REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AF HOLDINGS AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4529

3/16/93

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - x

D E C I S I O N

This is a simple claim for refund by petitioner in the amount of P3,508.32 representing creditable taxes withheld from income payments in the calendar year 1988.

This case at hand has been submitted for decision based on the pleadings and records of this case, sans the memorandum of both parties. The facts of the case are stated in the opinion of the petitioner, thus:

> 2. For the calendar year 1988, petitioner filed an annual income tax return, a copy of which is hereto attached as Annex "A" and made an

integral part of this petition, showing a refundable amount of P17,681.00 representing current (P6,500.00) and prior (P13,004.00) year's creditable taxes withheld. Petitioner applied for a refund of P13,000.00 of the prior year's excess creditable tax leaving a balance of P4.00 which it applied against its tax liability for 1988. Petitioner likewise applied against its 1988 and 1989 tax liabilities the current excess creditable tax of P6,500.00 leaving a refundable balance of P3,508.32.

3. On December 7, 1990, petitioner filed a claim for refund of P3,508.32 with the respondent; a copy of the aforesaid claim is hereto attached as Annex "B" and made an integral part of this petition for review.

4. The prescriptive period for refunds for 1988 will expire on December 30, 1990 but respondent has not been able to process the aforesaid claim; this petition for review is being filed to interrupt said prescriptive period.

Hence, this petition for review.

By way of special and affirmative defenses, respondent objected to the petition for review filed by the petitioner stating, among others, that "the petition states no cause of action as it does not allege the date/s when the alleged taxes withheld sought to be refunded were actually paid (Manufacturer's Bank and Trust Co., as Trustee of Gen. Trust Plan v. Comm. of Int. Rev., CTA Case No. 1059, Nov. 19, 1965)." Moreover, "in a claim for refund, it is incumbent upon petitioner to show that it is entitled thereto, otherwise, failure on the part of petitioner to prove the same is fatal to its claim for refund." And lastly, "claims for refund," according to the respondent, "are construed against the claimant for it partakes of the nature of exemption from taxation (Comm. of Int. Rev. v. Ledesma, G.R. No. L-17509, Jan. 30, 1970, 31 SCRA 95).

Confident of the weakness of the petitioner's case, counsel for the respondent manifested in open court on June 25, 1992 which later on was granted by the Court, that "she is submitting her case for decision on the basis of records and pleadings <u>without</u> the necessity of filing her memorandum." (See remarks of the Executive Clerk of Court, CTA record, p. 33.)

The petitioner, however, submitted and offered as evidence the following exhibits, to wit:

> 1. "Exhibit 'A' - which is the income tax return of the taxpayer for the calendar year ending December 31, 1988, including the financial statements prepared by Joaquin Cunanan and Co. <u>Purpose</u>: to show that in that year the taxpayer filed an income tax return showing an income tax due of P1,823.00, various creditable taxes withheld of P6,500.00";

> 2. "Exhibit 'B' and 'B-1' which are the certificates of creditable taxes withheld at source, to show that Paseo Realty and Development Corporation in paying a management fee of P3,250.00 per semester in 1988, withheld a total amount of P6,500.00 from the payments due to the taxpayer. . ."
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> 3. "Exhibit 'C' and 'C-1' to show that the taxpayer filed a claim for refund on December 12, 1990." (T.S.N., pp. 12-13, Hearing of Oct. 22,1991.)

The counsel for respondent, on the other hand, objected to the purposes for which the above exhibits were being offered or the grounds relied upon by the petitioner on this claim for refund. She averred that if ever there really was a withholding in the total amount of P6,500.00, "the best evidence of payment and remittance of which are the Central Bank confirmation receipts." (T.S.N., p. 14, Hearing of Oct. 22, 1991.)

The evidences at hand hardly gives us a legal ground not even a logical one to grant the claim for refund as prayed by the petitioner. The amount of P3,508.32 is not even reflected in any and all of the evidences offered by the petitioner. We cannot just make our own wild conjectures as to how the amount was arrived at wanting the necessary supporting documents. Of course, the petitioner does not expect this Court to go beyond evaluating evidences which are only at hand. In short, the claim for refund falls under the category of mere self-serving stipulations advanced by the petitioner. In a claim for refund, as pointed out by the respondent, it is incumbent upon the petitioner to show that it is entitled thereto, otherwise, failure on its part to prove the same is fatal to its claim for refund. This is true since claims for refund are construed strictly against the claimant for it partakes of the nature of exemption from taxation. (Comm. of Int. Rev. v. Ledesma, G.R. No. L-17509, Jan. 30, 1970, 31 SCRA 95.) In the hearing of this case on October 22, 1991, petitioner averred that a part of the P6,500.00 creditable tax withheld in 1988 was partially applied to its income liability in 1989. However, the 1989 income tax return was never presented for proper evaluation and identification. Such documents are wanting in support of the petitioner's case.

IN VIEW OF THE FOREGOING, this Court hereby DENIES the claim for refund by the petitioner for

lack of merit.

SO ORDERED.

Quezon City, Metro Manila, March 16, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation between 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