REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM ASSET MANAGEMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5965

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 09 2001

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DECISION

Before Us is a Petition for Review seeking for the refund of P522,092.17, allegedly representing unapplied creditable withholding tax on income for the taxable year 1997.

Petitioner, formerly Philam Fund Management, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It acts as the investment manager of both Philippine Fund, Inc. (PFI) and Philam Bond Fund, Inc. (PBFI), which are open-end investment companies in the sale of their shares of stocks and in the investment of the proceeds of these sales into a diversified portfolio of debt and equity securities. Being an investment manager, Petitioner provides management and technical services to PFI and PBFI. Petitioner is, likewise, PFI's and PBFI's principal distributor which takes charge of the sales of said companies' shares to prospective investors. Pursuant to the separate Management and Distribution agreements between the Petitioner and PFI and PBFI, both PFI and PBFI agreed to pay the Petitioner, by way of compensation for the latter's services and facilities, a monthly management fee from which PFI and PBFI withhold the amount equivalent to five percent (5%) creditable tax pursuant to the Expanded Withholding Tax Regulations.

On April 3, 1998, Petitioner filed its Annual Corporate Income Tax Return for the taxable year 1997 representing a net loss of P2,689,242.00. Consequently, it failed to utilize the creditable tax withheld in the amount of Five Hundred Twenty-Two Thousand Ninety-Two Pesos (P522,092.00) representing tax withheld by Petitioner's withholding agents, PFI and PBFI on professional fees (Exhibit A).

The creditable tax withheld by PFI and PBFI in the amount of P522,092.00 is broken down as follows:

PFI	P496,702.05
PBFI	25,389.66
Total	P522,091.71

(Exhibits C, D, E, F and G)

On September 11, 1998, Petitioner filed an administrative claim for refund with the BIR – Appellate Division in the amount of P522,092.00 representing unutilized excess tax credits for calendar year 1997 (Exhibit V). Thereafter, on July 28, 1999, a written request was filed with the same division, for the early resolution of Petitioner's claim for refund (Exhibit W).

Respondent did not act on Petitioner's claim for refund hence, a Petition for Review was filed with this Court on November 29, 1999 to toll the running of the two-year prescriptive period.

In his Answer filed on January 4, 2000, Respondent raised the following Special and Affirmative Defenses, to wit:

"4. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

5. It is incumbent upon herein Petitioner to show that it has complied with the provision of Section 229 of the Tax Code;

6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

7. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);

8. In action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

9. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable.

In order to support its claim for refund, Petitioner submitted the following pertinent documents as evidence, to wit:

1. 1997 Corporate Income Tax Return (Exhibit A)
2. 1997 Annual Information Return of Income Tax Withheld on withholding tax (Exhibits B and O)
3. Various Monthly Remittance Returns (Exhibits C to N, P to U)
4. Written claim for refund dated September 4, 1998 (Exhibit V)
5. Letter dated July 21, 1999 (Exhibit W)

In his Memorandum filed on March 13, 2001, Respondent's counsel raised the following objections:

"1. Petitioner's claim of loss in operations is not fully substantiated

"2. Petitioner failed to show proof that its 1997 excess tax credits were not carried over nor applied to its tax liability in 1998."

The sole issue brought before this Court is whether or not Petitioner is entitled to the refund of the amount of P522,092.00 allegedly representing creditable tax withheld for the year 1997.

We resolve to deny the Petition.

Time and again, this Court has ruled that for a refund of creditable withholding taxes to prosper, the Petitioner must comply with the following basic requirements provided under Revenue Regulations No. 12-94 as affirmed by the Supreme Court in the case of **Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459**, to wit:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;

2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3) That the income upon which the taxes were withheld were included in the return of the recipient [Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957].

While it is true that Petitioner substantially complied with the three aforementioned requirements, we cannot grant the claim for refund on the ground of the non-presentation of Petitioner's 1998 Annual Income Tax Return.

Petitioner's 1997 Annual Income Tax Return (ITR) sufficiently proved that it incurred a net loss of P2,689,242.00 for calendar year 1997 and that there was an excess creditable tax of P522,092.00. It is noted, however, that Petitioner failed to indicate in its

1997 ITR its option on whether the tax credits of P522,092.00 shall be refunded or applied as credit to the succeeding year (see Exhibit A).

This major lapse of the Petitioner of not indicating in its 1997 ITR its intention to refund or apply the excess creditable withholding taxes to the succeeding year was further aggravated by its failure to present the 1998 ITR to help us determine with certainty whether or not the claimed 1997 tax credits were not applied against its 1998 tax liabilities.

If the Petitioner applied the excess creditable taxes to its 1998 tax liabilities, then the instant claim for refund should no longer be granted because this would be tantamount to granting twice the refund being sought **(Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, CA G.R. SP No. 33589, October 14, 1994).**

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

Juanito C. Castaneda, Jr.

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTANEDA, 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