REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 5978

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated
JUN 04 2002
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DECISION

This case involves a judicial claim for refund of petitioner's alleged unutilized and unapplied withholding taxes on rentals of real property and dividend income for the taxable year 1997 in the aggregate amount of P9,326,979.35.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at the Philamlife Building, United Nations Avenue, Ermita, Manila (par. 1, Stipulation of Facts).

On April 15, 1998, petitioner filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the taxable year 1997 (Exhibit "A") declaring a net loss of ONE HUNDRED SIXTY FIVE MILLION SEVEN HUNDRED ONE THOUSAND FIVE HUNDRED EIGHT PESOS (P165,701,508.00).

On December 16, 1999, petitioner filed with the BIR-Appellate Division a written administrative claim for refund (Exhibit "YY") requesting that the amount of NINE

MILLION THREE HUNDRED TWENTY SIX THOUSAND NINE HUNDRED SEVENTY NINE AND 35/100 PESOS (P9,326,979.35) be refunded to it. The amount constitutes creditable taxes withheld and remitted to the BIR by petitioner's withholding agents from rentals of real property and dividend income during the calendar year 1997.

As there was no immediate action on the part of the respondent, petitioner filed the instant Petition for Review with this Court on December 23, 1999.

In his Answer filed on January 28, 2000, respondent raised the following Special and Affirmative Defenses, to wit:

> "5. Assuming but without 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**); Thus, petition is premature;
>
> 6. 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;
>
> 7. Petitioner must show that it has complied with the provisions of Section 51 (c) 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 2-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 gross income;
> c) The fact of the 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;
>
> 8. Petitioner must show that it has complied with the provisions of Section 204 (3) and 230 of the Tax Code; and
>
> 9. Claims for refund of taxes are construed strictly against the claimants, the same being in the nature of an exemption from taxation (**Manila**

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> **Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 351).**"

As jointly stipulated by the parties, the pertinent issues confronting this Court are:

1. Whether or not petitioner incurred overpaid and unapplied creditable rental and dividend income tax for tax year 1997 in the amount of P9,326,979.35;

2. Whether or not the overpaid and unapplied creditable rental and dividend income tax for tax year 1997 claimed as refund by petitioner has in fact remained unapplied and unutilized in the succeeding taxable year 1998; and

3. Whether or not respondent is liable to refund to petitioner the sum of P9,326,979.35 representing unapplied creditable rental and dividend income tax for tax year 1997.

We resolve against the petitioner.

In its 1997 Income Tax Return, petitioner signified its intention to carry over its unutilized creditable taxes withheld to the succeeding taxable year 1998 by putting an x mark beside the phrase 'To be carried as tax credit next year.' Unfortunately, petitioner failed to present its 1998 Annual Corporate Income Tax Return for the Court to verify if the amount sought to be refunded was indeed not applied as tax credit. This failure on the part of the petitioner to present its 1998 Income Tax Return is fatal to its claim for refund.

In a number of similar cases brought before this Court, the more recent of which is the case of ***JS Steel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6071, February 19, 2002,** We ruled on the importance of presenting the succeeding year's return:

> "A scrutiny of Petitioner's 1998 ITR (Exhibit C) shows that Petitioner opted once more to carry-over the 1997 excess tax credits of P2,922,924.00 (included in the P13,031,349.00 income tax overpayment)

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> to the succeeding year 1999 as evidenced by the "x" mark in the box corresponding to the option "To be carried as tax credit next year". Since Petitioner failed to submit its 1999 annual income tax return, this Court cannot verify with certainty whether or not the 1997 excess tax credits of P2,922,924.00 were applied/credited against Petitioner's 1999 income tax liability. Petitioner cannot at the same time claim for refund and apply the 1997 excess tax credits of P2,922,924.00 to its succeeding year's income tax liability. The two remedies of refund and tax credit as provided for in Section 69 [now 76] of the Tax Code, as amended, are alternative and the choice of one precludes the other (*Philippine Bank of Communications vs. CIR, G.R. No. 112024, dated January 28, 1999*). xxx"

Moreover, in the case of ***Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals***, CA-G.R. SP. No. 56800, August 18, 2000, the Court of Appeals categorically ruled:

> "Petitioner fails to discharge the burden of being entitled to the tax refund sought for considering that evidence on hand shows that although petitioner was able to comply with the requirements which a taxpayer must have to comply before a claim for a refund would be sustained, yet, it has failed to present vital documents, its Income Tax Return for the year 1997, which would show whether or not petitioner has applied or credited the refundable amount sought for in its 1997 tax liability, if there be any, since per its 1996 Income Tax Return, it readily revealed that petitioner opted to carry over the excess income tax paid to the succeeding year and it is only from petitioner's Income Tax return for the year 1997 that this fact can be determined with certainty and the non presentation of this vital document proved fatal to the petitioner's cause of action."

To grant petitioner's claim for refund is tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government (***Paseo Realty & Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals,* CA-G.R. SP No. 33589, October 14, 1994**). A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and

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categorical language. Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim (***Emmanuel & Zenaida Aguilar vs. Commissioner*, CA-GR Sp. No. 16432, March 30, 1990, cited on p.206, Law of Basic Taxation, Aban, 1994 Ed**).

In view of petitioner's failure to present its 1998 Income Tax Return, the Court no longer finds it necessary to dwell on the issues raised by the parties.

WHEREFORE, in view of the foregoing premises, petitioner's claim for refund is hereby **DENIED** for lack of merit.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

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