REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PERMANENT HOMES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6441

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 07 2004

x - x

DECISION

This case involves a claim for refund or issuance of tax credit certificate in the amount of P1,546,930.59 allegedly representing excess/unutilized creditable withholding taxes as of December 31, 1999.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with office address at the 9th Floor, Vicente Madrigal Building, Ayala Avenue, Makati City *(Paragraph 1, Joint Stipulation of Facts and Restatement of Issues)*. It is engaged in the business of developing, constructing, selling and marketing real estate, specifically condominium and townhouse units *(Paragraph 1, Petitioner's Memorandum)*.

On April 17, 2000, petitioner filed its income tax return for the calendar year ended December 31, 1999 wherein it declared a net loss of P113,320,360.00

(Exhibit "C-1"). Likewise, petitioner reported the amount of P1,305,436.00 as excess/unutilized creditable income taxes *(Exhibit "C").*

On April 11, 2001, petitioner filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund and/or tax credit in the amount of P1,546,930.59 allegedly pertaining to the excess/unused creditable withholding taxes of petitioner for the years 1998 & 1999. The said sum comprised the amount of P1,305,435.59 reported as excess/unutilized creditable income taxes in petitioner's 1999 Income Tax Return and the alleged excess creditable withholding taxes of P241,685.00 consisting of four (4) items of unrecorded excess creditable withholding taxes, which were allegedly paid and remitted directly to the BIR, but which were reported to petitioner only after it had already filed its ITR for 1999 *(Paragraph 4, Petition for Review).*

Unable to find any response from the respondent and in order to stop the running of the two-year prescriptive period, petitioner elevated the case through a Petition for Review with this court on April 12, 2002.

The resolution promulgated on August 12, 2002 confirmed the order of this court on August 9, 2002, granting respondent's Motion to Admit his Answer, there being no objection on the part of petitioner. Respondent alleged the following as Special and Affirmative Defenses, to wit:

> 4. The administrative claim for refund does not bear the official rubber stamp marking of the BIR, hence, not duly filed therein in accordance with Section 230 of the Tax Code;
>
> 5. The added sum of P241,685.00 alleged in paragraph 4 of the Petition is not refundable because it

> was not reported in the income tax return for taxable year 1999;
>
> 6. The prior year's (1998) excess credit in the amount of P1,077,989.00 is no longer refundable for having been prescribed;
>
> 7. Furthermore, petitioner has not shown proof that the prior years excess credit has not been subjected to a refund option which is vital to the claim in view of its irrevocability under Section 76 of the Tax Code;
>
> 8. Petitioner has not shown poof (sic) that the amount claimed has not been applied as tax credit in the succeeding years;
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> 9. The petition states no cause of action as it does not allege the date/s when the taxes sought to be refunded were actually paid;
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> 10. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;
>
> 11. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 12. Well settled is the rule that a claim for refund is strictly construed against the claimants since it partakes of the nature of an exception from taxation.

After trial on the merits, the court issued a resolution dated June 18, 2004 and considered the case submitted for decision sans memorandum from respondent.

In their Joint Stipulation of Facts and Restatement of Issues, the parties submitted the following issues for this court's resolution:

> 1. Whether or not the claim for refund was timely filed, or, conversely, whether or not petitioner's claim has partially prescribed.

2. Whether or not there were excess creditable income taxes withheld from petitioner as of 31 December 1999 which are duly substantiated by adequate evidence.

3. Whether or not the income from which the creditable income taxes were withheld was included and reported in petitioner's 1999 income tax return.

4. Whether or not petitioner is entitled to refund or tax credit in the amount of P1,546,930.59, representing its excess and unutilized creditable withholding taxes as of 31 December 1999.

Summing up the issues above-stated, the court can resolve this case on the issue of whether or not petitioner is entitled to claim for refund or tax credit on the basis of the evidences presented.

Petitioner anchored its claim on Section 76, in relation to Sections 204(C) and 230 (should be 229) of the Tax Code, to wit:

> "**SEC. 76. Final Adjustment Return.** -- Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. <u>Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for</u>

> cash refund or issuance of a tax credit certificate shall be allowed therefor." (Underscoring supplied)
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> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** -- The Commissioner may --
>
> xxx xxx xxx
>
> (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: x x x"
>
> "**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: x x x"

Based on the afore-quoted Section 76, once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

It maybe observed, however, that petitioner's claim for refund or issuance of tax credit certificate in its favor amounting to P1,546,930.59, as verified by an independent CPA, after proper re-computation of the same and correctly reflected in the "Independent Auditors' Report on Excess Creditable Withholding Taxes as of 31 December 1999 *(Exhibit "A")*", consisted of the following:

Prior Year's Excess Credits	P1,077,998.77
Creditable Taxes Withheld in 1999	227,246.82
Total Tax Credits/Payments	1,305,245.59
Unrecorded Remittances (not declared in the income tax return)	241,685.00
Less: Income Tax Due for 1999	0.00
Excess Creditable Income Taxes	**P1,546,930.59**

Thus, it is clear from the foregoing claim of petitioner that the same includes the prior year's (1998) excess credits or the carried over excess tax credits of P1,077,998.77 *(see page 269, CTA Records)*, which option to carry over excess tax credits once exercised becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed pursuant to Section 76 of the 1997 Tax Code ***(Commissioner of Internal Revenue vs. Citicorp Capital Phils., Inc., CA-G.R. SP No. 68554, April 12, 2002; Commissioner of Internal Revenue vs. Honda Phil., Inc., CA-G.R. SP No. 68141, October 25, 2002; Bank of Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003; Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue Mr. Rene Banez, CTA Case No. 6327, August 28, 2003)***.

Therefore, said portion of the claim amounting to P1,077,998.77 shall be denied outright. Besides, the same has already prescribed. So even assuming that petitioner can still file a claim for refund of its 1998 excess tax credits, it should have done so within the two-year prescriptive period computed from the time of filing the Final Adjustment Return or Annual Income Tax Return (***Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 83736, January 15, 1992; Commissioner of Internal Revenue vs. Court of Appeals, G.R. No. 117254, January 21, 1999***). The judicial appeal was filed by petitioner only on April 12, 2002, well beyond the period allowed by law and jurisprudence.

Consequently, petitioner's claimed creditable taxes withheld is reduced to P468,931.82. However, this court further notes that as reflected in the same report *(Exhibit "A")*, the amount of P241,685.00 representing unrecorded creditable withholding taxes allegedly paid and remitted directly to the BIR *(Exhibit "A-1")*, consisted of the following *(page 268, CTA Records)*:

Item No.	Buyer	Date Remitted	Title	Tax Base	Tax Rate	Creditable Tax
6	Jaime Co	01/29/1998	CCT24	P 2,260,000.00	5%	P 113,000.00
8	Rodolfo Pascual	02/05/1998	100211	1,800,000.00	3%	54,000.00
16	Vilma Almario	06/04/1998	100169	1,724,500.00	3%	51,735.00
28	Ricardo Poblete	11/16/1999	38323	765,000.00	3%	22,950.00
						P 241,685.00

(Underscoring ours)

Clearly, for the same reasons as above-stated, this court rules that petitioner is also barred from claiming the amounts reflected in item numbers 6, 8, and 16 or in the total amount of P218,735.00, considering that they refer to withholding taxes paid and remitted to the BIR for the year 1998.

In view thereof, what remains is petitioner's claim of creditable tax withheld for the year 1999 in the sum of P227,246.82, as mentioned earlier, plus the amount of

P22,950.00 representing unrecorded creditable withholding taxes allegedly paid and remitted directly to the BIR in the year 1999 or in the sum of P250,196.82.

This court in a number of similar cases ruled that the refund of excess creditable withholding taxes is dependent on claimant's compliance with the following three (3) basic requirements:

1. That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment (Section 229, NIRC);

2. 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

3. That it must be shown in the return of the recipient that the income payment received was declared as part of the gross income [***Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and CIR,***

280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].

Applying the aforesaid standards, this court finds that petitioner has indeed complied with the first requirement as to the creditable taxes withheld in 1999. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (***ACCRA Investment Corporation vs. Court of Appeals, supra***). For the taxable year ended December 31, 1999 petitioner filed its annual income tax return on April 17, 2000 *(Exhibit "C")*. Counting from this latter date, petitioner has until April 15, 2002 within which to file a claim for refund. Hence, petitioner's administrative claims for refund filed on April 11, 2001 and the Petition for Review filed before this court on April 12, 2002 fall within the two-year prescriptive period.

Now, did the petitioner comply with the second requirement?

To prove the fact of withholding, petitioner availed of the procedure provided for in CTA Circular No. 1-95 as amended by CTA Circular No. 10-97, for the appointment of an independent CPA to undertake the examination and evaluation of its documents and records. The appointed and commissioned auditing firm of Diaz Murillo Dalupan, CPAs, submitted to this court their "Independent Auditors' Report on Excess Creditable Withholding Taxes as of 31 December 1999 *(Exhibit "A")*" containing various Certificate Authorizing Registrations (CARs)/Tax Credit Certificates (TCCs), Withholding Tax Remittances Returns and the proof of payments of documentary stamps. Based on said evidence, it appears that petitioner was able to establish the fact of withholding and remittance of the entire amount of P250,196.82.

Finally, with regard to the third requirement, there is no dispute that petitioner declared the amount of P227,246.82 as part of the gross income in its 1999 Annual Income Tax Return *(Exhibit "C")*. However, petitioner admitted that it failed to declare in its records and returns the income corresponding to the four (4) items of withholding taxes amounting to P241,685.00 which it seeks to refund *(Paragraph 4, Petition for Review)*. Petitioner, in its memorandum, argued that in the testimony of its witness Ms. Barroga *(page 11, T.S.N. of 19 February 2003)*, she confirmed "that *the only difference* between those four unrecorded remittances and the rest of petitioner's excess creditable income taxes is the fact that those four items of withholding taxes totaling P241,685.00 had not been taken up and recorded in the books and in the ITR of petitioner for 1999. x x x *(page11, Petitioner's Memorandum, page 705, CTA Records)*."

In addition, petitioner claims that its failure "in the recording and declaration of those four items of withholding taxes was due to **a simple mistake**, x x x and furthermore, given that **no prejudice or injury was caused thereby**, x x x it is petitioner's belief that the said lapse may be excused and overlooked, and should not be deemed a hindrance or obstacle to the grant of the sought-for refund *(page 13, Petitioner's Memorandum, page 707, CTA Records)*."

Obviously, petitioner would like to impress upon this court that compliance of the aforesaid third requirement is not really necessary or that it may be considered to have complied the same.

This court disagrees.

The uncontested fact that said unrecorded remittances - not declared in the income tax return *(Exhibit "A-1")*, as reported by petitioner's witness Ms. Barroga, was admitted in open court, to wit:

> "xxx We noted that there were unrecorded withholding taxes and at the same time, there (sic) were not declared in the company's Income Tax Returns and this amounted to P241,685.00 *(page 10, T.S.N. of 19 February 2003)*." (Underscoring ours)

Time and again this court has held that the income upon which the taxes were withheld at source should be included as part of the income declared in the income tax return of the recipient (***CCT Constructors Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 5266, March 23, 1999***). Failure to do so is fatal to one's claim for tax refund. Thus, petitioner's failure to include the income upon which the taxes were withheld as source in its income tax return, for any reason whatsoever, is considered a fatal defect in its claim for tax refund or issuance of tax credit certificate.

Moreover, as already discussed earlier, of the four undeclared items, three pertained to the 1998 excess tax credits. It follows that only the amount of P22,950 shall be the focus of our verification.

Petitioner alleges that its witness, Ms. Giron, positively confirmed that the income from which the said four items of mis-posted and unrecorded creditable income taxes had been withheld was actually included and reported in petitioner's 1999 income tax return *(Paragraph 11, Petitioner's Memorandum, page 705, CTA Records)*.

We are not persuaded.

Petitioner failed to present concrete proof that the amount of P22,950 as well as the undeclared and unreported remittances for 1998 actually formed part of petitioner's income of P14,188,746.00 for the year 1999.

Concluding therefore, petitioner's claim of unrecorded remittances – not declared in its income tax return, particularly item no. 28 as reflected in Schedule B of the same report *(Exhibit "A"; page 268, CTA Records)* amounting to P22,950.00, does not meet the test under the third requirement stated above.

It bears stressing once again, that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., 309 SCRA 87; Davao Light and Power Co., Inc. vs. Commissioner of Customs, 44 SCRA 122; Asiatic Petroleum Co. vs. Llanes, 49 Phil 466)***.

In sum, this court finds petitioner to have only sufficiently proven its claim for refund or its entitlement to the issuance of a tax credit certificate representing excess creditable taxes withheld for taxable year 1999 in the reduced amount of P227,246.82, computed as follows:

Total Excess Creditable Withholding Taxes for 1999		P1,546,930.59
Less: Exceptions		
1. 1998 Excess Creditable Withholding Tax	P1,077,998.77	
2. 1998 Unrecorded Creditable W/H Tax (Undeclared)	218,735.00	
3. 1999 Unrecorded Creditable W/H Tax (Undeclared)	22,950.00	1,319,683.77
Refundable Amount		**P 227,246.82**

This amount of P227,246.82 was likewise not carried over by the petitioner to the succeeding taxable quarters of 2000.

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P227,246.82 representing excess creditable taxes withheld for the taxable year 1999.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

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

LOVELL R. BAUTISTA
Associate Justice

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 Justice