REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RENAISSANCE PROPERTIES AND MANAGEMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5602

THE HONORABLE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 05 1999

x - x

DECISION

This is a Petition for Review filed by the petitioner on April 7, 1998 seeking for a refund or in the alternative, an issuance of a tax credit certificate for the amount of P44,099.34 representing excess/unutilized withholding tax credits for the years 1996 and 1997.

The antecedent facts of this case giving rise to the controversy at bar are as follows:

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is engaged in business as a real estate lessor. In the years 1996 and 1997, petitioner earned certain rental income which allegedly were subjected to the 5% expanded withholding taxes pursuant to Revenue Regulations No. 6-85 as amended by Revenue Regulations No. 12-94. The said total taxes withheld allegedly amounted to P44,099.34, the subject matter of this petition.

During the period covered in this case, Petitioner allegedly incurred losses in its operations, thus, it was not able to apply the withheld taxes as credits to any income taxes due for the said years.

On March 24, 1998, petitioner filed an administrative claim for refund with the respondent Commissioner of Internal Revenue (Exhibit "V") seeking for a refund of the aforesaid amount. Unable to receive an affirmative response and fearing that its claim might be barred by the two-year period of prescription, petitioner elevated its case to this Court via Petition for Review on April 7, 1998.

On May 6, 1998, after having been granted an extension of time to file his responsive pleading, respondent finally filed his Answer to the Petition for Review and assailed the latter on the following grounds, viz:

SPECIAL AND AFFIRMATIVE DEFENSES

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

5) 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);

6) It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended;

7) In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund.

In a resolution promulgated on May 27, 1999, this case was considered submitted for decision sans the memorandum of the respondent.

The sole issue in this case is whether or not, on the basis of the evidence presented, Petitioner is entitled to the issuance of a Tax Credit Certificate or refund of the amount of P44,099.34 representing overpaid withholding taxes for the years 1996 and 1997.

In its memorandum, petitioner buttresses its stance by citing Section 10 of Revenue Regulations No. 6-85 as basis of its claim and We quote, thus:

"Sec. 10. Claim for Tax Credit or Refund.-

(a) 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 has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

(b) Excess Credits.-A taxpayer's excess expanded withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose, provided, however, he submits with his income tax return a copy of his income tax return for the aforesaid previous taxable period showing the amount of his aforementioned excess withholding tax credits.

(c) If the taxpayer, in lieu of the aforesaid automatic application of his excess credit, wants a cash refund or a tax credit certificate for use in payment of his other national internal tax liabilities, he shall make a written request therefor. Upon filing of his request, the taxpayer's income tax return showing the excess of expanded withholding tax credits shall be examined. The excess expanded withholding tax, if any, shall be determined and refunded/credited to the taxpayer-applicant. The refund/credit shall be made within a period of sixty (60) days from date of the taxpayer's request provided, however, that the taxpayer-applicant submitted for audit all his pertinent accounting records and that the aforesaid records established the veracity of his claim for a refund/credit of his excess expanded withholding tax credits."

In addition, petitioner contends that the quantum of evidence presented by it, in this case was more than enough to sustain its claim for tax credits or refund of overpaid taxes for the years 1996 and 1997.

We grant the petition.

This case presents no novel issue. Time and again, this Court has invariably held that a grant of refund is warranted provided the taxpayer complies with the following requisites, 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 was 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].**

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

Anent the first requirement, Petitioner must, comply with the provisions of Section 230 of the Tax Code which provides, thus: (now Section 229 of the 1997 Tax Code)

> "SEC. 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 filed 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 a 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.

A careful perusal of the records of this case reveal that petitioner filed its claim for refund with the Bureau of Internal Revenue on March 24, 1998 (Exh. V) and with this Court on April 7, 1998, which dates are both well within the two year period reckoned from petitioner's filing of the 1996 and 1997 income tax returns on April 3, 1997 and March 20, 1998 respectively.

As to the second requirement, petitioner was able to comply when it declared in its 1996 and 1997 income tax returns the income payments from which the income taxes withheld of P18,464.90 for 1996 and P24,545.44 for 1997 as part of its gross income of P684,463.39 for 1996 and P875,909.65 for 1997, respectively. (Exhs. 1-3 & H-1; C-3 & B-1); (TSN, August 27, 1998, pp. 5-8)

Finally, petitioner likewise complied with the third requirement as evidenced by the Certificates of Creditable Tax Withheld at source issued by Copylandia Services and

Trading Inc. and National Steel Corp. for calendar years 1996 and 1997, detailed as follows:

Year	Exh.	Withholding Agent	Income Payment	Income Tax Withheld
1996	J	Copylandia	P 261,360.00	P13,068.00
	K	National Steel Corp.	357,930.00	3,579.30
	L	National Steel Corp.	181,760.00	1,817.60
			₱ 801,050.00	₱ 18,464.90
1997	D	Copylandia	P 122,727.20	P 6,136.36
	E	Copylandia	122,727.20	6,136.36
	F	Copylandia	122,727.20	6,136.36
	G	Copylandia	122,727.20	6,136.36
			₱ 490,908.80	₱24,545.44
GRAND TOTAL			₱1,291,958.80	₱43,010.34

To further prove the withholding and remittance to the Bureau of Internal Revenue of the above income taxes, petitioner presented the following:

1.) Certifications issued by Copylandia and National Steel Corp. summarizing the amount of inocme taxes withheld from petitioner and remitted to BIR Accredited Agent Banks for 1996 and 1997 (Exhs. M & S, inclusive of sub-markings) and

2.) Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Tax filed by Copylandia and National Steel Corporation with the Bureau of Internal Revenue for 1996 and 1997 (Exhs. N, O, P, Q, R, T, U, inclusive of sub-markings).

Note, however, that there is a discrepancy in the amount claimed as refund indicated in petitioner's prayer in its Petition for Review and that as stated in the memorandum. This fact was explained by the petitioner's witness who testified that Copylandia made an error in the remittance of Certificate of Creditable Tax Withheld at Source and to which an adjustment in the schedule has been made.

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 **FORTY THREE THOUSAND TEN** and **THIRTY FOUR CENTAVOS** (P43,010.34) in favor of the petitioner representing unutilized creditable taxes withheld at source for the years 1996 and 1997.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals