

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 4897

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated :

APR 24 1995



x ----- x

DECISION

This is a claim for a tax refund in the amount of P483,532.40 representing alleged overpaid income tax for the taxable year ending December 1990.

Petitioner is a domestic banking institution duly organized and existing under and by virtue of the laws of the Philippines. Part of the income of petitioner is derived from the leasing of its properties and sale of its assets to various individuals and entities. For the taxable year 1990, it declared in its income tax return a total rental income of P1,983,533.00 (Exhibit "A-10") out of which the amount of P483,532.40 in creditable income taxes were allegedly withheld by its withholding agents in accordance with Expanded Withholding Tax Regulations. Certificates of Creditable Income Tax withheld at source,

DECISION --
C.T.A. CASE No. 4897

- 2 -

Form No. 1743-1 were formally offered as evidence by petitioner. The final income tax return for 1990, received by the BIR on April 15, 1991, also revealed that petitioner suffered a net loss amounting to P52,480,173.00 (Exhibit "A-9") thus negating any income tax liability of the petitioner for that year. Thus, in a letter received by the BIR on October 3, 1991 (Exhibit "C"), petitioner requested for a corresponding tax credit memo in the amount of P483,532.40 which represents the income tax withheld from the rental income it received in that same year. The said letter contained a certification to the effect that the excess withholding taxes for the calendar year ended December 31, 1990 has not been and/or will not be automatically credited/offset against any succeeding quarters' income tax liabilities for the rest of the calendar year ending December 31, 1991 (Exhibit "C-1"). Petitioner attached to the said letter copies of the first two quarterly returns filed for the succeeding calendar year 1991 to show that it suffered net losses thus preventing any offsetting of the excess income taxes paid the previous taxable year.

Respondent failed to act on this claim for a refund which impelled the petitioner to file a petition for review with this Court on January 4, 1993.

DECISION -
C.T.A. CASE No. 4897

- 3 -

In support of its claim for a tax refund, petitioner submitted to this Court in evidence its final income tax return for the calendar year 1990 (Exhibit "A") showing a net loss of P52,480,173.00), as well as certificates of creditable income tax withheld by its payors on the rental income it received for the taxable year 1990. (Exhibits "B-1" up to "B-55").

Respondent alleged as special and affirmative defenses, that:

4. Taxes collected and paid are deemed to have been made/effectuated in accordance with law and pertinent BIR regulations;

5. In an action for tax refund/credit, the burden is on the taxpayer to show that the tax paid was erroneously or illegally collected and failure to substantiate the same is fatal to the action;

6. A claim for a tax refund/credit is construed strictly against the claimant since it partakes of an exemption from taxation (Comm. of Int. Revenue vs. Ledesma, GR No. L-17509, 31 SCRA 95, January 20, 1970; Mla. Electric Co. vs. CIR, GR No. L-29987 and L-23487, Oct. 22, 1975, 67 SCRA 391).

7. Mere allegations that petitioner incurred losses in calendar year 1990 do not ipso facto merit a refund of the alleged creditable income taxes withheld on the pretext that petitioner had no tax liability against which to apply the same.

Respondent did not offer any evidence to dispute the claim of petitioner and failed to submit his memorandum.

DECISION -
C.T.A. CASE No. 4897

- 4 -

The only issue presented before this Court is whether petitioner is entitled to the tax refund of P483,532.40 representing excess creditable withholding taxes paid for the taxable year 1990.

A close examination and evaluation of the evidence presented and a subsequent re-computation of the figures included therein brings forth the conclusion that petitioner is entitled to a refund but is to be awarded a lesser amount than that sought in its petition.

This Court has ruled in several instances that three basic requirements must be met in order to successfully claim for a refund of excess creditable withholding taxes, to wit:

- 1) That the claim is filed with the Commissioner within the two-year period from the date of payment;

- 2) It must be shown in the return of the recipient that the income payment received was declared as part of the gross income;

- 3) The fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (cited in the cases of *Citytrust Finance Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 4134, Nov. 11, 1991; *Lincoln Philippine Life Insurance Corp. vs. Commissioner of Internal Revenue*, CTA Case No. 4522, December 1, 1992; *Filipinas Management and Leasing Services Corp. vs. CIR*, CTA Case No. 4146, March 11, 1994).

DECISION -
C.T.A. CASE No. 4897

- 5 -

Records show that the final income tax return of the petitioner was received by the BIR on April 15, 1991 and the letter-request for a refund was received by the same office on October 3, 1991 subsequently followed by a petition for review filed on January 4, 1993, all falling within the two-year prescriptive period provided by law. Certificates of creditable income tax withheld at source were also presented as evidence by petitioner to show that a total amount of P483,532.40 was withheld by the various payors in compliance with the Expanded Withholding Tax Regulations, summarized as follows -

<u>Withholding Agent</u>	<u>Exh.</u>	<u>I N C O M E</u>		<u>5% Tax Paid</u>
		<u>Rental</u>	<u>Sale of Assets</u>	
BPI - Credit Corp.	8-1	237,392.65		11,869.62
Berlined Phil. Corp.	8-2	489,837.60		24,491.88
Berlined Phil. Corp.	8-3	69,976.80		3,498.84
Berlined Phil. Corp.	8-4	69,976.80		3,498.84
Berlined Phil. Corp.	8-5	69,976.80		3,498.84
Berlined Phil. Corp.	8-6	69,976.80		3,498.84
Berlined Phil. Corp.	8-7	69,976.80		3,498.84
Colby Construction & Mgt.	8-8	70,800.00		3,540.00
Pacer Insurance Agency	8-9	62,400.00		3,120.00
Alfredo Benjamin Sulayman	8-10		128,520.00	6,426.00
Amityville Realty Corp.	8-11		116,440.00	5,822.00
Angel De Dios	8-12		203,940.00	10,197.00
Anthony M. Tongos	8-13		193,001.20	9,650.06
Basilio Bautista	8-14		141,750.00	7,087.50
Ceferino D. Sta. Maria	8-15		4,285,800.00	214,290.00
Danilo E. Mariano	8-16		124,200.00	6,210.00
Efren F. Go	8-17		224,000.00	11,200.00
Efren F. Go	8-18		241,500.00	12,075.00
Erlinda V. Garcia	8-19		227,040.00	11,352.00
Generoso C. Baladjay, Jr.	8-20		113,160.00	5,658.00
Glenn Vincent O. Yazon	8-21		118,680.00	5,934.00
Jesulino Serranilla	8-22		124,200.00	6,210.00
J. Alfonso Z. Carpio	8-23		155,350.00	7,767.50

DECISION -
C. T. A. CASE No. 4897

- 6 -

Withholding Agent	Exh.	I N C O M E		5%
		Rental	Sale of Assets	Tax Paid
Josias L. Guinto	B-24		118,800.00	5,940.00
Juanito V. Estaris	B-25		88,560.00	4,428.00
Melinda S. Mendoza	B-26		187,200.00	9,360.00
Oscar L. Cruel	B-27		197,276.40	9,863.82
Proceso T. Gonzalez	B-28		188,000.00	9,400.00
Salvador/Estrellita Cabote	B-29		124,650.00	6,232.50
Samson P. Tormis	B-30		66,588.03	3,329.40
Tessie Domingo	B-31		73,200.00	3,660.00
The Insular Life Assurance	B-32	135,258.85		6,762.94
Bureau of Internal Revenue	B-33	64,350.00		3,217.50
Herminia Nepomuceno	B-34	24,000.00		1,200.00
Phil. Info. Agency, R-7	B-35	60,000.00		3,000.00
DHL Phils. Inc.	B-36	39,600.00		1,980.00
HNL Enterprises	B-37	28,000.00		1,400.00
Tire Management Corp.	B-38	5,035.80		251.79
Mercury Drug Corp.	B-39	47,520.00		2,376.00
Rudy's Mami House	B-40	129,000.00		6,450.00
The Insular Life Assurance	B-41	38,775.00		1,938.75
Baguio Vendors Savings	B-42	25,053.60		1,252.68
Permanent Pension Plans	B-43	31,916.66		1,595.83
Prudential Life Plan Inc.	B-44	34,749.00		1,737.45
Federico Fernandez	B-45	17,916.80		895.84
Sabater Realty	B-46	41,024.50		2,051.22
Manuel Y. Ong	B-47	62,000.00		3,100.00
Charles Lee	B-48	60,000.00		3,000.00
Norkis Distributors	B-49	3,850.00		192.50
Princisito T. Lopez	B-50	65,240.00		3,262.00
Teresita R. Reyes & Co., Inc.	B-51	120,000.00		6,000.00
Nick L. Villatuya, M.D.	B-52	27,225.00		1,361.25
BPI Computer Systems Corp.	B-53	14,400.00		720.00
BPI Computer Systems Corp.	B-54	14,400.00		720.00
BPI Computer Systems Corp.	B-55	16,080.00		804.00
TOTAL		<u>2,315,709.46</u>	<u>7,351,855.63</u>	<u>483,532.40</u>

However, a comparison between the stated income under schedule 4 of the income tax return of the petitioner and the income it supposedly received as evidenced by the certificates of creditable withholding taxes combined reveals that the petitioner has an

DECISION -
C.T.A. CASE No. 4897

- 7 -

undeclared income in the amount of P7,684,032.09 computed as follows:

Income based on the certificates as computed by this Court (Exhs. "B-1" to "B-55")	P9,667,565.09
Less: income declared in the return under schedule 4 (Exh. "A-10")	<u>1,983,533.00</u>
Undeclared Income	<u>P7,684,032.09</u>

This undeclared income even if added to the gross income of the petitioner will not change the fact that petitioner suffered a net loss for the taxable year 1990 because of the huge amount of losses indicated in the return but we cannot allow this discrepancy to go unnoticed. Section 10 of Revenue Regulations No. 6-85 provides that claims for tax credit or refund of 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 was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

What is clear from the evidence is that the petitioner indicated an amount as income received under schedule 4 of the return but for some unexplained reasons largely because it was not passed upon during the hearings nor raised by respondent in her answer, a large

DECISION -
C.T.A. CASE No. 4897

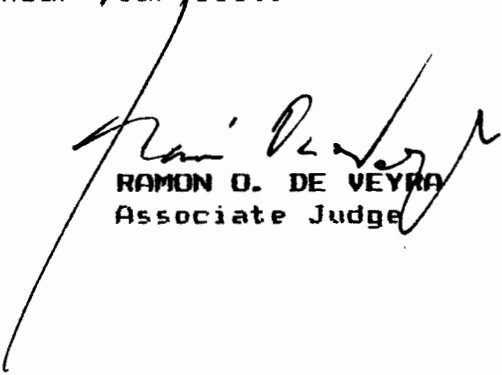
- 8 -

portion of the income indicated in the certificates of creditable income tax withheld was not declared in the income tax return of the petitioner. Nevertheless, we find that petitioner has substantially met the requirements set forth in claiming for the refund but we are constrained to deduct the amount of tax allocable to the undeclared income thus reducing the amount sought to be refunded in the amount of P99,330.80, computed as follows:

Undeclared Income	P7,684,032.09
Multiplied by tax Percentage withholding tax allocable to undeclared Income	<u>5%</u>
	P 384,201.60
Less: Amount being claimed	<u>P 483,532.40</u>
Total amount refundable	P 99,330.80

WHEREFORE, in view of the foregoing, respondent is hereby ordered to refund in favor of the petitioner the amount of P99,330.80 representing excess creditable withholding taxes paid for the calendar year 1990.

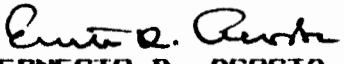
SO ORDERED.

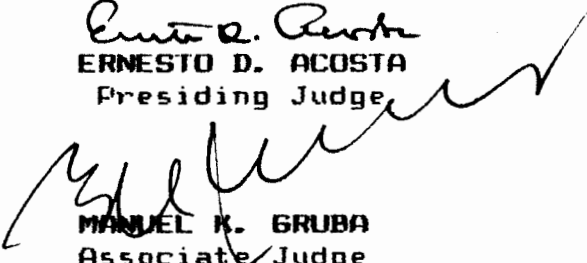

RAMON O. DE VEYRA
Associate Judge

DECISION -
C.T.A. CASE No. 4897

- 9 -

WE CONCUR:


ERNESTO D. ACOSTA
Presiding Judge


MANUEL K. GRUBA
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 Rule VIII of the Constitution.


ERNESTO D. ACOSTA
Presiding Judge