REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5484

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 26 1999 Emarguerite

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DECISION

This case involves a judicial action for the refund or issuance of a tax credit certificate in the sum of ₱2,556,063.00, representing overpaid income tax resulting from an excess payment of creditable withholding taxes for the calendar year ended December 31, 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located at 17th Flr., Citibank Center, Paseo de Roxas, Makati City. It is engaged in the business, among others, to lease real and personal properties (Exhs. A and A-1).

On April 17, 1995, Petitioner filed its 1994 Corporation Annual Income Tax Return reflecting a net income in the sum of ₱22,056,411.00 with a corresponding tax liability of ₱7,719,744.00 but with a refundable income tax payment in the amount of ₱34,178,711.00, detailed as follows: (Exhs. B, B-1 to B-5a)

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Gross Income		
Rent, Lease, etc. (Sch. 3)	₱248,145,042.00	
Sales of property (Sch. 5)	65,329.00	
Total		₱248,210,371.00
Less: Deductions		266,153,960.00
Net Income		₱ 22,056,411.00

Tax Due (₱22,056,411.00 x 35%)		₱ 7,719,744.00
Less: Tax Credits/Payments (From Section E)		
a. Prior year's excess credit	₱31,622,648.00	
b. Quarterly payments made this year	-	
c. Creditable tax withheld	10,275,807.00	
Total		41,898,455.00
Amount Refundable		₱ 34,178,711.00

On March 21, 1996, Petitioner filed a letter claim for refund with the Bureau of Internal Revenue covering its 1994 overpaid creditable withholding tax at source in the amount of ₱2,556,063.00, computed as follows: (Exh. G)

1994 Tax Due	₱ 7,719,744.00
Less: 1994 Creditable Tax Withheld	10,275,807.00
Amount Refundable	₱ 2,556,063.00

The inaction of the Respondent on the aforementioned claim for refund, compelled Petitioner to file the instant Petition for Review on April 7, 1997 in order to preserve its right to judicially claim for the refund of said amount pursuant to Section 230 of the Tax Code, as amended.

Respondent, in his Answer, raised as special and affirmative defenses, that Petitioner's claim for refund

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is still undergoing administrative investigation; taxes paid and collected are deemed to have been made in accordance with law and pertinent existing BIR regulations; claims for tax refund/credit are construed strictly against the claimants; it is incumbent upon Petitioner to show that it has complied with the provisions of Section 204 in relation to Section 230 of the Tax Code, as amended; and the claim for taxes paid prior to April 7, 1995 are already barred by prescription pursuant to section 230 of the Tax Code, as amended.

The issues posed before Us are as follows:

1. Whether or not Petitioner is legally entitled to the claim for refund; and

2. Whether or not Petitioner was able to substantiate its entitlement thereto.

Petitioner is firm in its stand that it is entitled to the refund sought. It cites as legal basis, Section 69 of the 1994 Tax Code, as amended, to wit:

> **Sec. 69. Final adjustment return.** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or

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> (b) Be refunded the excess amount paid, as the case may be.
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Underlining supplied).

Petitioner further submitted various documents in support of the claim for refund, to wit:

1. Amended Articles of Incorporation (Exhs. A and A-1);

2. Corporation Annual Income Tax Returns for 1994 and 1995 (Exhs. B, D, and F, inclusive of sub-markings);

3. Various Certificates of Creditable Income Tax Withheld at Source (Exhs. C to C-22); and

4. Letter-claim for refund with the Bureau of Internal Revenue (Exh. G).

Respondent, on the other hand, is convinced that Petitioner is no longer entitled to the refund of P2,556,063.00. He presented in evidence the memorandum submitted by Revenue Officer, Juan D. Yap, Jr., dated May 15, 1998, recommending the setting aside of the instant claim, although found to be tenable, pending the settlement of value added tax liability in the amount of P77,108,501.00 (Exhs. 1, 1-a, 1-b, 5, and 5-a).

It appears then, that the only hindrance why Petitioner cannot be accorded a refund is the existence of a probable assessment for deficiency value-added tax. Be that as it may, no formal assessment has been issued by the Respondent to Petitioner at the time this case was submitted for decision. We are then confronted only with the determination of the legal and factual bases of Petitioner's cause that is, to determine whether or not it has successfully established the right to the refund based on the evidence presented (**PERF Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4680, June 28, 1995**).

Based on Section 69 of the 1994 Tax Code, as amended, a taxpayer is entitled to a refund of excess income tax payment of a given year which was not applied as an automatic tax credit against the tax liability of the succeeding taxable year. In the case at bar, Petitioner has successfully established that its excess income tax payment for the year 1994 was not utilized in calendar year 1995 due to the net loss position of Petitioner in 1995 (Exhs. D and F, inclusive of sub-markings), thus, legally entitling Petitioner to the refund sought.

As regards the substantiation requirements, which is the second issue at bar, the following requisites have to be met:

> 1. That it filed a claim for refund within the two (2) year period from date of payment of the tax as prescribed under Section 299 (now 230) of the National Internal Revenue Code, as amended;
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> 2. That the income upon which the taxes were withheld at source under Section 53 were included as part of the income declared in the income tax return of the recipient; and
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> 3. 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. **[Sec. 10, Rev. Reg. 6-85; see Citytrust Finance Corporation vs. The 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, CA-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 Investors Finance Corporation/FNCB Finance) and the Court of Tax Appeals, CA-G.R. SP No. 31104, April 18, 1994].**

Petitioner satisfactorily complied with the first requirement when it filed its claims for refund with the Bureau of Internal Revenue and in this Court within the two-year period. The letter-claim for refund with the BIR was filed on March 21, 1996 and the instant petition

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for review on April 7, 1997. The two-year period commenced to run on April 17, 1995, the date when Petitioner filed its 1994 annual income tax return **(Commissioner of Internal Revenue v. TMX sales, Inc. et al., G.R. No. 837736, January 15, 1992).**

As to the second requirement, Petitioner was able to show that the income payments upon which the creditable withholding taxes for 1994 were paid were included in the gross income portion of Petitioner's annual income tax return. This was testified to by Petitioner's witness, Mrs. Cornelia M. Naguit, and, as verified, was duly reflected in Petitioner's 1994 income tax return (TSN, October 21, 1997, pp. 19 to 21; and Exh. B-3).

And lastly, the 1994 creditable withholding taxes at source in the total amount of ₱10,275,807 was duly supported by Certificates of Creditable Income Tax Withheld at Source (Exhs. C, C-1 to C-22).

WHEREFORE, in view of the foregoing, and as prayed for, jugdment is hereby rendered ordering Respondent to **REFUND** or to **ISSUE** a tax credit certificate in favor of Petitioner in the sum of ₱2,556,063.00 representing overpaid income tax for the calendar year 1994.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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
Presiding Judge
Court of Tax Appeals

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