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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAWORLD PROPERTIES PHILIPPINE CORPORATION (Formerly: Marina Properties Corporation, Asiaworld Properties Corporation, Asiaworld Properties Philippines Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 5980

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 05 2001

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DECISION

The case at bar seeks the refund/tax credit of the amount of P4,803,045.73 allegedly representing Petitioner's unutilized/excess creditable withholding tax for the taxable year 1997.

As represented, Petitioner is a corporation duly organized and existing under Philippine laws, with office address at Asiaworld City, Aguinaldo Boulevard, Parañaque City. It is habitually engaged in the real estate business, a certified member of the Chamber of Real Estate and Builders Association, Inc. (CREBA) and is licensed by the Housing and Land Use Regulatory Board (HLURB) [Joint Stipulation of Facts, p. 76, docket].

On April 15, 1998, Petitioner filed with Urban Bank-Parañaque office its Corporation Annual Income Tax Return for the calendar year ended December 31, 1997

(Exhibit A), which reflected a taxable income of P2,377,206.00, a tax due of P832,022.00, a creditable withholding tax in the amount of P5,635,067.73 and a tax overpayment/excess withholding tax amounting to P4,803,045.73.

The said tax overpayment/excess tax withheld amounting to P4,803,045.73 was not carried over by Petitioner to the succeeding taxable year 1998 (Exhibit B-3).

On December 9, 1999, within the two (2) year prescriptive period, Petitioner filed with the BIR an administrative claim for refund of its tax overpayment/excess creditable taxes withheld for the calendar year ending December 31, 1997 in the total amount of P4,803,045.73 (Paragraph 5, Joint Stipulation of Facts, pages 76 & 77, docket; par. 3, Answer).

The same was not acted upon by Respondent, hence, in order to suspend the running of the two-year prescriptive period within which to file a judicial claim for refund, Petitioner filed the instant Petition for Review with this Court on December 24, 1999, pursuant to Sections 204 (C) and 229 of the 1997 Tax Code which provides as follows:

> "**SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> "(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided,*

however That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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"**SEC. 229.** *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

"In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

On the other hand, Respondent raised in his Answer the following Special and Affirmative Defenses, to wit:

"4. The Petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

5. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35*);

6. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (*Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304*);

7. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

8. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

During the hearing of the case, Petitioner offered in evidence among others, its Income Tax Returns for calendar years 1988 to 1998, inclusive (Exhibits C, SS, D, TT, E, F, UU, G, H, A & B); Withholding Tax Remittance Return (BIR Form 1606) (Exhibits I to X, inclusive); Certificate of Creditable Tax Withheld at Source – BIR Form 2307 (Exhibits Y, Z, AA, BB); Schedule of Creditable Withholding Tax for 1997 (Exhibits CC, LL, LL-3); Schedule of Sales (Exhibits DD, EE, FF, GG, HH, II, JJ, & KK); Schedule of Other Income (Expense) (Exhibits "MM" & "MM-3"); BIR Certification on the actual receipt of the Government of the payment of said taxes (Exhibit "NN"); as well as the SEC Certificate of Registration (Exhibits OO, PP, QQ & RR).

Respondent on his part did not present any testimonial or documentary evidence to dispute the claim for refund of Petitioner and merely submitted this case for decision based solely on the evidence adduced by the Petitioner.

Thus, the pivotal issue that comes to fore for our consideration is: WHETHER OR NOT PETITIONER HAS PROVEN THE LEGAL AND FACTUAL COMPONENTS OF ITS CLAIM FOR REFUND FOR THE YEAR 1997.

We rule in the affirmative. Records show that Respondent did not present any countervailing evidence against the claim for refund of Petitioner. Thus, what is left to be done is to see whether Petitioner has complied with the requirements of a refund for overpaid income tax/excess creditable withholding tax.

The legality of the Petitioner's claim for refund is well established under Section 58 (D) and Section 69 (now Section 76) of the Tax Code, to wit:

> "**SEC. 58.** *Returns and Payments of Taxes Withheld at Source.* –
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> "(D) *Income of Recipient.* – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
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> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.

> "**SEC. 69**. *Final Adjustment Return.* – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar 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:
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> (a) Pay the excess tax still due; or
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> (b) Be refunded the excess amount paid, as the case may be.
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> 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."

Inasmuch as Petitioner's Corporate Income Tax Return (ITR) for 1997 (Exhibit A-3) reveal that there was an unutilized/excess creditable withholding tax (CWT) for the year 1997 and considering that the said excess CWT were opted by Petitioner to be refunded for the year 1997 (Par. 5, Joint Stipulation of Facts), and further considering that the said excess CWT was not carried over to the succeeding year 1998 (Exhibit B-3) it is clearly entitled to its claim for refund pursuant to paragraph (b) of Section 69, *supra*.

Thus, what remains is the determination of whether or not Petitioner has satisfied the factual requisites of its claim for refund in the total amount of P4,803,045.73.

In a litany of cases, such as **Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case Nos. 4134 and 4046, dated November 11, 1991 and February 24, 1993**, respectively; **FEB Investments, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5353, August 22, 1997**; **Oranbo Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5335, July 24, 1998**; **AP Industrial Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5360, January 20, 1999**, this Court ruled that the requisites required for the grant of refund when the creditable withholding tax is in excess of the amount of tax due consist of the following, to wit:

1. That the taxpayer filed a claim for refund within the two (2) year period as prescribed under Section 230 (now 229) of the Tax Code;

2. That it was shown on the return of the recipient that the income payment received was declared as part of the gross income (Sec. 10, Revenue Regulations No. 6-85, **ACCRA Investment Corp. vs. Court of Appeals, 204 SCRA 957**);

3. That the fact of withholding is established by a copy of a statement (BIR Form No. 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

These aforementioned requirements were affirmed by the Supreme Court in the case entitled **Citibank N.A. vs. Court of Appeals, et al., G.R. No. 107434, October 10, 1997, 280 SCRA 459**.

There is no doubt as to the timeliness of the instant petition. The Supreme Court in the case of **Commissioner of Internal Revenue vs. Asia Australia Express, Ltd., G.R. No. 85956 promulgated on April 10, 1989**, ruled that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of filing of the adjusted final tax return (**ACCRA Investment Corp. vs. Court of Appeals**, *supra*). Records show that Petitioner seasonably filed its administrative claim for refund with the Respondent's bureau on December 9, 1999 (par. 3, Answer) and its Petition for Review with this Court on December 24, 1999, well within the two-year prescriptive period provided under the Tax Code, reckoned from the date of the filing of its 1997 ITR on April 15, 1998 (Exhibit A).

With regard to the second requisite, We find merit in Petitioner's submission that the income subjected to the withholding tax was included in its 1997 gross income. The fact that Petitioner's income (Realized Gross Profit on Installment Sales) from which the creditable income taxes were withheld had been declared as part of its gross income is clear from Section C of its Corporation Annual Income Tax Return for the taxable year 1997 (Exhibit A-5). The rental income was likewise declared by Petitioner as part of its Other Income for 1997 (Exhibits MM & MM-3).

As regards the third requisite, Petitioner complied with the same when it submitted in evidence its Withholding Tax Remittance Returns for 1997 and its Certificates of Creditable Tax Withheld at Source duly issued by the income payor (withholding agent) to Petitioner, showing the amount of income paid and the amount of tax withheld therefrom (Exhibits I to BB), enumerated and tabulated under Exhibit CC.

The said creditable withholding taxes for 1997 amounting to P5,635,067.73 was actually remitted to the Bureau, as per the Certification issued by the Chief of the Revenue Accounting Division of the BIR (Exhibit NN).

Thus, taking into account the above findings and the Respondent's failure to controvert or dispute the documentary and testimonial evidence of Petitioner and considering further the explicit provisions of Section 51 (f) [now 58 (D)] of the Tax Code, which states that any excess of the amount of tax so withheld over the tax due on the taxpayer's return should be refunded, the Court has no other recourse but to grant the tax credit/refund prayed for by the Petitioner in the instant Petition for Review.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE a TAX CREDIT CERTIFICATE** in favor of herein Petitioner in the amount of P4,803,045.73 representing the latter's unutilized/excess creditable withholding tax for the year 1997. No costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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