Lt.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIANBANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5795

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 08 2000

x - x

DECISION

This Petition for Review filed on April 15, 1999, prays among others for the refund or issuance of a tax credit certificate amounting to One Hundred Three Thousand One Hundred Twenty Six Pesos (P103,126.00), allegedly representing overpaid creditable withholding tax for calendar year ending December 31, 1996.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines and is engaged in the banking business. Its principal office is located at Asianbank Center, Sen. Gil J. Puyat Avenue, Makati City.

As can be gleaned from the records of the case, Petitioner Asian Bank Corporation, and Respondent Commissioner of Internal Revenue entered into a Joint Stipulation of Facts and Issues (CTA docket, p. 106 and 107) and arrived at the following facts and issues as set forth below:

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STATEMENT OF FACTS

1.01 Petitioner seasonably filed on April 15, 1997 with the Bureau of Internal Revenue (BIR) its Corporate Annual Income Tax Return for the calendar year 1996 reporting a net loss in the amount of Three Hundred Forty Nine Thousand Eight Hundred Eighty Six Pesos (P349,886.00);

1.02 Petitioner duly filed with the BIR its Corporate Annual Income Tax Return for calendar year 1997 on April 16, 1998 showing a net loss in the amount of Sixteen Million One Hundred Sixty Three Thousand four Hundred Twenty Pesos (P16,163,420.00);

1.03 Petitioner filed an administrative claim for refund and/or tax credit of overpaid income taxes for calendar year 1996 with the BIR on March 17, 1999;

1.04 Up to the filing of this Joint Stipulation of Facts, Respondent has not yet formally acted on the said application for refund and is still under investigation.

STATEMENT OF ISSUES

2.01 Whether or not Petitioner has overpaid income tax for the calendar year ended December 31, 1996 in the amount of P103,126.00; and

2.02 Whether or not the said overpaid income taxes are substantiated by evidence.

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

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau.
>
> 5. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected.
>
> 6. The amount of P103,126.00 being claimed by petitioner as alleged overpaid creditable withholding tax for calendar year ending December 31, 1996 was not properly documented.
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> 7. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit.
>
> 8. It is an elementary rule that claims for tax refund/credit are construed in strictissimi juris against the taxpayer as they partake the nature of exemption from tax.

In order to establish its claim for refund, Petitioner presented the following documentary evidence, to wit:

Exhibit	Description
A	1996 Corporation Annual Income Tax Return (BIR Form No. 1702)
B, C	Certificates of Creditable Tax Withheld at Source for taxable year 1996 (BIR Form No. 1743-750)
D	1997 Corporate Annual Income Tax Return (BIR Form No. 1702)
E	1998 Corporate Annual Income Tax Return (BIR Form No. 1702)

In its memorandum, Petitioner explained that the amount of P103,126.00 representing the reported 1996 creditable withholding tax was not utilized since Petitioner incurred a net loss in calendar year 1996 amounting to P349,886.00 (Exh. A-1). Said amount was not likewise utilized for the 1997 income tax liabilities since Petitioner ended said year at a net loss position for the taxable year 1997 (Exh. D-2). Petitioner also ended taxable year 1998 at a net loss position, hence, up to this time said amount allegedly remained unutilized.

In ventilating its case to this Court, Petitioner draws its legal strength on Section 69 and Section 51(a)(b)(c)(d) of the National Internal Revenue Code [Section 76 and Section 58(A)(B)(C)(D), respectively of the NIRC of 1997], which for easy reference is hereunder quoted as follows:

> **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.
>
> **Section 51. - Returns and Payment of Taxes Withheld at Source. –**
>
> (A) *Quarterly Returns and Payments of Taxes Withheld.* - Taxes deducted and withheld under Section 57 by withholding agents shall be

covered by a return and paid to, except in cases where the Commissioner otherwise permits, an authorized Treasurer of the city or municipality where the withholding agent has his legal residence or principal place of business, or where the withholding agent is a corporation, where the principal office is located. The taxes deducted and withheld by the withholding agent shall be held as a special fund in trust for the government until paid to the collecting officers. The Commissioner of Internal Revenue may, with the approval of the Minister (now Secretary) of Finance, require these withholding agents to pay or deposit the taxes deducted or withheld at more frequent intervals when necessary to protect the interest of the government. The return for final withholding tax shall be filed and the payment made within twenty-five (25) days from the close of each calendar quarter, while the return for creditable withholding taxes shall be filed and the payment made not later than the last day of the month following the close of the quarter during which withholding was made.

(B) *Statement of income payments made and taxes withheld.* – Every withholding agent required to deduct and withhold taxes under Section Fifty-three shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

(C) *Annual returns.* - Every withholding agent required to deduct and withhold taxes under Section 50 shall submit to the Commissioner of Internal Revenue a reconciliation statement of quarterly payments and list of payees and income payments. In the case of final withholding taxes, the return shall be filed on or before January 31 of the succeeding year, and for creditable withholding taxes, not later than March 1 of the year following the year for which the annual report is being submitted. This return, if made and filed in accordance with regulations approved by the Secretary of Finance, shall be sufficient compliance with the requirements of Section 61 of this Title in respect to the income payments.

The Commissioner may, by regulations, grant to any withholding agent a reasonable extension of time to furnish and submit the return required in this subsection.

> (D) *Income of recipient.* - Income upon which any creditable tax is required to be withheld at the source under Section 50 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 49.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing 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.

With regard to the first stipulated issue of whether or not Petitioner has overpaid income tax for the calendar year ended December 31, 1995, We rule in the affirmative. It is apparent from the evidence on record that Petitioner incurred successive net operating losses from its business undertakings for calendar years 1996, 1997 and 1998. The income tax payments arising from creditable withholding tax at source remain unapplied, hence, it appears that Petitioner is legally entitled to the refund sought. However, Petitioner must still prove its entitlement to the refund by pertinent and substantial evidence.

This brings us now to the second stipulated issue of whether or not the overpaid income taxes are substantiated by evidence.

A refund of unutilized creditable income tax shall be granted if there is compliance with the three basic requirements set forth in Section 10 of Revenue Regulations No. 6-85. Compliance with these requirements has been reiterated in a number of cases decided by this Court, namely: **Citytrust Finance Corp. vs. CIR, CTA Case No. 4143, November 11, 1991; Oranbo Realty Corporation vs. CIR, CTA Case No. 5082,**

January 16, 1997; Ayala vs. CIR, CTA Case No. 5081, March 31, 1997 and Anscor Insurance Brokers, Inc. vs. The CIR, CTA Case No. 5481, April 21, 1999, and further affirmed by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

Thus, to be entitled to a refund, the following requirements have to be met:

1.) That the claim for refund was filed within the two (2) year period prescribed under Section 230 (now Section 229) of the National Internal Revenue Code;

2.) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3.) That the income upon which the taxes were withheld were included in the return of the recipient.

Records show that Petitioner filed a claim for refund with the BIR on March 17, 1999 and with this Court on April 15, 1999. Clearly, both dates are within the two-year prescriptive period as mandated by Section 230 (now 229) of the Tax Code. The Supreme Court in the case of Commissioner of Internal Revenue vs. Asia Australia Express Ltd., G.R. No. L-85956, April 10, 1989, held 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 (see also ACCRA Investments Corp. vs. CIR, G.R. No. 96322, dated December 20, 1991, 204 SCRA 957) because it is only then that Petitioner can ascertain whether it made profits or incurred losses in its business operations. In the instant case, Petitioner filed its Corporate Annual Income Tax Return on April 15, 1997. Thus, using this as the reckoning date from which the two-year period is to be counted, it would show that the two-year reglementary period had not yet lapsed, thereby showing compliance with the aforementioned requirement number one.

In his memorandum, Respondent raised the issue of Petitioner's non-compliance with the aforementioned second and third requirements, to wit:

> "However, the Certificates of Creditable Tax Withheld at Source submitted by petitioner pertain to rentals of real property. Schedule 1 of the Annual Income Tax Return of petitioner for 1996 does not reflect that the rental income was included as part of the gross income appearing in Section A of the said return. Verily, the income of petitioner coming from rent of real property upon which the creditable taxes withheld were based was not duly reflected. It is then submitted that petitioner failed to comply with the second and third requirements, hence, not entitled to the refund.
>
> Moreover, from the documents submitted by the petitioner it is apparent that there exists a discrepancy between the total withholding taxes reported in the return which petitioner is claiming to be refundable and those which had been actually withheld by the agents. The certificates submitted do not really correspond to the amount being sought to be refunded."

A scrutiny of the records of this case would indicate compliance with the second requirement by Petitioner's submission of the various Certificates of Creditable Income Tax Withheld at Source. The proof of withholding is well established by these certificates which show that the amount, subject of the claim was in fact withheld by the withholding agents and remitted to the BIR (Exhibits B and C). However, We are inclined to reduce the amount claimed because the only ones duly substantiated are the following income tax payments, thus:

Exhibit	Source of Income	Income Payment	Tax Withheld
B	Rental Income	P 702,515.70	P35,125.80
C	Rental Income	1,200,000.00	60,000.00
	TOTAL	P1,902,515.70	P95,125.80

As to whether or not Petitioner included the income from which the taxes were withheld in the gross income, We are convinced that Petitioner sufficiently met this requirement.

During the hearing of November 11, 1999, Petitioner presented its Assistant Manager, Mr. Edwin A. Cruz, who testified that the rental income which is being questioned by the Respondent was included and duly declared in Petitioner's 1996 annual income tax return (Exhibit 4). Portions of the testimony of Mr. Cruz are hereunder quoted, thus:

"Q: Mr. Witness, are the Income Provision where taxes were withheld included in the Gross Income of the Petitioner for 1996?

A: Yes, they are.

Q: What is your proof for saying so?

A: It is shown in our ITR for the year 1996.

Q: Can you point at the said portion?

Atty. Molina: (The witness is pointing at the portion of page 1 of Section A – Items of Gross Income). May we request that this portion of Section A page 1 be encircled and marked as Exhibit "A-4" for the Petitioner.

Judge De Veyra: Mark it. (Executive Clerk so marks.)

x x x x x x x x x

(TSN, pp. 17-18, November 11, 1999)

While a perusal of Petitioner's 1996 Income Tax Return does not specifically indicate the word rental income but categorizes only Gross Income into two, thus:

Interest Income	P 920,499,322.00
Others	148,944,637.00
T O T A L	P1,069,443,959.00

we still give credence to the testimony of Petitioner's witness that the rental income was already included as part of the gross income appearing in Section A of the Income tax return. The witness, being the assistant manager of the Petitioner is the one who is in charge of the Books of the Bank and has the custody of Petitioner's tax records and monetary tax claim. Therefore, he has the knowledge and the capacity to testify that the income from which the taxes were withheld were included as part of the gross income declared in the 1996 Corporate Annual Income Tax Return. It is likewise worthy to mention that during the hearing of November 11, 1999, Respondent was given a chance to cross –examine the witness, but he elected not to do so. Hence, We are inclined to adopt the testimony of Petitioner's witness as these were made under oath with an imminent penalty of perjury. Furthermore, Respondent never controverted said testimony nor presented proofs which could undermine the statement of Petitioner's witness. In fine, We still uphold the veracity and truthfulness of the figures contained in the Petitioner's income tax return.

Although Petitioner was able to furnish this Court with the required Certificates of Creditable Taxes Withheld at Source, We are inclined to grant only the amount fully substantiated and disallow the remaining amount that are not properly supported. Thus, out of the total original claim of P103,126.00, only P95,125.80 can be refunded to the Petitioner.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** to the Petitioner the reduced amount of P95,125.80 as unutilized creditable withholding tax for calendar year ending December 31, 1996.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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