,180.00	R
Josephine L. Bon	300,000.00	15,000.00	S
Danilo Olmo	202,300.00	10,115.00	T
Martin R. Litten	500,000.00	29,312.50	U
Ong Ching Liong	351,850.00	8,796.25	V
Erlinda Raiz	183,600.00	4,590.00	W
Paolo C. San Mateo	144,000.00	3,600.00	X
Elvira Cabrito	475,200.00	11,880.00	AA
Natividad del Rosario	439,000.00	6,585.00	BB
Antonio Aligaen	342,000.00	5,130.00	CC
Marciame C. Gala	108,000.00	2,754.00	DD
Jose B. Interno	183,000.00	4,666.50	EE
Marildo D. Dimasangal	25,000.00	1,250.00	FF
Amelyn T. Ibugan	238,000.00	3,570.00	GG
Mary Aida Karen Queen Silveron	27,270.00	499.95	HH
Amelyn T. Ibugan	238,000.00	3,570.00	II
Ruben Diaz	224,580.00	3,368.70	JJ
Jerry Navarrete	6,112,000.00	831,231.20	KK
Carmelita Oligario	200,000.00	3,000.00	LL
Ng Tong Guan	2,293,872.00	57,346.80	MM

Angeles Sevilla-Guevarra	2,000,000.00	60,000.00	NN
Ruperto Matienzo	216,450.00	3,240.00	OO
Nonesio R. Rivera	3,200,000.00	160,000.00	PP
Norberto Nazareno	281,450.00	4,221.75	QQ
Rev. Fr. Luciano Bongcac	41,860.00	807.30	RR
Dante Daypuyart	700,000.00	21,000.00	TT
Eduardo Manuel	403,000.00	6,045.00	UU
JH Trading House Co.	300,000.00	15,000.00	VV
Lee Design Inds.	902,640.00	45,132.00	XX
Isla Communications Co.	490,350.00	24,517.50	YY
Soledad Q. Rianzares	10,681.20	534.06	XX
PBC Insurance Brokerage	46,665.65	2,333.27	AAA
Sun Holidays Inc.	533,040.00	26,652.00	BBB
Glaser Loans & Credit	44,507.00	2,225.35	CCC
PET & Pension Plans	19,395.00	969.75	DDD
Phil. Overseas Employ.	203,000.00	10,150.00	EEE
Stanley Sales	360,360.00	18,018.00	FFF
TOTAL REFUNDABLE TAX		₱2,346,889.36	

On the part of Respondent, he 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 **(Shangri-La Plaza Corporation vs. CIR, CTA Case No. 5346, January 9, 1998).**

All told, We find Petitioner's claim for refund/tax credit to be in order.

WHEREFORE, in view of the foregoing premises, Respondent is hereby **ORDERED** to **REFUND** in favor of Philippine Banking Corporation the total amount of

P2,346,889.36, representing unutilized creditable withholding taxes for the year 1994.

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