REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB LEASING & FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5749

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 04 2001

x - x

DECISION

This is a Petition for Review seeking for the refund of the amount of P3,817,343.00 allegedly representing unutilized excess creditable income taxes withheld at source for the taxable years 1996 and 1997.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at Far East Bank Center, Sen. Gil Puyat Avenue, Makati City.

On April 15, 1997, Petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Corporate Income Tax Return for the calendar year ended December 31, 1996, declaring a taxable income of P2,820,267.00 with a corresponding tax due in the amount of P987,093.00. The creditable income taxes withheld for the year 1996 in the amount of P5,481,307.00 was applied as tax credit against the tax due of P987,093.00, thereby resulting to an overpaid/refundable income tax of P4,494,214.00 which was reflected in its corporate income tax return for the calendar year ended December 31, 1996 as to be applied to the succeeding year (Exhibit A).

The amount of P4,494,214.00 as excess creditable withholding taxes for the year 1996 was carried-over to Petitioner's 1997 annual corporate income tax return which was filed on April 14, 1998. However, said amount was reduced by P676,871.00 representing tax credit adjustments. Thus, the amount of P3,817,343.00 was applied as tax credit for the year 1997 (Exhibit B-4).

However, Petitioner was not able to apply its prior year's excess tax credit of P3,817,343.00 as it suffered a net loss of P11,601,028.00 for the year 1997 (Exhibit B-1). Such excess tax credit was neither carried-over nor applied to the succeeding year 1998 as can be gleaned from Petitioner's 1998 annual corporate income tax return (Exhibit C).

On June 26, 1998, Petitioner filed an administrative claim for refund with the Appellate Division of the BIR National Office for the alleged excess creditable income taxes withheld in the amount of P3,817,343.00. Subsequently, Petitioner represented by SGV & Co., filed on March 17, 1999, an amended administrative claim with the BIR Revenue District Office No. 49, North Makati, alleging that the amount of P3,817,343.00 represents excess creditable withholding taxes for the years 1996 and 1997 (Annexes D and E, CTA Records, pp. 12-15).

Respondent did not act upon Petitioner's claim, hence, a judicial claim for refund was filed with this Court on March 26, 1999 pursuant to Section 7 of Republic Act No. 1125 and Sections 204 and 209 of the National Internal Revenue Code of 1997.

In answer to the instant Petition, Respondent raised the following Special and Affirmative Defenses, to wit:

> "5. Petitioner's claim for refund is under verification/investigation by respondent Commissioner of Internal Revenue;
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> 6. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
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> 7. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);
>
> 8. Taxes are presumed to have been paid and collected in accordance with law."

In order to substantiate its claim for refund, Petitioner submitted the following documents:

1. Annual Corporate Income Tax Returns for the years 1996, 1997 and 1998 (Exhibits A, B and C).
2. Monthly Remittance Return of Income Taxes Withheld for the months, December and September (certified true copy) of 1996, and February 1997 (Exhibits D, G and O).
3. Certificate Authorizing Registration (CAR) (Exhibits E, H, J and N).
4. Certified True Copies of Deeds of Absolute Sale (Exhibits F and P).
5. Capital Gains Tax Return/Application for CAR (Exhibit I).
6. Certification issued by Traders Royal Bank on the payment of expanded withholding tax [Exhibits K, L (on additional expanded withholding tax)].

7. Authority to accept payment (ATAP) on the payment of additional expanded withholding tax.

Respondent, on the other hand, did not present any controverting evidence and submitted the case for decision.

The issue brought before this Court for its consideration is whether or not Petitioner is entitled to the refund of its excess creditable withholding taxes for the years 1996 and 1997 in the amount of P3,817,343.00.

After a careful examination of the evidence presented, We rule in favor of the Petitioner.

Petitioner's claim for refund was anchored on Section 69 (now Section 76) of the National Internal Revenue Code, which provides, viz:

> **Section 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.

Before a claim for refund is granted, Petitioner must show proof of compliance with the following basic requirements provided under Revenue Regulations No. 12-94 and the prevailing jurisprudence on the matter:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 (now Section 229) of the National Internal Revenue Code;

2) The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3) The income upon which the taxes were withheld were included in the return of the recipient. (Revenue Regulations No. 12-94 amending Revenue Regulations No. 6-85; **Citibank N.A. vs, Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCSRA 957).**

Records of the case disclose that Petitioner filed its claim for refund with the Appellate Division of the BIR on June 26, 1998 and later on filed an amended claim for refund with the Revenue District Office No. 49, North Quezon City on March 17, 1999. The Petition for Review was then filed with this Court on March 26, 1999. These dates are well-within the two-year prescriptive period prescribed under Section 230 (now Section 229) of the National Internal Revenue Code reckoned from the dates of filing of Petitioner's 1996 and 1997 annual income tax returns on April 15, 1997 and April 14, 1998, respectively.

To prove the fact of actual withholding and remittance to the BIR of the creditable withholding taxes of P1,860,686.00 and P2,943,750.00 for the years 1996 and 1997, respectively, Petitioner presented the Monthly Remittance Returns (Exhibits D, G and O), Capital Gains Tax Return (Exhibit I), Bank Certifications (Exhibits K and L) and the Authority to Accept Payment (Exhibit M) which actually pertain to the creditable withholding taxes on its sale of real properties for the aforementioned years. Moreover, the sale of its real properties were evidenced by the Deeds of Absolute Sale (Exhibits F and D) and Certificates Authorizing Registration (Exhibits E, H, J and N).

Revenue Regulations No. 6-85, as amended, requires the submission of the Certificates of Creditable Tax Withheld at Source, however, it does not preclude the claimant/Petitioner from presenting other proofs of actual payment/remittance of the claimed creditable withholding taxes **(Tierra International Construction vs. Commissioner of Internal Revenue, CTA Case No. 5626, dated June 7, 2000).**

Notwithstanding the non-submission by Petitioner of the Certificates of Creditable Tax Withheld at Source, Petitioner has nevertheless proven the actual withholding and remittance to the BIR of the creditable withholding taxes of P1,860,686.00 and P2,943,750.00, or a total of P4,804,436.00. Thus, the second requirement was also complied with.

Requirement number three (3) was likewise complied with by the Petitioner's presentation of exhibit Q which clearly illustrated the breakdown of its Miscellaneous Income in the total amount of P27,684,444.00 as reported in its 1996 Annual Corporate Income Tax Return which included the gain/profit realized from its sale of real properties amounting to P24,208,814.00. Inasmuch as Petitioner is primarily engaged in financing and leasing and that the properties sold represent properties repossessed from clients who no longer meet their obligations to the former, the gain/profit therefrom is considered as ordinary income of Petitioner.

In fine, Petitioner has complied with all the requirements for the grant of its claim for refund.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the entire claim for refund in the amount of P3,817,343.00 representing excess creditable withholding taxes for the years 1996 and 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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