REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PILIPINAS MAINTENANCE SERVICES CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 6072**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated
JUL 1 1 2002

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DECISION

This case involves a judicial claim for refund of petitioner's alleged unutilized and unapplied withholding taxes as of December 31, 1997 in the amount of P602,331.00.

The facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at EDSA corner Madison Street, Mandaluyong City and the respondent is the head of the Bureau of Internal Revenue (BIR) and holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During the taxable year 1996, various customers/clients and payors of the petitioner, as withholding agents, withheld certain percentage on income payments to the latter. The tax withheld and remitted to the Government amounted to FIVE HUNDRED NINETEEN THOUSAND FIVE HUNDRED FOURTEEN PESOS (P519,514.00)

(Exhibit "A-2"). However, the tax due from the petitioner for that taxable year was only THREE HUNDRED EIGHTY THOUSAND NINE HUNDRED SIXTY EIGHT PESOS (P380,968.00), leaving an unutilized or excess creditable withholding tax in the amount of ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED FORTY SIX PESOS (P138,546.00) (Exhibit "A").

Again, during the taxable year 1997, petitioner's customers/clients withheld certain percentage on income payments to petitioner and remitted the same to the Government. But since petitioner ended up in a net loss position on that year, all creditable withholding taxes were unutilized. The excess creditable withholding taxes amounted to SIX HUNDRED TWO THOUSAND THREE HUNDRED THIRTY ONE PESOS (P602,331.00) (Exhibits "B" and "B-2"). On April 15, 1998, petitioner filed its annual income tax return for the year 1997 (Exhibits "B" to "B-2"), declaring a loss of P5,919,243.00.

On January 17, 2000, petitioner filed its claim for tax refund in the amount of P602,331.00 allegedly representing its excess tax credit as of December 31, 1997 (Exhibit "C"). In its letter to the Appellate Division of the Bureau of Internal Revenue, petitioner stated that it has closed its business operations on February 28, 1998.

Considering that petitioner has closed its business operations on February 28, 1998 and the prescriptive period would expire on April 14, 2000, the instant Petition for Review was filed with this Court on April 14, 2000.

In his Answer filed on May 26, 2000, respondent countered by raising the following Special and Affirmative Defenses, to wit:

"1. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;

2. Claims for refund are construed strictly against the taxpayer. Petitioner has no cause of action."

The issue We are tasked to resolve is whether or not petitioner is entitled to the claim for refund in the amount of P602,331.00 representing its alleged unutilized and unapplied withholding taxes for the taxable year 1997, on the basis of the evidence presented.

To prove its case, petitioner submitted its income tax returns for the years 1996 and 1997, its letter-claim for refund filed with the BIR on January 17, 2000 and its Certificates of Creditable Tax Withheld at Source for the years 1996 and 1997. On the other hand, respondent failed to submit his memorandum and was considered to have waived his right to present evidence.

After considering the attending facts, jurisprudence and laws applicable in this case and upon careful examination of evidence adduced solely by petitioner, We find the petitioner entitled to a partial refund.

In order to be entitled to a refund of unapplied creditable income tax paid, the taxpayer-claimant must prove compliance with the following three (3) basic requirements:

- That the claim for refund was filed within the two-year prescriptive period provided under **Section 204 (3)** [now **Section 204 (C)**] in relation to **Section 230** [now **Section 229**] of the Tax Code, as amended;

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- That 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

- That 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, NA vs. Court of Appeals and Commissioner of Internal Revenue**, 280 SCRA 459 & **ACCRA Investments Corporation vs. The Hon. Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals**, 204 SCRA 957].

Going to the first requirement, the 1997 ITR was filed on April 15, 1998 while the administrative claim for refund and this petition for review were filed on January 7, 2000 and April 14, 2000, respectively. Clearly, petitioner was able to file its administrative and judicial claims well within the two-year prescriptive period counted from the date of filing of its 1997 income tax return.

As to the second requirement, petitioner was able to present copies of certificates of creditable taxes withheld for 1996 and 1997 duly issued by its withholding agents, showing the amount of income as basis of withholding and the corresponding amount of taxes withheld. The 1997 copies of certificates of creditable taxes withheld presented by the petitioner validly support its claim for refund for taxable year 1997. However, the 1996 certificates of withholding are outside of the period covered by the subject claim for refund. Consequently, the same are barred by prescription. (**Philippine Airlines, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 5915, April 10, 2001). Thus, only the certificates showing creditable taxes withheld in 1997 shall be considered as valid support for petitioner's claim for refund, to wit:

Exhibit	WITHHOLDING AGENT	TYPE OF INCOME		INCOME PAYMENT		TAX WITHHELD
F	Pangasinan Five Star Bus Co., Inc.	Payment on purchases of goods	P	1,167,986.00	P	11,679.86
F1	Pangasinan Five Star Bus Co., Inc.	Payment on purchases of goods		180,016.00		1,800.16
F2	Pangasinan Five Star Bus Co., Inc.	Payment on purchases of goods		549,934.00		5,499.34
I3	Pilipinas Transport Industries, Inc.	Payment on purchases of goods		1,374,573.00		13,745.73
H1	Pilhino Sales Corporation	Payment on purchases of goods		38,909.00		389.09
H2	Pilhino Sales Corporation	Payment on purchases of goods7		60,454.09		604.54
H3	Pilhino Sales Corporation	Payment on purchases of goods		138,535.29		1,385.35
J1	Pilipinas Hino Incorporated	Payment on purchases of goods		279,403.00		2,794.03
J2	Pilipinas Hino Incorporated	Payment on purchases of goods		782,588.00		7,825.88
J3	Pilipinas hino Incorporated	Payment on purchases of goods		5,386,825.00		53,868.25
K	SR Santiago Const. Inc.	Supplier		29,800.00		270.91
	TOTAL		**P**	**9,989,023.38**	**P**	**99,863.14**
D	ICC LEASING & FIN. CORP.	Payment to contractors		30,000.00		300.00
E	Motor Mall Corporation	Payment to contractors		20,000.00		200.00
H	Pilipino Sales Corporation	Payment to contractors		356,363.00		3,563.63
I1	Pilipinas Transport Industries, Inc.	Payment to contractors		2,628,947.00		26,289.47
I2	Pilipinas Transport Industries, Inc.	Payment to contractors		2,411,162.00		24,111.62
H1	Pilhino Sales Corporation	Payment to contractors		181,615.00		1,816.15
H2	Pilhino Sales Corporation	Payment to contractors		759,091.09		7,590.91
H3	Pilhino Sales Corporation	Payment to contractors		930,181.00		9,301.81
J	Pilipinas Hino Incorporated	Payment to contractors		6,151,612.00		61,516.12
J1	Pilipinas Hino Incorporated	Payment to contractors		1,657,609.00		16,576.09
J2	Pilipinas Hino Incorporated	Payment to contractors		9,420.00		94.20
G	Peakson Bulk Sales	Contractor's Fee		2,092.71		20.93
G1	Peakson Bulk Sales	Contractor's Fee		2,988.18		29.88
J3	Pilipinas hino Incorporated	Payment to contractors		9,420.00		94.20
	TOTAL		**P**	**15,150,500.98**	**P**	**151,505.01**
J1	Pilipinas Hino Incorporated	Prof Talent fees		107,970.00		5,398.50
J	Pilipinas Hino Incorporated	Prof Talent fees		107,970.00		5,398.50
J2	Pilipinas Hino Incorporated	Prof/Talent fees		107,970.00		5,398.50
J3	Pilipinas Hino Incorporated	Prof/Talent fees		107,970.00		5,398.50
	TOTAL		**P**	**431,880.00**	**P**	**21,594.00**
H	Pilipino Sales Corporation	Rental of Real Property		1,472.80		73.64
I	Pilipinas Transport Industries, Inc.	Rental of Real Property		252,939.60		12,646.98
I	Pilipinas Transport Industries, Inc.	Rental of Real Property		406,422.20		20,321.11
I2	Pilipinas Transport Industries, Inc.	Rental of Real Property		265,586.80		13,279.34
I3	Pilipinas Transport Industries, Inc.	Rental of Real Property		278,233.80		13,911.69
H1	Pilhino Sales Corporation	Rental of Real Property		1,472.80		73.64
H2	Pilhino Sales Corporation	Rental of Real Property		3,042.62		152.18
H3	Pilhino Sales Corporation	Rental of Real Property		13,351.77		670.09
J	Pilipinas Hino Incorporated	Rental of Real Property		248,707.80		12,435.39
J1	Pilipinas Hino Incorporated	Rental of Real Property		192,498.40		9,624.92
J2	Pilipinas Hino Incorporated	Rental of Real Property		248,425.60		12,421.28
J3	Pilipinas Hino Incorporated	Rental of Real Property		273,578.20		13,678.91
	TOTAL		**P**	**2,185,732.39**	**P**	**109,289.17**
I1	Pilipinas Transport Industries, Inc.	Commission			**P**	**12,646.98**

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Settling the third requirement, upon careful scrutiny of the copies of the 1997 certificates of taxes withheld, the Court could not determine with certainty if the entire income upon which the taxes were withheld were really included in its 1997 income tax return since there was no schedule shown or explanation on the part of the petitioner regarding the composition of its income as shown in its ITR for taxable year 1997.

The petitioner's 1997 ITR (Exhibit B, inclusive of submarkings), indicates that the gross income from sales of goods and various income (which were subjected to withholding taxes) amount to P57,177,957.00 and P2,279,593.00, respectively. If we compare the aforementioned amounts with the income payment reflected in the table above, we can deduce that the income received from the "payments on purchase of goods by Government and top 5000 corporation" in the total amount of P9,989,023.38 was included in the gross income declared under sales of goods in the amount of P57,177,957.00 as reflected in the 1997 ITR.

However, the income payments received from contractors/contractors fee, professional/talent fees, rental of real property and commission cannot be traced from among the income declared in the 1997 return. There was no such income payment reflected in the said return. Worse, petitioner gave no explanation as to the composition of the revenue so declared.

Petitioner has the burden of proving that it is entitled to the refund sought for because taxes are presumed to have been collected in accordance with laws and regulations (**Caltex, Philippines, Inc. vs. CIR**, CTA Case No. 2871, 29 January 1986). Moreover, claim for refund is in the nature of a claim for exemption and should be

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construed in *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd.**, 244 SCRA 332). To say the least, the same cannot be allowed unless granted in the law explicitly and in categorical language and proven by clear, convincing and overwhelming evidence.

In sum, petitioner has sufficiently proved its claim for refund but only to the extent of P99,863.14, representing tax withheld on purchases of goods for the taxable year 1997 (Exhs. "F" to "K").

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner the amount of P99,863.14.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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

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