REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANCO FILIPINO SAVINGS AND MORTGAGE BANK
Petitioner,

- versus -

C.T.A. CASE NO. 5611

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 05 1999

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DECISION

This is a Petition for Review filed by the herein Petitioner on April 13, 1998, seeking for a refund of the amount of ONE MILLION SIX HUNDRED TWENTY TWO THOUSAND FIVE HUNDRED SEVENTY SIX PESOS (P1,622,576.00), representing allegedly overpaid creditable taxes withheld for the year 1995.

The antecedent facts of the case are undisputed.

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines.

Records reveal that on April 12, 1996, Petitioner filed its annual income tax return covering the year 1995 declaring a net operating loss of P211,476,241.00 and a total tax credit of P13,103,918.00 representing the prior year's excess tax credit of P11,481,342.00 and creditable withholding taxes of P1,622,576.00 (Exhs. A, A-2). Inasmuch as Petitioner has incurred losses, the tax credit was never utilized.

159

On February 4, 1998, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue covering the aforesaid amount (Annex B). However, Respondent Commissioner failed to act on the said claim, thus prompting the Petitioner to elevate its case to this Court on April 13, 1998 to toll the running of the prescriptive period within which to file a claim for refund.

In his Answer filed through registered mail on June 3, 1998, Respondent assailed the validity of Petitioner's claim and interposed the following Special and Affirmative Defenses, to wit:

> 3. The alleged written claim for refund of creditable taxes withheld for the year 1995 and the corresponding income tax return for the same year are yet subject to and are undergoing administrative investigation;
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> 4. The amount of P1,622,576.00 being claimed by the Petitioner with the BIR and the subject matter in the instant case was not properly documented;
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> 5. Taxes paid and collected are presumed in accordance with law and regulations, hence, not refundable;
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> 6. In an action for tax refund/credit the burden of proof is on the taxpayer to establish its right thereto and failure to sustain the burden is fatal to such action;
>
> 7. It is incumbent upon the Petitioner to show that it has complied with the provisions of Sections 204 and 230 (mow 229) of the Tax Code;
>
> 8. Well-settled is the rule that claims for refund are construed strictly against claimants, since the same partakes of the nature of exemption from taxation (Resins, Inc. vs. Auditor General, 25 SCRA 754, 1968).

On November 23, 1998, Petitioner filed its Formal Offer of Evidence to substantiate its claim consisting, among others, of the following relevant documents, to wit:

a) Corporate Annual Income Tax Return for taxable year 1995 (A, A-1, A-2);

160

b) Monthly Remittance Return of Income Taxes Withheld;

c) Certificates of Creditable Tax Withheld.

In addition thereto, Petitioner offered in evidence the testimony of its lone witness, Mrs. Roberta Afable, the Assistant Manager of its Accounting Department.

On December 16, 1998, Respondent filed its Comment to the Formal Offer of Evidence where he interposes to have no objection as to the existence of Petitioner's exhibits with the observation, however, that the same are not concrete, eloquent or much less sufficient pieces of evidence to prove erroneous payment of taxes.

In a resolution promulgated August 10, 1999, after the parties have submitted their respective memorandum, this case was considered submitted for decision.

The sole issue posed for Our consideration is whether or not Petitioner was able to substantiate its claim for refund of the amount of P1,622,576.00 through presentation of material and relevant evidence.

In its Memorandum, Petitioner supported its stance by advancing the argument that it has complied with the substantiation rule as required by the law before a claim for refund may be granted, viz:

1) Petitioner's claim for refund was filed with the Respondent within the two (2) year prescriptive period as required under Section 229 of the Tax Code;

2) That the fact of withholding as well as payment of the refundable taxes withheld from Petitioner are supported by certifications or statement of taxes withheld issued by it or its payors of income; and

3) That the income payments from which the refundable taxes were withheld were included/declared as part of Petitioner's gross income.

161

Upon the other hand, in its Memorandum filed on July 22, 1999, Respondent assails the authenticity and due execution of the 1995 income tax and monthly withholding tax returns filed by the Petitioner. It is Respondent's submission that the aforesaid documentary exhibits should not be given probative value since the signature and the date of filing thereof were never identified by its lone witness and hence, not offered in evidence. Such being the case, Respondent theorizes that such oversight is disastrous to Petitioner's cause for it goes deep into the issue of authenticity and due execution of the return itself and the date of filing with the BIR. In other words, the Respondent is of the conclusion that the claim for refund must be denied on the ground of Petitioner's failure to prove the authenticity and due execution of its documentary exhibits, more particularly its income tax return and Monthly Return of Income Tax Withheld.

We find for the Petitioner.

It bears emphasis that the income tax return and withholding tax returns claimed by the Respondent as not to be given probative value, were the same returns which were not objected to by the Respondent during the Commissioner's hearing, when presented and conclusively presumed as faithful reproduction of its originals. Likewise, there was never any instance during the entire proceedings where the Respondent assailed the contents of the income tax returns which, to this Court's mind, are the very *lis mota* of the case. Thus, in the absence of any evidence that will taint the reliability, sufficiency and competency of the said returns, there is no cogent reason why this Court will not give due credence on these documents which were prepared by the Petitioner under penalties of perjury.

We now shift to the merits.

(6)

After a careful scrutiny of all the evidence at hand and the applicable laws on the claim filed by the Petitioner, We decide to grant the same but only in a reduced amount.

In a litany of cases too numerous to cite, this Court has invariably held that refund of creditable withholding taxes shall be granted in the event the Petitioner was able to comply with the following requirements, to wit:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994**].

These aforementioned requirements were affirmed by the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.**

We now discuss Petitioner's compliance with the aforementioned requirements *ad seriatim.*

163

As borne out by the records, the annual income tax return of the Petitioner for taxable year 1995 was filed on April 12, 1996 while the letter-claim for refund and the Petition for Review were filed on February 4, 1998 and April 13, 1998, respectively, well within the two-year prescriptive period provided under Section 229 of the Tax Code which provides, thus:

> **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 have 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 begun 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 payment was made, such payment appears clearly to have been erroneously paid.

Anent the second requirement, Petitioner's income from rent and disposal of acquired assets upon which the taxes were withheld were declared as part of the gross income of Petitioner as reflected in its 1995 annual income tax return. After a perusal of its return, We found out that the rental income amounting to P377,688.00, as supported by the certificates of tax withheld, were included in the item "Other Income" amounting to P15,326,056.00, while the income from the disposal of acquired assets were included under "Acquired Assets" in the amount P192,812,247.00 (see Schedule 3, 1995 Income Tax Return, Exhibit "A").

164

As to the third requirement, this Court finds that from among the documents submitted by Petitioner to support its claim for refund, only the certificates of creditable tax withheld at source (BIR Form 1743-750) can be given full credence pursuant to Section 10 of Revenue Regulations No. 6-85 which provides, thus:

> "**Section 10** - 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 (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."

The certificates of income tax withheld on compensation (Exh. "II") and the monthly remittance returns of income taxes withheld (Exhs. "C" to "Z") cannot be accepted as proper documents to prove the fact of withholding because these are not the proper BIR forms required pursuant to Sections 6 and 10 of Revenue Regulations No. 6-85 **(Far East Bank vs. Commissioner of Internal Revenue, CTA Case No. 4972, January 24, 1996 and PDCP Development Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5237, March 25, 1997.)**

Therefore, all the amounts indicated in the aforementioned exhibits were excluded in the final computation of the refundable amount.

In conclusion, the amount that may be refunded to the Petitioner is computed as follows:

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
AGUIRRE LOAN CO., INC.	AA	P233,688.00	P 11,684.40
SOCIAL SECURITY SYSTEM	BB	7,500.00	375.00
SOCIAL SECURITY SYSTEM	CC	7,500.00	375.00

165

SOCIAL SECURITY SYSTEM	DD	7,500.00	375.00
SOCIAL SECURITY SYSTEM	EE	7,500.00	375.00
DAVAO WHITELIGHTNING	FF	30,000.00	1,500.00
DAVAO PAINTSHOP	GG	30,000.00	1,500.00
ACEBEDO INT'L CORP.	HH to HH-2	54,000.00	2,700.00
	TOTALS	P377,688.00	P 18,884.40

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate in the amount of EIGHTEEN THOUSAND EIGHT HUNDRED EIGHTY FOUR PESOS AND FORTY CENTAVOS (P18,884.40) in favor of the Petitioner, representing overpaid income tax for the year 1995.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(On Leave)
RAMON O. DE VEYRA
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

166