REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PASEO REALTY & DEVELOPMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 4439

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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7/5/93

D E C I S I O N

This is a claim for refund in the amount of P81,403.00 representing overpaid creditable withholding tax of the petitioner, Paseo Realty & Development Corporation, for the calendar year ending December 31, 1987.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address at Makati, Metro Manila.

On April 15, 1988, petitioner filed its 1987 Corporation Annual Income Tax Return with the Bureau of Internal Revenue (BIR) showing a refundable amount of P81,403.00, computed as follows: (Exh. "A-1")

Income:		
Rentals/Leases (Schedule 4)		P1,855,000.00
Less: Deductions (Section E)		1.693,011.00
Net Income		P 161,989.00
Tax Due (161,989.00 x 35%)		P 56,696.00
Less:		
(a) Prior Year's Excess Credit	P45,349.00	
(b) Quarterly Payments	-	
(c) Creditable Tax Withheld (Expanded Withholding Tax)	92,750.00	138,099.00
Total Amount Due/Refundable		(P 81,403.00)

On March 22, 1990, petitioner filed a letter-claim for refund with respondent of allegedly creditable withholding taxes for the taxable year 1987 in the amount of P25,623.52 (Exh. "H"). Since respondent has not acted on the aforesaid letter, petitioner filed a judicial claim for refund with this Court on April 16, 1990. Hence, this petition for review.

Respondent in his answer alleged, among others, the following as special and affirmative defenses:

1. Any amount claimed to have been withheld must show payment and remittance to the government;

2. In any action for tax refund, the burden of proof is upon the taxpayer to show that the tax paid was erroneously or illegally collected;

3. Petitioner must show that a written claim for refund was filed within two (2) years from the time said tax was paid and instituted a suit before this Court within two (2) years from date of payment regardless of any supervening cause that may arise after payment;

4. The petition does not state a cause of action because it merely states a period and not the particular dates when the income taxes were allegedly withheld; and

5. Petitioner's claim is barred by prescription.

The only issue raised in this petition is whether or not petitioner is entitled to the refund of P81,403.00 as excess creditable withholding tax paid for the year 1987.

In support of its case, petitioner presented the following exhibits, to wit:

Exhibit A-1	Income Tax Return (ITR) of petitioner for the calendar year 1987, including page 1 of 1986 ITR and the audited Financial Statements for 1987;
Exhibit D	Certificate of Creditable Income Tax Withheld at Source (BIR Form 1743.1) for the year 1987 issued by Citibank NA showing an income tax withheld of P92,750.00 on rental income of P1,855,000.00; and

Exhibit H	Letter-claim for refund dated March 22, 1990 received by respondent on March 26, 1990 in the amount of P25,623.52.

The case was submitted for decision by counsel for respondent on the basis of the pleadings sans presentation of his evidence.

The question raised in the case at bar is not new. In many cases already decided by this Court involving claims for refund of excess creditable withholding tax, the only proofs required of the petitioner are the following:

1. *That it filed a claim for refund within the two (2) year period as prescribed under Section 243 (now 230) of the National Internal Revenue Code*[1]*;*
2. *That the income upon which the taxes were withheld were included in the return of the recipient*[2]*; and*
3. *The fact of withholding is established by a copy of statement duly issued by the payor to the payee (BIR Form 1743.1) showing the amount*

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[1]See Citytrust Finance Corporation v. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; and Citytrust Finance Corporation (Formerly Investors Finance Corporation/FNCB Finance) v. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, Paseo Realty and Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 4528, April 30, 1993.

[2]Ibid; Sec. 10, Revenue Regulation 6-85.

paid and the amount of tax withheld therefrom.[3]

Herein petitioner filed its 1987 claim for refund on March 26, 1990 well within the two-year prescriptive period provided under Section 243 (now 230) of the National Internal Revenue Code (that is, from April 16, 1988 to April 15, 1990[4]) with the BIR and filed with this Court a claim for refund on April 16, 1990.

Respondent, on the other hand, alleged that said petition was barred by prescription having filed it late on April 16, 1990, the last day for reception should at least be made on April 15, 1990.

We disagree with the respondent.

April 15, 1990 falls on a Sunday and "when the time refers to a period prescribed or allowed by the *Rules of Court*, by an *order of the Court*, or by any other *applicable statute*, if the last day is a Sunday or a legal holiday, it is understood that the last day should really be the next day, provided said day is neither a Sunday nor a legal

[3]Ibid.

[4]In computing a period, the first day shall be excluded, and the last day included.

holiday"[5]. Therefore, said filing is within the period allowed under Section 243 (now 230) of the Tax Code, which reads:

> "Sec. 243. *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 excessive 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 begun after the expiration of two 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." (Underscoring supplied)

As borne out by the records, it is undeniable fact that petitioner also complied with the second and third requirements when it presented in evidence the 1987 ITR (which shows that the rental income of P1,855,000.00 on which the 5% withholding tax was deducted was declared as part its gross

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[5]Edgardo L. Paras, Civil Code of the Philippines Annotated, 1978 Ed., p. 52.

income) and the BIR Form 1743.1 (on which the payor, Citibank NA, certified that the 5% withholding tax was withheld from the payee, Paseo Realty and Development Corporation, in the amount of P92,750.00).

Accordingly, there is no doubt that petitioner was able to prove its entitlement for a tax refund. The only point that besets this Court, at this time, is petitioner's inconsistency in the amount being claimed.

Petitioner is seeking the amount of P81,403.00 by way of this petition. However, a careful examination of the records of the case reveals that it was only claiming some P25,623.52 with the BIR.

The amount P25,623.52 was arrived at by petitioner after deducting from P81,403.00 the income tax liabilities of 1988 and 1989 as follows:

1987 prior year's credit	P 81,403.00
1988 income tax liabilities	(28,127.00)
1989 income tax liabilities	(27,653.00)
Balance	P 25,623.00*

(See Petition for Review, C.T.A. Case No. 4528)

But when the 1988 Income Tax Return (Exh. A-3) was presented, the P81,403.00 being applied as tax credit in two successive years, 1988 and 1989 [as

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*Figures are rounded off to the nearest peso for convenience.

alleged in Petition for Review in CTA Case No. 4528, supra], was then declared by petitioner to be refunded.

Thus, it is necessary to quote the relevant portion of our decision in C.T.A. Case No. 4528, **supra,** involving claim for refund of same petitioner regarding its 1988 excess creditable withholding tax as follows:

> "xxx xxx xxx
>
> An examination of petitioner's 1988 Income Tax Return reveals that out of the total refundable amount of P146,026.00 petitioner opted to claim for refund the amount of P81,403.00[7] and to apply as a tax credit to the succeeding taxable year (1989) the amount of P64,623.00 (P92,750.00 less P28,127.00), as indicated in the cross marked on the appropriate box shown in item #10 of Section C thereof.
>
> xxx xxx xxx
>
> By declaring that the amount of P81,403.00 is to be refunded and the amount of P64,623.00 is to be applied as tax credit to the succeeding taxable year (1989), petitioner should not have applied as a tax credit the whole refundable amount of P146,026.00 to the succeeding year. Instead, only the amount of P64,623.00 should have been applied as credit in its 1989 Income Tax Return.
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> xxx xxx xxx."

Based on the above-cited case, the Court did not allow the application of the 1987 excess tax

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[7]Subject of this petition.

credit on the income tax liability of 1988 simply because petitioner opted to refund the same. A greater weight was given by the Court on the intention of petitioner to refund it because the document (ITR) was signed "under the penalties of perjury" if found not true and correct.

Furthermore, Sec. 2(a) of Rule 131 of the Rules of Court[8] provides:

> "Sec. 2. *Conclusive presumptions.* - The following are instances of conclusive presumptions:
>
> (a) Whenever party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it;
>
> xxx xxx xxx."

In this case, petitioner draw this Court to believe that it was entitled to the tax refund of P81,403.00 manifested in its 1987-1988 Income Tax Returns and in this petition and not the P25,623.52 claimed with the BIR. But since the Court's jurisdiction is exclusively appellate in nature, we find it fit to grant only the amount of P25,623.52 and not the P81,403.00 claimed in the petition for review.

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[8]Paras, Rules of Court Annotated, 1991 Ed., p. 478.

DECISION -
C.T.A. CASE NO. 4439.

WHEREFORE, in view of the foregoing, respondent is hereby ordered to REFUND to petitioner the amount of P25,623.52, representing overpaid creditable withholding tax from rental income for the calendar year 1987. No cost.

SO ORDERED.

Quezon City Metro Manila, July 5, 1993.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals