REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAWORLD PROPERTIES PHILIPPINES CORPORATION (Formerly Marina Properties Corporation),
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5451

Promulgated:
FEB 15 1999

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DECISION

This case involves a judicial action for the refund of the sum of ₱12,248,856.00, representing overpaid income tax for the calendar year ended December 31, 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines. It is engaged in the real estate business which includes the development and construction of high rise condominium buildings (Exhs. A and B). It is a certified member of the Chamber of Real Estate and Builders Association, Inc. and is licensed by the Housing and Land Use Regulatory Board (Exhs. C and D to D-3).

For the calendar year ended December 31, 1994, petitioner filed its Corporation Annual Income Tax Return on April 17, 1995, declaring an income tax due in the amount of ₱3,396,606.00 but with a refundable income tax payment in the sum of P12,248,856.00, detailed as follows: (Exhs. E to E-5)

Income:	
Realized Gross Profit on Installment Sales	P75,986,329.00
Various	16,214,453.00
Total	P92,200,782.00
Less: Deductions	82,496,194.00
Taxable Income	P 9,704,588.00
Tax Due (9,704,588.00 x 35%)	P 3,396,606.00
Less:	
a. Prior Year's Excess Credit	P 1,273,324.00
b. Quarterly Payments	-
c. Creditable Tax Withheld	14,372,138.00
Total	P15,645,462.00
AMOUNT REFUNDABLE	P12,248,856.00

Petitioner opted not to apply this 1994 refundable income tax in the amount of P12,248,856.00 as tax credit to the succeeding taxable year 1995 (Exh. F to F-2), but instead filed on November 8, 1995, a letter claim for refund with the Bureau of Internal Revenue (Exhs. P to P-2). No action was taken by the respondent on its claim for refund thus, petitioner lodged its judicial appeal with this Court on December 24, 1996 in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

The lone issue to be resolved by this Court is whether or not petitioner is entitled to the refund of alleged excess income tax payments in the sum of P12,248,856.00.

Section 69 of the 1994 Tax Code, provides legal basis for petitioner's claim for refund of creditable withholding tax at source for the calendar year 1994. Section 69 of the 1994 Tax Code provides, thus:

> "**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 income of that year the corporation shall either*:
>
> (a) Pay the excess tax still due; or
>
> (b) <u>Be refunded the excess amount paid, as the case may be.</u>
>
> 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. (Underscoring supplied)

In an act which bolstered petitioner's claim, respondent presented in evidence, the memorandum report of the revenue officer, Ms. Consuelo A. Mariano, who made a favorable recommendation on petitioner's claim but in the lesser amount of P11,875,106.70, detailed as follows (Exhs. 2 to 2-c):

CWT claimed in 1994	P14,372,138.00
CWT certified as received by Revenue Accounting Div. per attached certification	

Page 1		₱ 4,871,032.50	
Page 2		4,706,931.70	
Page 3		4,722,174.55	
TOTAL		₱14,300,138.75	
Less: 1995 CWT			
Feb. 17, 1995	₱172,512.50		
"	99,348.77	271,861.27	
Net CWT per investigation			₱14,028,277.48
Add: Prior Year's Excess Credit			1,273,324.00
TOTAL			₱15,301,601.48
Less:			
Tax paid per 1994 ITR		₱3,396,606.00	
Deficiency Income Tax		29,888.78	3,426,494.78
Balance: CWT Refundable per investigation			₱11,875,106.70

CWT Claimed in 1994	₱14,372,138.00
CWT Certified by Acctg. Div.	14,300,138.00
Difference: Document presented was BIR Form 1743-750 which is only an information document and not an evidence of payment.	₱ 72,000.00

From the aforementioned findings, petitioner disagreed on two kinds of disallowances: a) the disallowance in the amount of ₱271,861.27, and b) the disallowance in the amount of ₱72,000.00.

Petitioner argued that the amount of ₱271,861.27 should be included in the refund because Section 70 of the 1994 Tax Code, as amended, allows petitioner to file an annual corporate income tax return for calendar year 1994 on or before April 15, 1995. Thus, withholding tax paid on February 17, 1995, pertaining to income earned in 1994 may be included in the annual adjustment return for 1994, and can be claimed as tax credit on the tax due for 1994 even if the final adjustment return was filed in 1995.

The records belie petitioner's claim. A careful scrutiny of the records show that the evidence of petitioner which consist of the Monthly Remittance Returns of Income Taxes Withheld indicate that the taxes withheld are for the calendar year 1995 (Exhs. M-71 and M-90) and do not refer to income earned in calendar year 1994. Moreover, Exh. M-90 shows that petitioner even indicated that the withholding of P99,348.77 was for the month of February 1995.

As regards the revenue examiner's disallowance of P72,000.00, which petitioner objected to, We find the position of petitioner meritorious.

Section 10 of Revenue Regulations No. 6-85, as amended, provides:

> **Section 10.** *Claim for Tax Credit or Refund.* -
>
> (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and <u>the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom</u>. (Underlining supplied).

Petitioner was able to present in evidence the required Withholding Tax Statement which is the BIR Form 1743-750 showing the fact that the amount of P72,000.00 was withheld on income earned on rental of real property in the amount of P1,440,000.00 (Exh. M-94). This is a valid proof of payment and can be made a basis in claiming a refund of excess creditable withholding tax at source pursuant to the aforementioned revenue regulation.

In sum, petitioner is entitled to the refund in a reduced amount of P11,947,106.70, computed as follows:

Amount recommended by the revenue examiner	P11,875,106.70
Add: CWT supported by BIR Form 1743-750	72,000.00
Amount refundable	P11,947,106.70

WHEREFORE, finding the petition for review partially meritorious, respondent is hereby **ORDERED** to **REFUND** in favor of the petitioner the amount of P11,947,106.70, representing overpaid income tax for calendar year ended December 31, 1994.

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