

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

**FMF DEVELOPMENT
CORPORATION**

Petitioner,

- versus -

C.T.A. CASE NO. 6082

**COMMISSIONER OF
INTERNAL REVENUE**

Respondent.

Promulgated:

NOV 16 2001

[Signature]

X ----- X

DECISION

This is a judicial claim for refund in the amount of *six hundred seventy nine thousand five pesos* (P679,005.00) allegedly representing unutilized excess creditable withholding taxes for taxable years 1997 and 1998.

The facts are as follows:

Petitioner is a domestic corporation organized and existing under the laws of the Philippines, with office address at the 4th Floor Beneficial Life Building, Muralla St., Intramuros, Manila.

On April 15, 1998, Petitioner filed its tentative 1997 annual income tax return reflecting a net loss of P38,571,675.00 and excess creditable taxes withheld in 1997 of P407,288.00 (Exhibit A). Subsequently, on June 4, 1998, Petitioner filed an amended 1997 income tax return declaring a lower net loss amount of P30,616,003.00 but

reporting the same amount of excess creditable taxes withheld in 1997 of P407,288.00 which it opted to be refunded (Exhibits A-2 to A-4, inclusive).

On November 3, 1998, Petitioner filed an administrative claim for refund corresponding to its reported 1997 excess creditable withholding taxes of P407,288.00 (par. 2, Joint Stipulation of Facts).

On May 25, 1999, Petitioner filed its amended 1998 annual income tax return (Exhibit C) showing a net loss of P16,393,781.00 (Exhibit C-3) and a minimum corporate income tax due of P146,163.00 which was offset against its creditable taxes withheld in 1998 of P417,880.00 leaving the balance of P271,717.00 as excess tax credit for taxable year 1998 (Exhibit C-1). The excess amount of P271,717.00 was indicated in the return as "To be refunded" (Exhibit C-2).

On April 13, 2000, Petitioner filed an administrative claim for refund in the amount of P271,717.00 representing its alleged excess creditable taxes withheld in 1998 (par. 4, Joint Stipulation of Facts).

Without waiting for an action from the Respondent on the aforesated claims for refund in the total amount of P679,005.00, Petitioner filed the instant Petition before this Court on April 14, 2000 pursuant to Sections 204(3) [now Section 204(C)] and 230 [now 229] of the Tax Code, which are all hereinbelow quoted, thus :

"SEC. 204. *Authority of the Commissioner to compromise, abate and refund/credit taxes.* —The Commissioner may –

xxx

xxx

xxx

“(3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: x x x “

"SEC. 230. *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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; x x x.”

"In any case, no such suit or proceeding shall be filed after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: xxx”

In his Answer filed through registered mail on May 11, 2000, Respondent interposed the following Special and Affirmative Defenses:

- “5. Petitioner’s claims for refund for taxable years 1997 and 1998 is pending administrative investigation;
6. Claims for refund or tax credit are strictly construed against claimants since a claim for refund or tax credit is in the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, L-17509, January 30, 1970, 31 SCRA 95);
7. Petitioner must show that it has complied with the requirements for claiming a refund of creditable withholding taxes, to wit:
 - a. That it filed a claim for refund within the two (2) year period;
 - b. That the income upon which the taxes were withheld were included in the return of the recipient; and

- c. The fact of withholding is established by a copy of a 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 (Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Citytrust Finance Corp. (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993).
8. Petitioner has not shown that the alleged creditable taxes on rentals for taxable years 1997 and 1998 sought to be refunded were actually withheld and remitted by its withholding agents to the Bureau of Internal Revenue in accordance with the provisions of the Tax Code, as amended; and
9. The allegations regarding refundability does not *ipso facto* merit Petitioner's claims for refund.

Petitioner, in support of its claim, presented both testimonial and documentary evidence. Respondent, on the other hand, opted not to present evidence and merely submitted the case based on the pleadings.

As jointly stipulated by the parties, the issues We are tasked to resolve are as follows:

- 1.) Whether or not the claims for refund were timely filed;
- 2.) Whether or not Petitioner included in its income tax return the income from which the creditable income taxes were withheld;
- 3.) Whether or not there were excess creditable income taxes withheld from Petitioner for the years ended December 31, 1997 and 1998;
- 4.) Whether or not these creditable income taxes withheld are established by a copy or copies of Certificate(s) of Creditable Income Taxes Withheld at Source duly issued by the

payor/withholding agent for the Petitioner, showing the amount paid and the amount of tax withheld therefrom; and

- 5.) Whether or not the Petitioner is entitled to the refund or tax credit in the amount of P679,005.00 representing its unapplied or excess creditable income taxes withheld for the calendar years ended December 31, 1997 and 1998.

After a careful examination of the evidence adduced solely by Petitioner, We find the latter to be entitled to a partial refund.

It is not disputed that Petitioner's amended 1997 and 1998 income tax returns showed excess creditable withholding taxes of P407,288.00 and P271,717.00, (Exhibits A-1 & C), respectively. Inasmuch as Petitioner did not carry-over the reported excess tax credits of P407,288.00 for 1997 and P271,717.00 for 1998 to the succeeding taxable year 1999 (Exhibit E-1), the same may be the proper object of a claim for refund under Section 69 [now 76] of the 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:

- a.) Pay the excess tax still due; or
- b.) Be refunded the excess amount paid, as the case may be.

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).

However, in order to be entitled to a refund of excess creditable withholding taxes, Petitioner must prove:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] 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, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

The above requirements are similar to the first, second and fourth issues raised by both parties in their Joint Stipulation of Facts and Issues.

Records show that Petitioner complied with the first requirement. The reckoning of the two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*). The claimed excess creditable withholding taxes involve taxable years 1997 and 1998. Petitioner filed its tentative annual income tax return for 1997, the earlier year covered by the instant Petition, on April 15, 1998 (Exhibit A). Counting from April 15, 1998, Petitioner's two separate administrative claims for refund filed on November 3, 1998 and April 13, 2000 as well as the Petition for Review filed on April 14, 2000, fall within the two-year period prescribed under

Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code.

In compliance with the second requirement, Petitioner presented the certificates of Creditable Tax Withheld at Source and annual information returns/alpha lists of expanded withholding taxes issued to it by various payors/withholding agents for taxable years 1997 and 1998. Respondent, in his memorandum, argued that the payors/withholding agents' 1997 and 1998 annual information returns/alpha lists of expanded withholding taxes submitted by Petitioner are self-serving documentary evidence. On the contrary, these documents prove the actual withholding of the creditable income taxes and the remittance thereof to the BIR and are thus, extended credence and probative value by this Court.

However, out of the creditable withholding taxes reported in its amended 1997 and 1998 income tax returns of P407,288.00 and P417,880.00, (Exhibits A-2 & C-1), respectively, Petitioner was able to substantiate only the amounts of P329,522.18 for 1997 and P234,704.02 for 1998 or in the aggregate sum of P564,226.20, detailed as follows:

<u>Exhibit</u>	<u>Withholding Agent</u>	<u>Income Payment</u>	<u>Income Tax Withheld</u>
<u>For taxable year 1997</u>			
B-1-b	Dawn International Company	P 185,391.36	P 9,269.52
B-2-b	Principal Products Mktg Corp	869,022.00	43,451.10
B-3; B-3-a	Biochemica, Inc.	150,040.00	7,502.00
B-4; B-4-a	Technomed International, Inc.	369,098.40	18,454.92
B-5	Applied Ideas, Inc.	955,597.20	47,779.86
B-6; B-6-a	ARAM Ent., Inc.	814,862.40	40,743.12

B-7; B-7-a	Bremenn Industries (Phil), Inc.	649,915.20	32,495.76
B-10; B-10-a	First Quality Apparel Mfg., Inc.	766,800.00	38,340.00
B-8	Siemens, Inc.	257,598.00	12,879.90
B-8-a	Siemens, Inc.	204,534.00	10,226.70
B-8-b	Siemens, Inc.	605,484.00	30,274.20
B-8-c	Siemens, Inc.	302,742.00	15,137.10
B-9	Sports Rek Philippines, Inc.	<u>459,360.00</u>	<u>22,968.00</u>

Total -1997 P 6,590,444.56 P 329,522.18

For taxable year 1998

D-1-b	Principal Products Mktg Corp	P 1,576,654.20	P 78,832.71
D-2	Applied Ideas, Inc.	1,177,296.00	58,864.80
D-3; D-3-a	Bremenn Industries (Phil.), Inc.	714,906.24	35,745.31
D-4; D-4-a	First Quality Apparel Mfg., Inc.	1,033,560.00	51,678.00
D-5	Biochemica, Inc.	<u>191,664.00</u>	<u>9,583.20</u>

Total -1998 P 4,694,080.44 P 234,704.02

Total – 1997 & 1998 P11,284,525.00 P 564,226.20

With reference to the third requirement, Petitioner declared in its amended 1997 and 1998 income tax returns the rental income of P8,594,144.00 (Exhibit A-5) and P9,375,760.00 (Exhibit C-4), respectively. As can be gathered from the 1997 and 1998 certificates of creditable tax withheld at source and annual information returns/alpha lists, the creditable income taxes of P329,522.18 and P234,704.02 were withheld from Petitioner's rental income of P6,590,444.56 and P4,694,080.44, in 1997 and 1998, respectively. Since the rental income amounts as declared by Petitioner in its income tax returns were greater than those reflected in the certificates and annual information returns/alpha lists of expanded withholding taxes, it may then be inferred that Petitioner declared all of the rental income from which the substantiated creditable withholding taxes of P329,522.18 for 1997 and P234,704.02 for 1998 were withheld.

In sum, this Court finds Petitioner to have sufficiently proven its entitlement to the refund representing its 1997 and 1998 excess creditable withholding taxes but only insofar as the amount of P418,063.20 computed as follows:

For taxable year 1997

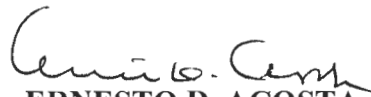
Gross Income	P 10,041,675.00
Less: Deductions	<u>40,657,678.00</u>
Net Loss	<u>P(30,616,003.00)</u>
Income Tax Due	P -
Less: Creditable Taxes Withheld	<u>329,522.18</u>
Income Tax Refundable	<u>P(329,522.18)</u>

For taxable year 1998

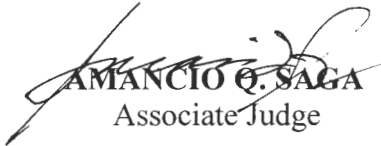
Gross Income	P 7,310,282.00
Less: Deductions	<u>23,704,063.00</u>
Net Loss	<u>P(16,393,781.00)</u>
Minimum Corporate Income Tax Due	P 146,163.00
Less: Creditable Taxes Withheld	<u>234,704.02</u>
Income Tax Refundable	<u>P(88,541.02)</u>
Total Income Tax Refundable – 1997 & 1998	<u>P(418,063.20)</u>

WHEREFORE, in view of the foregoing premises, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND** in the amount of **FOUR HUNDRED EIGHTEEN THOUSAND SIXTY THREE & 20/100 PESOS (P418,063.20)** in favor of Petitioner representing its unutilized excess creditable withholding taxes for taxable years 1997 and 1998.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge

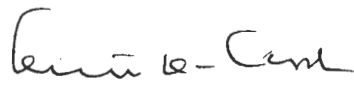
WE CONCUR:


AMANCIO Q. SAGA
Associate Judge


JUANITO C. CASTAÑEDA, 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