REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

**UNITED INTERNATIONAL PICTURES AB,**
Petitioner,

- versus -

C.T.A. CASE NO. 5618

**THE COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
OCT 01 1999 Margarette

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

# DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner seeking for a refund of the sum of FIVE MILLION SEVEN HUNDRED NINETY ONE THOUSAND ONE HUNDRED NINETY FOUR (₱5,791,194.00) or in the alternative, the issuance of a Tax Credit Certificate for the said amount, representing allegedly overpaid creditable withholding tax for calendar year ended December 31, 1996.

The antecedent facts of this case are undisputed.

Petitioner is the Philippine branch of United International Pictures AB, a corporation duly organized and existing under the laws of Sweden, duly licensed to engage in business in the Philippines.

Records of this case reveal that on March 22, 1996, Petitioner filed its income tax return for the calendar year ended December 31, 1995, reporting tax credit payments in the amount of ₱10,064,610.00 and a tax payable of ₱3,908,004.00

(Exhibit "A"). On July 10, 1996, an Amended Corporation Annual Income Tax Return was filed by the Petitioner, this time reflecting tax credit payments amounting to ₱9,865,751.00 and a tax payable of ₱3,709,145.00 corresponding to the taxable year 1995 (Exhibit "C").

On April 8, 1997, Petitioner filed with the Bureau of Internal Revenue its Corporate Income Tax Return for the calendar year ended December 31, 1996, reporting a creditable tax withheld in the amount of ₱11,612,565.00 which it applied against its current tax liabilities of ₱5,821,371.00, thereby leaving a balance of ₱5,791,194.00 as excess creditable withholding tax for the taxable year 1996.

Pursuant to Section 230 of the Tax Code (now Section 229), Petitioner filed an administrative claim for refund with the Respondent involving the aforesaid excess income tax payments on February 27, 1998 (Exhibit "J") in the total amount of ₱5,791,194.00.

Failing to obtain an affirmative response from the Respondent and fearing that its claim would be barred by the two-year period of prescription within which to file a judicial claim for refund, Petitioner filed a Petition for Review with this Court on April 14, 1998.

In his Answer, Respondent interposed the following Special and Affirmative Defenses:

4. Assuming but not admitting that Petitioner filed an application for refund and/or tax credit with the Respondent, the same is subject to administrative investigation and resolution (San Carlos Milling vs. Commissioner of Internal Revenue);

5. Taxes are presumed to have been collected in accordance with law. Hence, Petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

6. Petitioner must show that it has complied with the provisions of Section 51(e) and (f) of the Tax Code, as amended, as enunciated in City Trust Finance Corporation vs. CTA, to wit:

    a) That the claim is filed with the Commissioner of Internal Revenue within the two year period from the date of payment;

    b) It must be shown on the return of the recipient that the income payment received was declared as part of the gross income;

    c) The fact of withholding is established by a copy of the statement duly issued by the payor to payee showing the amount paid and the amount of tax withheld therefrom.

7. Petitioner must show that it has complied with the provisions of Sections 240(3) and 230 of the Tax Code;

8. Claim for refund of taxes are construed strictly against the claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. v. CIR, 67 SCRA 361).

The sole issue in this case is whether or not Petitioner is entitled to the issuance of a Tax Credit Certificate or refund of the amount of ₱5,791,194.00 covering its alleged overpaid (not unpaid as stated in its Petition) income tax payments for calendar year ended December 31, 1996.

To prove its entitlement for refund, Petitioner positively averred that it has sufficiently proven the factual circumstances surrounding the claim for refund with substantial evidence consisting of testimonial and documentary exhibits presented and submitted before Us during the trial of this case.

On the other hand, Respondent in his Memorandum assailed the validity of Petitioner's claim for refund arguing that the Petitioner failed to comply with Section 69 of the Tax Code in relation to the ruling of the Supreme Court in the case of **San**

**Carlos Milling Co., Inc. v. Commissioner of Internal Revenue G.R. No. 103379, November 23, 1993,** where it was held that an approval by the Commissioner of Internal Revenue must first be secured before a taxpayer may apply its excess tax credit to the succeeding taxable year.

Further, Respondent asserts that Petitioner is not entitled to a tax credit/refund of its excess creditable withholding tax inasmuch as the latter failed to prove during the trial of this case the actual remittance by the withholding agent Warner Brothers, Inc. of the 1996 withholding tax with the Bureau of Internal Revenue.

This Court resolves the case in favor of the Petitioner.

It is noted that Respondent rested his case almost entirely on the decision of the Supreme Court in the aforesaid case of **San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue,** where it made the pronouncement that prior approval by the Commissioner of Internal Revenue is a condition *sine qua non* before a taxpayer may avail of its right to tax credit under Section 69 of the Tax Code which provides, thus:

> "**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.

This Court, however, finds Respondent's reliance on the aforementioned ruling off-tangent inasmuch as in the case at bar, Petitioner was able to prove convincingly its compliance with the requirements provided by law before a refund of creditable withholding taxes may be granted. It is further noted that Respondent opted to submit his case without presenting any controverting evidence. Thus, We are of the view that Respondent must be considered to have impliedly admitted the truth of the contents of the exhibits, specifically the returns filed by the Petitioner, in the absence of any countervailing evidence that will show that the returns were erroneous or that there exists any irregularity in their computation or preparation.

As regards the issue of non-remittance and erroneous carry over and application of Petitioner's excess creditable payments, We reject Respondent's allegation of non-remittance by the Petitioner of its withholding tax to the Bureau of Internal Revenue. Suffice it to state that the Bureau's collecting agent acknowledged the receipt thereof and the same now forms part of the Respondent's records. To repeat, no evidence was submitted by Respondent that will taint the reliability, sufficiency and competency of the income tax returns and the Certificate of Income Tax Withheld at Source of the Petitioner. Therefore this Court gives credence on the said exhibits and other supporting documents which were prepared by the Petitioner under penalties of perjury.

Parallel to this, the Tax Code has placed several safety measures to prevent falsification of income tax returns which the Supreme Court recognized in **Commissioner of Internal Revenue vs. TMX Sales, Inc. (205 SCRA 184).**

"Furthermore, Section 321 (now Section 232) of the National Internal Revenue Code requires that the books of accounts of companies or persons with gross quarterly sales or earnings exceeding Twenty Five Thousand Pesos (P25,000.00) be audited and examined yearly by an independent Certified Public Accountant and their income tax returns be accompanied by certified balance sheets, profits and loss statements, schedules listing income proceeding properties and the corresponding incomes therefrom and other related statements.

"It is generally recognized that before an accountant can make a certification on the financial statements or render an auditor's opinion, an audit of the books of account has to be conducted in accordance with generally accepted auditing standards.

"Since the audit, as required by Section 321 (now Section 232) of the Tax Code is to be conducted yearly, then it is the final adjustment return, where the figures of the gross receipts and deductions have been audited and adjusted, <u>that is truly reflective of the results of the operations of a business enterprise</u>. Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures." (Underscoring supplied)

We now shift to the requirements before a claim for refund may be granted.

In a litany of cases, this Court has invariably held that refund of creditable withholding taxes shall be granted in the event the Petitioner was able to comply with the following requirements, to wit:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of 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. [Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable 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; and Citytrust Finance Corporation (formerly Investor's 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**].

The aforementioned requirements for the refund of excess creditable withholding taxes were affirmed by the Supreme Court in the case entitled **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459.**

We now discuss Petitioner's compliance with the aforementioned requirements in *seriatim*.

Pursuant to Section 230 of the Tax Code, Petitioner filed its claim for tax refund with the Bureau of Internal Revenue on February 27, 1998 and with this Court on April 14, 1998, both dates well within two (2) years from April 8, 1997, the date of Petitioner's payment of its income tax for the year 1996.

The second requirement was satisfied when Petitioner declared in its 1995 and 1996 Income Tax Returns its income derived from film rentals in the amount of ₱135,542,664.00 for 1995 (Exh. C-4) and ₱152,463,194.00 for 1996 (Exh. H-4) from which, income taxes in the amount of ₱6,815,170.79 for 1995 (Exh. B) and ₱7,641,631.87 for 1996 (Exh. I) were withheld by Warner Brothers (F.E.), Inc., Petitioner's withholding agent.

Petitioner, likewise, complied with the third requirement as evidenced by the Certificates of Creditable Tax Withheld at Source issued by Warner Bros. (F.E.), Inc. to Petitioner (Exhs. "B", "I") showing the amount of taxes withheld of ₱6,815,170.79

and ₱7,641,631.87 and the corresponding amount of income payments of ₱136,303,415.80 and ₱152,832,637.40 for the taxable years 1995 and 1996, respectively. However, upon scrutiny of the records, We found out that Petitioner reported in its 1996 income tax return a creditable tax payment of ₱7,641,631.87, thereby, overstating its 1996 creditable tax payments by ₱35,167.13. Thus, after taking into account the overstatement of Petitioner's 1996 creditable withholding tax and its 1997 income tax due, the amount of tax refundable is computed as follows:

| | | |
|---|---|---|
| 1996 Income Tax Due (Exh. H-1) | | ₱ 5,821,371.00 |
| Less: Tax Credit/Payment | | |
| (a) Prior Year's Excess Credit (Exh. C-2) | ₱3,709,145.00 | |
| (b) 3rd Quarter Payment (Exh. C) | 226,621.00 | |
| (c) Creditable Tax Withheld (Exh. I) | 7,641,671.87 | 11,577,397.87 |
| Amount Refundable to be applied as Tax Credit to Next Year | | ₱ 5,756,026.07 |
| Less: Portion applied as Tax Credit 1997 Income Tax Liability | | 1,748,669.00 |
| NET AMOUNT REFUNDABLE | | ₱ 4,007,357.87 |

**WHEREFORE**, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a Tax Credit Certificate in favor of Petitioner the amount of FOUR MILLION SEVEN THOUSAND THREE HUNDRED FIFTY SEVEN AND EIGHTY SEVEN CENTAVOS (₱4,007,357.87) in favor of the Petitioner representing overpaid income tax for the year 1996.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

**WE CONCUR:**

**ERNESTO D. ACOSTA**
Presiding Judge

**AMANCIO Q. SAGA**
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