REPUBLIC OF THE PHILIPPINES
**COURT OF TAX APPEALS**
Quezon City

**TRANS-PHILIPPINES INVESTMENT, CORPORATION,**
Petitioner,

- versus -

**C.T.A. Case No. 4889**

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

**Promulgated:**
SEP 11 1995

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# DECISION

This is a case filed by petitioner Trans-Philippines Investment Corporation before this Court, to claim a refund or the issuance of a tax credit certificate from respondent, Commissioner of Internal Revenue, in the amount of P3,056,363.34 representing unutilized creditable income tax withheld at source on management fees and rental income for the calendar year 1990.

Petitioner is a domestic corporation doing business in the Philippines as a management company, export trader and producer. Part of its business operations as a management company is the lease of real properties to its clients.

On April 15, 1991, Petitioner filed its annual income tax return for the calendar year ending December 31, 1990 showing a net loss of P3,391,042.00.

As a result of this declaration of loss in its business operation for the taxable year 1990, Petitioner was not able to utilize its creditable expanded withholding tax on rental and management fees, income withheld and paid at source for the year ending December 31, 1990, summarized as follows:

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|---|---|
| Management fees | P 703,963.34 |
| Rental Income | 102,400.00 |
| Sale of Real Property | 2,250,000.00 |
| TOTAL | P 3,056,363.34 |

Neither was this unutilized creditable withholding taxes for the calendar year 1990 carried over to the succeeding calendar year 1991 because in that year, Petitioner likewise declared a net loss in its business operation.

On January 24, 1992, that is, within the two-year period after payment of said taxes, and pursuant to Section 204(3) of the National Internal Revenue Code (NIRC), petitioner filed an administrative claim for refund with the Bureau of Internal Revenue (BIR) in the aforesaid sum of P3,056,363.34 representing unutilized five percent (5%) expanded withholding tax on their rental and management fees income withheld and paid at source for the year ending December 31, 1990.

It was also within the same two-year period that the present Petition for Review was filed before this court precisely to seek judicial intervention for the refund of the sum of P3,056,363.34 or the issuance of a tax credit certificate equivalent thereto from the respondent as no action was taken by the latter in petitioner's claim for refund within the same reglementary period.

In the Answer filed by Respondent, except for the allegation that Petitioner filed its annual income tax return for the period in question and that it filed a claim for refund with the BIR which Respondent readily admitted, the latter made a blanket denial of all material allegations in the Petition stating in general that the same were mere conclusions of facts and that she (Respondent) had no knowledge or information sufficient to form a belief as to the truth thereof. As "special and affirmative defenses," Respondent stated that: 1) the present petition is prematurely filed because the claim for refund is still under investigation by the Respondent and that no decision has yet been rendered in Petitioner's claim for refund; 2) Petitioner has failed to show that it has strictly complied with the requirements of the NIRC in relation to Section 230; and 3) a claim for refund partakes of the nature of tax exemption which is strictly construed against the claimant.

Issues having been joined Petitioner presented testimonial and documentary evidence to support its case. A memorandum to wrap up its case was filed by Petitioner. On the other hand, Respondent submitted her case for decision without presenting any evidence. Respondent even failed to submit the records of the case in its custody which is a mandatory requirement under Rule 7, Section 2 of the Rules of this Court. Respondent's counsel merely manifested, as an excuse for the non-production of the records, that he was unable to "locate" the same. True or not, it was also utilized as a reason for not submitting a memorandum.

The evidence submitted by Petitioner was uncontroverted. No attempt was made by Respondent to substantiate the "special and affirmative defenses" that there was an ongoing investigation being conducted pertaining to the claim for refund of Petitioner. We can only surmise that there was none being conducted, much less any resulting action forthcoming.

The evidence submitted by Petitioner through its lone witness, Rafaelito Capistrano, Chief Accountant of Trans-Philippines Investment Corporation, substantially proved that Petitioner filed its 1990 income tax return (IRR) with the Bureau of Internal Revenue on April 19, 1991 declaring a net loss of P 3,391,042.00 for the fiscal year 1990 with a refundable tax in the amount of P5,970,417.00 (Exh. A, with attachments and submarkings, A-1 to A-7). It was likewise reflected in said returns that Petitioner derived income from management fees in the amount of P14,079,266.00 (A-8), rental fees in the sum of P36,473,006.00 (A-10) and sale of real property in the amount of P 2,448,000.00 (A-9).

Petitioner further presented as part of its documentary evidence a consolidated summary of creditable income tax withheld for the calendar year ending December 30, 1990 (Exh. B), to prove that Petitioner's managed companies, lessees and buyer of real estate remitted and paid to the BIR the required withholding tax for the income due to Petitioner as reported in its 1990 ITR. This consolidated summary was confirmed by the following documentary evidence:

> Petitioner's summary of tax withheld for 1990 by Urushi, Inc. (Exh. G);
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> Certificate of creditable income tax withheld at source for 1990 by withholding agent Atlantic Gulf and Pacific Co. of Manila, Inc. (Exh. L);
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> Petitioner's summary of tax withheld for 1990 by Atlantic Gulf and Pacific Co. of Manila, Inc. to prove that said company remitted and paid to the BIR the required withholding tax. (Exh. H);
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> Certificate of creditable income tax withheld at source for 1990 to establish the amount of creditable tax on the income of Petitioner withheld at source by its withholding agent Royal Undergarment Corporation of the Philippines, for 1990 (Exh. I);

Petitioner's summary of tax withheld for 1990 by Royal Undergarments Corporation of the Philippines to prove that said company remitted and paid to the BIR the required withholding tax for the income due to Petitioner in 1990 (Exh. E);

Annual Return of creditable income tax withheld at Royal Undergarments Corporation of the Philippines (Exh. D);

Certificate of creditable income tax withheld at source for 1990 regarding income of Petitioner withheld at source by its withholding agent Artefacts, Inc. for 1990 (Exh. J);

Petitioner's summary of tax withheld for 1990 by Artefacts, Inc. regarding remittance and payment to the BIR of the required withholding tax for income due the Petitioner in 1990 (Exh. F).

Certificate of creditable income tax withheld for 1990 by Urushi, Inc. to establish the amount of creditable tax on the income of Petitioner withheld at source by said company as its withholding agent income due the petitioner in 1990 (Exh. K).

Finally, petitioner presented its 1991 ITR, together with attachments, to prove that it did file its return for that year on April 15, 1992 and that it incurred a net loss with refundable tax (Exh. M).

As shown by the evidence on record, there is not a shadow of doubt that Petitioner filed its claim within the two-year prescriptive period as provided for by Sections 204 and 230 of the NIRC and subsequently initiated judicial proceedings when no administrative action in its claim for tax refund within the same period was in the offing. Cited for ready reference are the pertinent provisions of the NIRC:

> "Section 204. Authority of the Commissioner to compromise, abate, and refund/credit taxes.--The Commissioner may -
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> x x x x
>
> (3) Credit or refund taxes erroneously or illegally received, 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 years after the payment of the tax or penalty."
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> Section 230. 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. x x x x "

The evidence presented by Petitioner clearly spell out that it filed its claim for credit or refund with the BIR within the two-year period as prescribed by the above-cited provisions of the NIRC from the date it filed its annual corporate income tax return and paid the corresponding tax due thereon.

It was in fact admitted by Respondent that Petitioner filed its claim for refund with the BIR on January 24, 1992. The instant Petition for Review was filed on December 22, 1992, approximately eleven months after the administrative claim for refund was brought to the BIR. It cannot be gainsaid that Respondent had more than adequate time within which to look into the claim for refund and decide the matter accordingly. It is evident that Respondent failed to act on the matter. It was even alleged by Respondent in her Answer which was filed on January 28, 1993 and this was more than a year since the administrative claim for refund was initiated- that "the claim for refund of petitioner is still pending investigation and consideration before the office of the respondent." In spite of the pendency of the case before this Court, Respondent has not made any serious effort in resolving the matter in the administrative level nor inform the Court of its status.

There is no question that a taxpayer can elevate before this Court recovery of any tax erroneously or illegally collected without waiting for a decision of the Commissioner of Internal Revenue if the two-year period under existing provisions of the NIRC is about to end, otherwise, the taxpayer will be left with no other remedy. Our Supreme Court has already ruled squarely on this issue and the following can be considered as a ruling case law. In the case of Collector of Internal Revenue vs. Sweeney, et. al., 106 Phil. 59 (1959), it so stated that:

> "As to the propriety of taking the case to the Court of Tax Appeals before respondents receive any advice as to the action taken, if any, on their petition for refund, this question has already been ruled upon by Us to the effect that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to court. In the case of P.J. Kiener Co. v. David, 92 Phil. 945 (49 Official Gazette, 1852) we said: 'xxxx Nowhere in and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim <u>or that the taxpayer shall not go to court before he is notified of the Collector's action</u>. Having filed his claim with the Collector of Internal Revenue and having had ample time to study it, the claimant may, indeed should, within the statutory period of two years proceed with his suit <u>without waiting for the Collector's decision</u>. xxxx" (emphasis supplied)

Again in the case of Gibbs vs. Collector of Internal Revenue, G. R. No. L-13453, February 20, 1960, the Court ruled that :

> "If however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the preemptory period fixed by the statute."

Having therefore amply demonstrated by its evidence that Petitioner is entitled to the refund with no evidence to the contrary presented by Respondent, the latter may be considered to have "no serious objection to petitioner's entitlement to the refund" (see Ateneo de Manila University vs. Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989). We rule therefore in favor of petitioner's right to refund based on the preponderance of evidence it has adduced.

**WHEREFORE**, judgement is hereby rendered ordering the Respondent to refund to Petitioner the amount of P3,056,363.34 representing unutilized excess creditable income taxes withheld at source, or in the alternative, to issue a tax credit for the said amount.

**SO ORDERED.**

**RAMON O. DE VEYRA**
Associate Judge

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, Article VIII, of the Constitution.

**ERNESTO D. ACOSTA**
Presiding Judge
Court of Tax Appeals