REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FILINVEST DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6055

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 16 2002

x -- x

DECISION

This case involves a judicial action for the refund or issuance of a tax credit certificate in the amount of P8,849,785.00, representing overpaid income tax arising from the payments of creditable taxes withheld at source for the calendar year ended December 31, 1997.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at 173 P. Gomez St., San Juan, Metro Manila (par. 1, Joint Stipulation of Facts, p. 66, CTA Records).

On April 15, 1998, petitioner filed its 1997 Corporation Annual Income Tax Return reflecting a net loss from operations in the sum of P83,308,762.00 but with a refundable income tax payment in the amount of P11,373,434.00 resulting from the payments of creditable income taxes withheld on management services and lease of real properties, computed as follows: (Exhibit C, inclusive of submarkings)

Income:		
Schedule 1		
Sale of Goods		(P 1,360,847.00)
Schedule 2		
Management Fee		*73,376,572.00*
Schedule 3		
Interest Income	P 47,360,567.00	
Rent Income	*21,639,511.00*	
Miscellaneous	150,881,188.00	219,881,286.00
Schedule 4		
Sale of Property & Equipment		298,665.00
Total		P292,195,676.00
Less Deductions (Section D)		375,504,438.00
Net Loss		(P 83,308,762.00)

Tax Due		NIL
Less: Tax Credits/Payments (Section E)		
a) Prior year's excess credits	P -	
b) Quarterly excess credits	2,523,549.00	
c) Creditable tax withheld	8,849,785.00	P 11,373,434.00
Total Amount Refundable		P 11,373,434.00

Petitioner indicated in its 1997 income tax return its intention to carry over as an automatic tax credit the total amount refundable of P11,373,434.00.

On April 15, 1999, petitioner filed its 1998 Corporation Annual Income Tax Return reflecting an income tax due in the amount of P385,687.00 but with an income tax refundable of P11,907,902.00 (Exhibit G). In its 1998 return, petitioner opted to refund its alleged 1997 excess income tax payment in the amount of P11,373,434.00 and the balance in the sum of P534,468.00, representing the 1998 unutilized creditable taxes withheld, to be carried over as tax credit to the succeeding taxable year. On April 30, 1999, petitioner amended its 1998 final adjustment return (Exhibit H). The original overpaid income tax as of December 31, 1998, in the amount of P11,907,902.00 was reduced to P9,384,253.00 due to the decrease in the amount of prior year's excess credits

562

from P11,373,434.00 to P8,849,785.00. According to petitioner, after a review of its creditable withholding taxes, it was found out that the cash amount of P2,523,549.00 under Section E of its 1997 ITR was an error for it was not actually paid to the BIR. Consequently the amount to be refunded for the year 1997 was also lowered to P8,849,785.00.

On May 4, 1999, petitioner filed with RDO No. 42 of the BIR a letter request for the cash refund of its excess creditable withholding taxes for the taxable year 1997 in the sum of P8,849,785.00 in accordance with Section 69 (now Sec. 76) of the Tax Code, as amended (Exhibit A, inclusive of submarkings).

As there was no action on the part of the respondent, petitioner filed the instant Petition for Review on April 7, 2000 in order to toll the running of the two-year prescriptive period under Section 230 of the Tax Code, as amended.

In his Answer filed on May 15, 2000, respondent advanced the following Special and Affirmative Defenses:

> "4. The claim for refund is subject to investigation by the Bureau of Internal Revenue;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable. Claims for tax refund are construed in *strictissimi juris* against the claimant as they partake of the nature of an exemption from tax (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1979, 31 SCRA 95) and it is incumbent upon the petitioner to prove that it is entitled thereto under the law (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121) and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law;
>
> 6. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit; and

563

7. Moreover, petitioner must prove that it has complied with the governing rules with reference to tax recovery or refund, which are found in Sections 204(c) and 229 of the Tax Code, as amended, which are quoted as follows:

> "**Sec. 204**. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may – x x x x
>
> (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 of 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 payment of the tax penalty: Provided, however, That a return filed showing an overpayment shall be considered a written claim for credit or refund."
>
> **Section 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 nave 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 (*sic*) 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: *Provided*, however, That the Commissioner may, even without written claim therefor, refund or credit any tax, where on the face of the return upon which payments was made, such payment appears clearly to have been erroneously paid."

To prove its entitlement to the claim for refund, petitioner presented its letter-claim for refund with the BIR dated April 26, 1999 (Exhibit A, inclusive of submarkings), Secretary's Certificates dated September 12, 2000 and October 12, 2000 (Exhibits B, B-1, and II), the original Corporation Annual Income Tax Returns for the calendar years 1996, 1997 and 1999, and the original and amended Corporation Annual Income Tax Return for the year 1998 (Exhibits JJ, C, L, G, and H, respectively), Corporation Quarterly Income Tax Returns for the years 1997 and 1998 (Exhibits D, E, F, I, J and K), various Certificates of Creditable Tax Withheld at Source (Exhibits M to Z, AA and BB, inclusive of submarkings), pre-marked documents examined by the commissioned independent CPA (Exhibits CC-1 to CC-86, DD-1 to DD-23, EE-1 to EE-16, FF-1 to FF-35, and GG-1 to GG-26), and the report of the commissioned independent auditing firm, R.S. Bernaldo & Associates (Exhibits HH to HH-8). All these exhibits were admitted by the Court in its Resolution dated May 3, 2001.

On October 1, 2001, this case was submitted for decision sans the evidence and memorandum of the respondent.

The sole issue to be resolved in this case is whether or not petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of P8,849,785.00 representing unutilized creditable withholding taxes at source for the calendar year ended December 31, 1997 on the basis of the evidence presented.

Section 69 (now 76) of the Tax Code, as amended, which is petitioner's legal basis in claiming the refund of its overpaid income tax, is hereby reproduced for easy reference:

> **SEC. 69.** *Final Adjustment Return.* – Every corporation liable to tax under Section 24 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

505

total tax due on the entire taxable income of that vear the corporation shall either:

(a) Pay the excess tax still due; or

<u>(b) 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, <u>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</u> (Underlining supplied).

Clearly from the above provision of law, a corporation may claim for the refund of any excess amount paid if the sum of the quarterly tax payments during the taxable year is more than the total tax due on the entire taxable income.

Nonetheless, in claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements as enunciated in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**:

1. that it filed a claim for refund within the two (2) year period as prescribed under Section 299 (now 230) of the National Internal Revenue Code;

2. that the income upon which the taxes were withheld were included in the return of the recipient; and

3. the fact of withholding is established by a copy of statement (BIR For 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom **(cited in Columbian Motors South Super, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5503, dated October 5, 1999, with Entry of Judgment dated October 27, 1999).**

A perusal of the evidence on record reveals that the petitioner's administrative and judicial claims for refund were timely filed within two years from the date of payment of the tax. The administrative claim for refund was filed with the respondent on May 4, 1999 and the petition for review was filed with this Court on April 7, 2000, both within the two-year prescriptive period reckoned from April 15, 1998, the date when petitioner filed its 1997 final adjustment return **(Commissioner of Internal Revenue vs. TMX Sales, Inc. et. al., G.R. No. 83736, January 15, 1992)**.

Petitioner was also able to establish the amount of P8,892,158.18 as the unutilized creditable withholding taxes for the year 1997 through its presentation of various certificates of creditable tax withheld at source, to wit:

Withholding Agent	Exh.	Management Fee	Rental	Tax Wittheld
Filinvest Land, Inc.	M		P3,171,335.40	P 158,566.77
Filinvest Alabang, Inc.	N		714,766.80	35,738.34
George Teson/Cebu Fair	O		188,340.00	9,417.00
Filivest Land, Inc.	P		553,585.00	27,679.25
Filinvest Land, Inc.	Q		3,171,335.40	158,566.77
Filinvest Alabang, Inc.	R		714,766.80	35,738.34
Filinvest Alabang, Inc.	S	P 17,806,559.40		890,327.97
Filinvest Land, Inc.	T		3,329,902.20	166,495.11
Filinvest Alabang, Inc.	U	13,795,350.00		689,767.50
Filinvest Alabang, Inc.	V		714,766.80	35,738.34
Davao Sugar Central Co.	W	127,285,127.20		6,364,256.36
Filinvest Land, Inc.	X		3,647,035.80	182,351.79
Filinvest Alabang, Inc.	Y		714,766.80	35,738.34
Filinvest Alabang, Inc.	Z	1,929,986.00		96,449.30
Elena E. Abella	AA		99,060.00	4,953.00
Business Equipment Corp.	BB		6,800.00	374.00
T o t a l		P160,817,022.60	17,026,461.00	P8,892,158.18

However, petitioner failed to prove that the management fee and rental income in the amounts of P160,817,022.60 and P17,026,461.00, respectively, were all declared in its 1997 income tax return. The Court noted that only the following amounts of management fee and rental income were reported by petitioner in its 1997 final adjustment return: (Exhibit C-5)

Management Fees (Schedule 2)	P 73,376,572.00
Rent Income (Schedule 3)	21,639,511.00
Total	P 95,016,083.00

On the other hand, petitioner still believes that the income relative to the taxes withheld were all included in its 1997 return. Petitioner cited as its basis one of the audit procedures adopted by R.S. Bernaldo & Associates, the independent auditing firm commissioned by the Court to examine the voluminous documents supporting the claim for refund of petitioner, stating thus:

> We verified that the annual income tax return and audited financial statements support the claim of the Petitioner and that the income earned by the Petitioner received has been declared as part of the income during the period covered by the application.

The reliance of petitioner in the above-quoted audit procedure holds no water. Petitioner failed to realize that the same is an audit procedure and not the result of the audit procedure per se. The result of the audit procedure is shown in Exhibit HH-5 wherein the amount of rental income and management fee were itemized and totaled only to P95,016,082.90, broken down as follows:

PAYOR	T.I.N.	DATE	INVOICE NO.	AMOUNT
BUSINESS EQUIPMENT CORP.	082-000-843-124	CONTRACT		P 87,720.00
CEBU FAIR MARKETING	103-785-428	CONTRACT		189,800.00
DAVAO SUGAR CENTRAL CO., INC.	000-053-167	CONTRACT		50,000,000.00
ELENA ABELLA	600-126-772-985	CONTRACT		106,860.00
FILINVEST ALABANG, INC.	053-002-924-787	1/6/97	0013	27,922,026.90
FILINVEST ALABANG, INC.	053-002-924-787	2/4/97	0015	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	3/5/97	0018	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	4/1/97	0019	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	5/3/97	0022	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	6/2/97	0023	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	7/1/97	0026	238,255.59

568

FILINVEST ALABANG, INC.	053-002-924-787	8/4/97	0027	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	9/1/97	0029	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	10/3/97	0032	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	11/3/97	0034	238,255.59
FILINVEST ALABANG, INC.	053-002-924-787	12/2/97	0036	238,255.59
FILINVEST LAND, INC.	310-000-533-224	1/6/97	0014	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	2/4/97	0016	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	3/5/97	0017	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	4/1/97	0020	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	5/3/97	0021	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	6/2/97	0024	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	7/1/97	0025	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	8/4/97	0028	1,057,111.82
FILINVEST LAND, INC.	310-000-533-224	9/1/97	0030	1,215,678.59
FILINVEST LAND, INC.	310-000-533-224	10/3/97	0031	1,215,678.59
FILINVEST LAND, INC.	310-000-533-224	11/3/97	0033	1,215,678.59
FILINVEST LAND, INC.	310-000-533-224	12/2/97	0035	1,215,678.59
GEORGE & PETER LINES, INC.	000-554-296	CONTRACT		531,000.00
Total revenue from rental and management fee*				P 95,016,082.90 *

*Should only be 94,777,827.31

As adverted to earlier, in claiming for the refund of its excess creditable withholding taxes, the income upon which the taxes were withheld must have been declared by the petitioner in its 1997 income tax return. Thus, although petitioner was able to substantiate its claim for refund of unutilized creditable withholding taxes at source in the amount of P8,892,158.18 (which is even bigger than the amount sought to be refunded of P8,849,785.00), it nevertheless fell short in proving that the income upon which the aforesaid creditable taxes withheld were all reported in its 1997 income tax return. Consequently, this Court is constrained to grant a refund only for the amount of P4,734,416.37, detailed as follows:

PAYOR		INCOME PAYMENTS		TAX WITHHELD
BUSINESS EQUIPMENT CORP.	P	87,720.00	P	374.00
CEBU FAIR MARKETING		189 800.00		9,417.00

DAVAO SUGAR CENTRAL CO., INC.	50,000,000.00	2,500,000.00
ELENA ABELLA	106,860.00	4,953.00
FILINVEST ALABANG, INC.	27,922,026.90	1,396,101.35
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST ALABANG, INC.	238,255.59	11,912.78
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,057,111.82	52,855.59
FILINVEST LAND, INC.	1,215,678.59	60,783.93
FILINVEST LAND, INC.	1,215,678.59	60,783.93
FILINVEST LAND, INC.	1,215,678.59	60,783.93
FILINVEST LAND, INC.	1,215,678.59	60,783.93
GEORGE & PETER LINES, INC.	531,000.00	26,550.00
T o t a l	P 94,777,827.31	P 4,734,416.37

WHEREFORE, in the view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED.*** Respondent is **ORDERED to REFUND or in the alternative**, **ISSUE a TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of P4,734,416.37, representing overpaid income taxes for the year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

590

I CONCUR:

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

57