

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

**JARDINE DAVIES TRANSPORT
SERVICES, INC.,**

Petitioner,

- versus -

C.T.A. CASE NO. 5789

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

JAN 08 2001 *[Signature]*

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DECISION

Submitted before Us for decision is a Petition for Review filed on April 14, 1999, seeking for a refund of the amount of P3,097,794.00 representing alleged excess unutilized creditable withholding taxes for taxable years 1996 and 1997.

The antecedent facts of the 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.

As culled from the records, Petitioner filed with the Respondent Bureau of Internal Revenue on April 14, 1997 its annual income tax return for taxable year ended December 31, 1996 (par. 3, Joint Stipulation of Facts and Issues) declaring therein a net loss of P28,788,207.00 and unutilized creditable taxes withheld in 1996 amounting to P1,548,527.00. Petitioner, as indicated in its return, opted to apply the aforesaid amount as tax credit to whatever tax liability it may incur in the succeeding taxable year 1997.

Incurring a net loss of P43,547,402.00 in the year 1997 as reflected in its 1997 annual income tax return filed on April 15, 1998, Petitioner, allegedly, was not able to utilize its prior year's excess tax credit of P1,548,527.00.

On August 31, 1998, Petitioner amended its 1997 tentative annual income tax return filed on April 15, 1998, reflecting therein the same refundable amount of P1,548,527.00 representing the 1996 excess tax credit but with a lower amount of net loss of P41,474,106.00 (Exhibit "C").

Seemingly unsatisfied with its first amendment of the 1997 annual income tax return, Petitioner amended again its 1997 return on December 28, 1998, indicating the same amount of net loss of P41,474,106.00 but declaring now a much higher refundable amount of P3,097,794.00 which latter amount allegedly represents the sum of its 1996 tax credit of P1,548,527.00 and creditable taxes withheld during taxable year 1997 amounting to P1,549,267.00 (Exhibit "D").

On March 15, 1999, believing that it has an overpaid income tax, Petitioner, through counsel, filed with the Appellate Division of the Bureau of Internal Revenue a claim for refund of overpaid income tax as of December 31, 1997 amounting to P3,097,794.00 (Exhibit "E").

Unable to obtain an affirmative response from the Respondent, Petitioner elevated its grievance to this Court on April 14, 1999 to toll the running of the prescriptive period provided under Section 230 (now Section 229) of the Tax Code.

In an Answer filed on June 14, 1999, Respondent denied Petitioner's assertions and by way of Special and Affirmative Defenses, interposed the following:

5. In an action for tax refund, petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;
6. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);
7. Taxes are presumed to have been paid and collected in accordance with law;
8. Petitioner failed to state the jurisdictional facts and specific provision of law on which its action is based.

As shown in the parties' Joint Stipulation of Facts and Issues, the vortex of the controversy lies on whether or not Petitioner is entitled to the refund of the amount of P3,097,794.00 representing its overpaid income tax as of December 31, 1997 based on the evidence presented.

The basis of Petitioner's claim for refund is Section 69 (now Section 76) of the Tax Code, and We quote, thus:

Section 69. *Final Adjustment Return.* - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 net income of that year the corporation shall either:

- (a) Pay the 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.

However, as held in numerous cases decided by this Court, a taxpayer, to be entitled to the refund of excess creditable withholding tax, must comply 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 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.

[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; *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, 280 SCRA 459].

After a circumspect study of all the relevant documents submitted by the Petitioner with this Court, coupled by the Respondent's failure to refute the same, We find the Petitioner to have complied with all of the above requirements but was able to substantiate only the amount of P2,194,976.14 out of the total claim for refund of P3,097,794.00.

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

Anent the first requirement, records clearly show that Petitioner complied with the two-year prescriptive period within which to file its claim for refund having filed its administrative and judicial claims for refund on March 15, 1999 (Exh. E) and April 14, 1999, respectively, which are both within two years from April 14, 1997 and April 15, 1998, the respective dates when Petitioner filed its 1996 and 1997 tentative annual income tax returns.

Proceeding now to the second requirement, the supporting documents submitted by the Petitioner to prove the fact of withholding showed only an aggregate amount of P2,308,822.60 as creditable withholding taxes for the years 1996 and 1997 broken down as follows:

<u>Exh.</u>	<u>Period Covered</u>	<u>Payee</u>	<u>Payor (Withholding Agent)</u>	<u>Income Tax Withheld</u>
F	10-May-96	United Terminals Serv	Bacardi Jardine Prod'n	P 45.00
G	31-Jul-96	United Terminal Serv	Bacardi Jardine Prod'n	45.00
H		United Terminal Serv	Bacardi Jardine Prod'n	46.50
I	22-Jan-96	United Terminals Serv	Bacardi Jardine Prod'n	115.50
J		United Terminals Serv	Birkart-East West	35,697.96
K	Mar-96	United Terminal Serv	Duty Free Phils	70,572.50
K	Jun-96	United Terminal Serv	Duty Free Phils	4,167.50
L	Jul-96	United Terminals Serv	Duty Free Phils	8,320.00
L	Aug-96	United Terminals Serv	Duty Free Phils	25,502.50
L	Sep-96	United Terminals Serv	Duty Free Phils	1,038.75
M	May-96	United Terminals Serv	Duty Free Phils	56,503.36
N	Mar-96	United Terminal Serv	Duty Free Phils	84,687.00
O	Jun-96	United Terminal Serv	Duty Free Phils	5,001.00
P	Jul-96	United Terminals Serv	Duty Free Phils	9,984.00
Q	Aug-96	United Terminals Serv	Duty Free Phils	30,603.00
R	Sep-96	United Terminals Serv	Duty Free Phils	1,246.50
S	May-96	United Terminals Serv	Duty Free Phils	9,417.23
T	Jan. to Mar. '96	United Terminal Serv	Exxon Chem. Phils.	2,699.00
U	Apr to June '96	United Terminal Serv	Exxon Chem. Phils.	4,770.00
V	Oct. to Dec. '96	United Terminal Serv	Famous Pacific	23.00
W	July to Sept '96	Jardine Davies Trans	Famous Pacific	70.50
X	July to Sept '96	United Terminal Serv	Famous Pacific	138.67
Y	July to Sept '96	United Terminal Serv	Famous Pacific	27.00
Z	Apr to June '96	United Terminal Serv	Famous Pacific	94.18
AA	Jan to Mar '96	United Terminals Serv	Famous Pacific	126.12
BB	Jan to Mar '96	United Terminals Serv	Famous Pacific	189.07
CC	Jan to Mar '96	United Terminal Serv	Famous Pacific	145.20
DD	Jan to Mar '96	United Terminal Serv	Famous Pacific	171.41
EE	Apr to June '96	United Terminal Serv	Famous Pacific	88.00

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FF	Jan to Mar '96	United Terminals Serv	Famous Pacific	65.00
GG	Jan to Mar '96	United Terminal Serv	Famous Pacific	146.95
HH		United Terminal Serv	Famous Pacific	252.00
II	Jan to Mar '96	United Terminal Serv	Famous Pacific	228.27
JJ	Jan to Mar '96	United Terminal Serv	Famous Pacific	191.70
KK		United Terminal Serv	Famous Pacific	117.62
LL	Jan to Mar '96	United Terminal Serv	Famous Pacific	142.00
MM	Jan to Mar '96	United Terminal Serv	Famous Pacific	93.37
NN	Jan to Mar '96	United Terminal Serv	Famous Pacific	45.21
OO	Jan to Mar '96	United Terminal Serv	Famous Pacific	43.84
PP	Jan to Mar '96	United Terminal Serv	Famous Pacific	190.69
QQ	Apr to June '96	United Terminal Serv	Famous Pacific	169.31
RR	Apr to June '96	United Terminal Serv	Famous Pacific	125.70
SS	Apr to June '96	United Terminal Serv	Famous Pacific	238.35
TT	Apr to June '96	United Terminal Serv	Famous Pacific	84.00
UU	Apr to June '96	United Terminal Serv	Famous Pacific	71.64
VV	Apr to June '96	United Terminal Serv	Famous Pacific	77.81
WW	Apr to June '96	United Terminal Serv	Famous Pacific	81.00
XX	Apr to June '96	United Terminal Serv	Famous Pacific	182.09
YY	Apr to June '96	United Terminal Serv	Famous Pacific	113.35
ZZ	Apr to June '96	United Terminal Serv	Famous Pacific	296.21
AAA	Apr to June '96	United Terminal Serv	Famous Pacific	117.37
BBB	Apr to June '96	United Terminal Serv	Famous Pacific	161.04
CCC	Apr to June '96	United Terminal Serv	Famous Pacific	257.82
DDD	July to Sept '96	United Terminal Serv	Famous Pacific	118.26
EEE	July to Sept '96	Jardine Davies Trans	Fashion Accessories	2,192.00
FFF	Oct. to Dec. '96	Jardine Davies Trans	Fashion Accessories	7,268.85
GGG	Jan 1- Dec 31, '96	United Terminal	G.E. Antonino, Inc.	291.00
HHH	Jan 1- Dec 31, '96	United Terminals Serv	Isarog Pulp & Paper	2,048.48
III	Jan. 17, 1996	United Terminals Serv	Jardine Davies, Inc.	123.64
JJJ	Jan. 24, 1996	United Terminals Serv	Jardine Davies, Inc.	233.82
KKK	Jan. 8, 1996	United Terminals Serv	Jardine Davies, Inc.	378.78
LLL	Jan. 9, 1996	United Terminals Serv	Jardine Davies, Inc.	341.01
MMM	Oct. to Dec. '96	United Terminals Serv	Jollibee Foods Corp.	25,887.69
NNN	July to Sept '96	United Terminals Serv	Jollibee Foods Corp.	20,101.75
OOO	July to Sept '96	United Terminals Serv	Jollibee Foods Corp.	488.22
PPP	Apr to June '96	United Terminals Serv	Jollibee Foods Corp.	25,535.54
QQQ	Oct. to Dec. '96	UTS Transport Co., Inc.	Johnson & Johnson	1,614.55
RRR	Jan 1 - Dec 31, '96	United Terminals Serv	Mercantile-Filipinas	7,731.48
SSS	Jan to Mar '96	Jardine Davies	Merck, Inc.	5,728.86
TTT	Oct. to Dec. '96	United Terminals Serv	NOL Philippines, Inc.	79.68
UUU	Jan to Dec '96	Jardine Davies		
VVV	Jan 1 - Mar 31, '96	Transport Services	Orient Overseas Cont.	5,814.17
WWW	Apr 1 - Jun 30, '96	United Terminals Serv	Procter & Gamble	76,309.66
XXX	Jul 1 - Sept 30, '96	United Terminals Serv	Procter & Gamble	80,593.34
YYY	Jul 1 - Sept 30, '96	United Terminals Serv	Procter & Gamble	21,221.64
ZZZ	Oct 1 - Dec 31, '96	United Terminals Serv	Procter & Gamble	5,464.15
AAAA	Jan. 1 to Dec 31, '96	Jardine Davies	Procter & Gamble	46,047.36
BBBB	Jan 1- Dec 31, '96	Transport Services, Inc.	KPPI Foods Corp.	12.00
CCCC	Jan 1 - Dec 31, '96	United Terminal Serv	KPPI Foods Corp.	7,015.05
DDDD	Jan - Dec '96	United Terminals Serv	KPPI Foods Corp.	13,542.05
EEEE	March '96	UTS Transport Co., Inc.	KPPI Foods Corp.	14.00
FFFF	Feb., 1996	United Terminals Serv	Rexor & Co., Inc.	130.03
GGGG	Jan., 1996	United Terminals Serv	Rexor & Co., Inc.	158.15
HHHH	March, 1996	United Terminals Serv	Rexor & Co., Inc.	159.37
IIII	May, 1996	United Terminals Serv	Rexor & Co., Inc.	26.00
JJJJ	June, 1996	United Terminals Serv	Rexor & Company, Inc.	149.67
			Rexor & Co., Inc.	118.39

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KKKK	Nov., 1996	United Terminals Serv	Rexor & Co., Inc.	104.27
LLLL	Nov., 1996	United Terminals Serv	Rexor & Co., Inc.	71.75
MMMM	Jan 1 - Dec 31, '96	United Terminals	Soriamont Steamship	244.06
NNNN	Oct 1 - Dec 31, '96	United Terminals	Temic Telefunken	16,669.57
OOOO	Jul 1 - Sept 30, '96	United Terminals	Temic Telefunken	3,192.86
PPPP	Jul 1 - Sept 30, '96	Jardine Davies Trans	Temic Telefunken	93.79
QQQQ	Apr 1 - Jun 30, '96	United Terminal	Temic Telefunken	12,739.05
RRRR	Jan 1 - Mar 31, '96	United Terminals	Temic Telefunken	435.92
SSSS	Jul 31 - Sept 30, '96	UTS United Terminals	United Phil. Lines, Inc.	19.55
TTTT	Oct. to Dec. '96	Jardine Davies Trans	Uni-Lonseal Plastics	45.36
UUUU	Oct. to Dec. '96	Jardine Davies	Uni-Plastic Int'l Corp.	470.14
VVVV	Oct. to Dec. '96	Transport Services	Unilever Phils, Inc.	36,089.56
WWWW	Jul 1 to Sept 30, '96	United Terminals Serv	Toyota Motor Phils.	2,701.45
XXXX	Oct 1 to Dec 31, '96	United Terminals Serv	Toyota Motor Phils.	8,921.50
YYYY	Jan. 1 to Dec 31, '97	Jardine Davies	Apollo Trading & Mfg Corp	1,332.04
ZZZZ	Jan 1 to Mar 31, '97	Jardine Davies Trans	ATC Tape Phils, Inc.	2,968.25
AAAAA	Apr 1 to Jun 30, '97	Jardine Davies Trans	ATC Tape Phils, Inc.	1,154.00
BBBBB	Oct 1 to Dec 31, '97	Jardine Davies Trans	ATC Tape Phils, Inc.	6,392.94
CCCCC	Jan. 1 to Dec 31, '97	Jardine Davies	Avantex Mill Corp.	12,571.15
DDDDD	Apr 1 to Jun 30, '97	Transport Services, Inc.	Best Chem & Plastics	47.61
EEEE	Jan., 1997	Jardine Davies	Borden Chem Phils.	187.31
FFFFF	Jan., 1997	Transport Serv, Inc.	Borden Int'l Phils, Inc.	187.20
GGGGG	Feb., 1997	Jardine Davies	Borden Int'l Phils, Inc.	355.87
HHHHH	March, 1997	Transport Services	Borden Int'l Phils, Inc.	846.35
IIIII	March, 1997	Jardine Davies	Borden Int'l Phils, Inc.	86.47
JJJJJ	April, 1997	Transport Services	Borden Int'l Phils, Inc.	144.75
KKKKK		Jardine Davies	Cebu Fil-Veneer Corp.	267.00
LLLLL	1997	Transport Services	Daito Nan-Shin Shipping	360.91
MMMMM	Jan. to Mar. '97	Jardine Davies	Famous Pacific	73.96
NNNNN	Jan. to Mar. '97	Transport Services	Famous Pacific	47.52
OOOOO	Mar. 29 to Jun 28, '97	Jardine Davies	Goodyear Phils., Inc.	1,101.79
RRRRR	Jan. 31 to May 31, '97	Transport Services	Multi-Trans	264.61
QQQQQ	Jan. to Mar. '97	Jardine Davies	Agency Phils.	501.50
PPPPP	Jan. to Dec. '97	Jardine Davies	Pacific Activated Carbon Co.	1,844.92
SSSSS	Oct. 1 to Dec 31, '97	Transport Services	Inglonook	251.60
TTTTT	July 1 to Sept 30, '97	Jardine Davies	Basic Foods	6,327.11
UUUUU	Jan. 1 to	Transport Services	Shemberg Mktg Corp.	
		Jardine Davies		

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VVVVV	Mar 31, '97	Transport Services, Inc.	TA Philippines, Inc.	1,592.44
WWWWW	Jan 1 to Mar 31, '97	Jardine Davies Trans	Transmar Agencies	13,984.45
XXXXX	Apr 1 to Jun 30, '97	Jardine Davies Trans	Transmar Agencies	31,275.08
YYYYY	Jan. 1 to Dec 31, '97	Jardine Freight Services, Ltd.	Jardine-Aboitiz Int'l Forwarders	8,159.50
ZZZZZ	Jan 1 to Dec 31, '97	United Terminals	Allegro Microsys. Phils.	491.92
AAAAA	Oct 1 to Dec 31, '97	United Terminal	Analog Devices (Phils.)	4,136.95
BBBBB	Jul 1 to Sept 30, '97	United Terminal	Analog Devices (Phils.)	6,407.68
CCCCC	Apr 1 to Jun 30, '97	United Terminal	Analog Devices (Phils.)	6,384.57
DDDDD	Jan 1 to Mar 31, '97	United Terminal	Analog Devices (Phils.)	5,999.53
EEEEEE	Jan 1 to Mar 31, '97	Jardine Davies		
		Transport Services, Inc.	Analog Devices (Phils.)	3,345.60
FFFFFF	Jul 1 to Sept 30, '97	Jardine Davies		
GGGGG	Jan 31- Dec 31, '97	Transport Services, Inc.	Analog Devices (Phils.)	6,691.20
	Oct 1 to Dec 31, '97	United Terminals Serv	Birkart East-West	13,470.54
HHHHH		Jardine Davies		
IIIII	Apr 1 to Jun 30, '97	Transport Services	California Mfg. Co., Inc.	83,991.41
JJJJJ	Oct 1 to Dec 31, '97	Jardine Davies	Caltex Phils., Inc.	4,736.70
KKKKK	Jul 1 to Sept 30, '97	Jardine Davies	Caltex Phils., Inc.	1,355.49
LLLLL	Jan 1 to Dec 31, '97	Jardine Davies	Caltex Phils., Inc.	3,215.81
	May to July '97	Jardine Davies	Cosmos Bottling Corp.	3,828.53
MMMMM		Transport Services, Inc.	Del Monte Phils, Inc.	30.00
NNNNN	Sept 1-Dec 31, '97	UTS United Terminals	Del Monte Phils, Inc.	34,386.92
	Jan. to Feb. '97	United Terminals Serv/		
OOOOO		Jardine D Trans Serv	Donut Magic Phils., Inc.	2,115.92
	July to Sept. '97	United Terminals Serv/		
PPPPP		Jardine D Trans Serv.	Donut Magic Phils., Inc.	763.88
	Oct. to Dec. '97	United Terminals Serv/		
QQQQQ		Jardine D Trans Serv.	Donut Magic Phils., Inc.	2,364.95
QQQQQ	Oct. '97	United Terminals Serv	Duty Free Phils, Inc.	6,940.00
QQQQQ	Nov. '97	United Terminals Serv	Duty Free Phils, Inc.	2,640.00
QQQQQ	Dec. '97	United Terminals Serv	Duty Free Phils, Inc.	48,090.00
RRRRR	July '97	United Terminals Serv	Duty Free Phils, Inc.	35,135.00
RRRRR	Aug. '97	United Terminals Serv	Duty Free Phils, Inc.	20,165.00
RRRRR	Sept. '97	United Terminals Serv	Duty Free Phils, Inc.	22,195.00
SSSSS	July '97	United Terminals Serv	Duty Free Phils, Inc.	642.00
SSSSS	Aug. '97	United Terminals Serv	Duty Free Phils, Inc.	371.00
SSSSS	Sept. '97	United Terminals Serv	Duty Free Phils, Inc.	395.00
TTTTT	Jun. '97	United Terminals Serv	Duty Free Phils, Inc.	55.00
UUUUU	May '97	United Terminals Serv	Duty Free Phils, Inc.	9,865.00
UUUUU	Jun. '97	United Terminals Serv	Duty Free Phils, Inc.	510.00
VVVVV	Nov. '97	United Terminals Serv	Duty Free Phils, Inc.	2,316.00
WWWWW	Oct. '97	United Terminals Serv	Duty Free Phils, Inc.	8,328.00
XXXXX	Sept. '97	United Terminals Serv	Duty Free Phils, Inc.	29,004.00
YYYYY	July '97	United Terminals Serv	Duty Free Phils, Inc.	46,014.00
ZZZZZ	Jun. '97	United Terminals Serv	Duty Free Phils, Inc.	942.00
AAAAA	May '97	United Terminals Serv	Duty Free Phils, Inc.	11,838.00
BBBBB	Jun. '97	Jardine Davies		
		Transport Serv, Inc.	Duty Free Phils, Inc.	12,398.40
CCCCC	Dec. '97	United Terminals Serv	Duty Free Phils, Inc.	57,708.00
DDDDD	Dec. 26 '96 to Dec 25 '97			
DDDDD	Dec. 26 '96 to Dec. 25 '97	United Terminals Serv	Electronic Tel. Syst	16,306.80
EEEEEE	Dec. 26 to Dec 25 '97	United Terminals Serv	Electronic Tel. Syst	33,979.28
FFFFFF	Mar. 1-Dec. 31, '97	Jardine Davies		
		Transport Services	Electronic Tel. Syst	5,199.87
		United Terminals Serv	Evergreen Phils. Corp.	660.00

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GGGGGGG	Jan. to Mar. '97	United Terminal Serv	Famous Pacific	77.00
HHHHHHH	Jan. to Mar. '97	United Terminal Serv	Famous Pacific	50.00
IIIIIII	June 30 '97	Jardine Davies		
		Transport Serv, Inc.	Hardie Jardine, Inc.	17,689.59
JJJJJJJ	Sept. 30 '97	Jardine Davies		
		Transport Serv, Inc.	Hardie Jardine, Inc.	54,214.62
KKKKKKK	Dec. 31 '97	Jardine Davies		
		Transport Serv, Inc.	Hardie Jardine, Inc.	15,165.19
KKKKKKK	Dec. 31 '97	Jardine Davies		
		Transport Serv, Inc.	Hardie Jardine, Inc.	62,627.00
LLLLLLL	Jan to Dec. '97	Jardine Davies		
		Transport Serv, Inc.	Hi-Precision Steel Ctr.	885.00
MMMMMMM	Jan. to Dec. '97	Jardine Davies	Honda Cars Phils., Inc.	67,500.00
NNNNNNN	Jan. to Dec. '97	United Terminals Serv	Intel Phils. Mfg., Inc.	117,651.03
OOOOOOO	Jan. to Mar. '97	United Terminals Serv	Jimenez Oil Mills, Inc.	24.70
PPPPPPP	Apr 1 to Jun 30, '97	United Terminals Serv	Jimenez Oil Mills, Inc.	43.57
QQQQQQQ	July to Sept. '97	United Terminas Serv	Jimenez Oil Mills, Inc.	31.94
RRRRRRR	May to Jun '97	United Terminals/	Ice Cream	
		Jardine D Trans Serv	Copenhagen Phils	2,457.53
SSSSSSS	July to Sept. '97	United Terminals/	Ice Cream	
		Jardine D Trans Serv	Copenhagen Phils	75.65
TTTTTTT	Oct. to Dec. '97	United Terminals/	Ice Cream	
		Jardine D Trans Serv	Copenhagen Phils	80.61
UUUUUUU	Jan 1 to Dec 31, '97	United Terminals Serv	Isla Comm. Co., Inc.	1,412.03
VVVVVVV	Jan to Dec. '97	Jardine Davies	Jardine Aboitz	
		Transport Services	Int'l Forwarders	5,024.00
WWWWWWW	July 1 to	Jardine Davies	Johnson & Johnson	
	Sept 30, '97	Transport Serv, Inc.	Phils, Inc	6,946.20
XXXXXXX	Oct 1 to Dec 31, '97	Jardine Davies	Johnson & Johnson	
		Transport Services, Inc.	Phils, Inc	2,855.77
YYYYYYY	Jan 1 to Mar 31, '97	United Terminals Serv	Jollibee Foods Corp.	8,433.23
ZZZZZZZ	Apr 1 to Jun 30, '97	United Terminals Serv	Jollibee Foods Corp.	37,354.19
A8	Jul 1 - Sept. 30, '97	United Terminals Serv	Jollibee Foods Corp.	47,883.39
B8	Oct 1 to Dec 31, '97	United Terminals Serv	Jollibee Foods Corp.	39,433.32
C8	Oct to Dec '97	United Terminals Serv	Jimenez Oil Mills, Inc.	31.60
D8	Jul 1 to Sept 30, '97	Jardine Davies Trans	ATC Tape Phils., Inc.	3,551.56
E8	Jul 1 to Sept 30, '97	Jardine Davies Trans	Transmar Agencies	22,176.90
F8	Jan. 10, '97	United Terminals	La Tondena Distillers	518.00
G8	Sept. 4 '97	United Terminals	La Tondena Distillers.	180.00
H8	Mar. 18 '97	United Terminals	La Tondena Distillers	120.00
I8	May 19 '97	United Terminals	La Tondena Distillers	10.00
J8	Jan to Dec. '97	United Terminals Inc.	Bristol-Myers Squibb	92,702.22
K8	Jan 1 to Dec 31, '97	United Terminals Serv	Mercantile Filipinas	23,699.52
L8	Oct. to Dec. '97	United Terminals Serv	Merck, Inc.	46,536.65
M8	July to Sept. '97	United Terminal Serv	New World Int'l Devt.	723.39
N8	Oct to Dec '97	United Terminal Serv	New World Int'l Devt.	715.53
O8	Jan-1 to Dec 31, '97	United Terminal Serv	N'K-FIL Japan Ship	246.50
P8	Jan. to Mar. '97	UTS	OOCL (Phils.), Inc.	107.78
Q8	Jan. to Mar. '97	UTS	OOCL (Phils.), Inc.	306.86
R8	Jan. to Mar. '97	UTS	COCL (Phils.), Inc.	411.86
S8	Jan. to Mar. '97	UTS	COCL (Phils.), Inc.	137.67
T8	Jan. to Mar. '97	UTS	COCL (Phils.), Inc.	439.23
U8	Jan. to Mar. '97	UTS	COCL (Phils.), Inc.	1,062.00
V8	Apr. to June '97	United Terminals	OOCL (Phils.), Inc.	1,000.92
W8	Apr. to June '97	United Terminals	COCL (Phils.), Inc.	84.06
X8	Apr. to June '97	United Terminals Serv	COCL (Phils.), Inc.	635.30
Y8	Apr. to June '97	UTS	COCL (Phils.), Inc.	226.26
Z8	Apr. to June '97	UTS	OOCL (Phils.), Inc.	7.50
A9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	2.00

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B9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	22.50
C9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	530.85
D9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	387.95
E9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	84.20
F9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	152.43
G9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	142.82
H9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	118.28
I9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	105.63
J9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	82.20
K9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	68.29
L9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	59.70
M9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	428.53
N9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	49.70
O9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	129.66
P9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	51.70
Q9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	276.85
R9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	10.00
S9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	57.70
T9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	170.14
U9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	171.40
V9	July to Sept. '97	UTS	OOCL (Phils.), Inc.	170.23
W9	July to Sept. '97	UTS	OOCL (Phils.), Inc.	133.13
X9	July to Sept. '97	UTS	OOCL (Phils.), Inc.	252.63
Y9	July to Sept. '97	UTS	OOCL (Phils.), Inc.	201.38
Z9	July to Sept. '97	UTS	OOCL (Phils.), Inc.	95.10
A10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	86.28
B10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	52.91
C10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	8.00
D10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	118.53
E10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	42.42
F10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	271.41
G10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	179.11
H10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	148.53
I10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	59.70
J10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	287.09
K10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	44.56
L10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	49.62
M10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	151.50
N10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	6.96
O10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	45.73
P10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	14.63
Q10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	151.93
R10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	187.45
S10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	91.20
T10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	117.28
U10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	292.76
V10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	96.28
W10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	177.42
X10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	8.75
Y10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	42.00
Z10	July to Sept. '97	UTS	OOCL (Phils.), Inc.	105.78
A11	July to Sept. '97	UTS	OOCL (Phils.), Inc.	123.78
B11	July to Sept. '97	UTS	OOCL (Phils.), Inc.	90.30
C11	July to Sept. '97	UTS	OOCL (Phils.), Inc.	59.70
D11	July to Sept. '97	UTS	OOCL (Phils.), Inc.	186.76
E11	July to Sept. '97	UTS	OOCL (Phils.), Inc.	176.01
F11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	84.41
G11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	97.59
H11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	250.19
I11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	84.21

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J11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	132.62
K11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	98.10
L11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	93.01
M11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	110.31
N11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	80.40
O11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	53.58
P11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	83.36
Q11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	186.28
R11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	182.45
S11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	82.41
T11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	127.78
U11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	82.70
V11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	56.46
W11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	99.53
X11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	101.54
Y11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	156.28
Z11	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	102.02
A12	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	7.00
B12	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	10.50
C12	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	250.98
D12	Oct. to Dec. '97	UTS	OOCL (Phils.), Inc.	90.17
E12	Jul 1 to	Jardine Davies		
	Sept. 30, '97	Transport Serv, Inc.	Phil. Appliance Corp.	6,708.63
E12	Jul 1 to	Jardine Davies		
	Sept. 30, '97	Transport Serv, Inc.	Phil. Appliance Corp.	5,823.49
F12	Apr. 1 to	Jardine Davies		
	Jun 30 '97	Transport Serv, Inc.	Phil. Appliance Corp.	7,922.12
F12	Apr. 1 to	Jardine Davies		
	Jun 30 '97	Transport Serv, Inc.	Phil. Appliance Corp.	6,069.27
G12	Oct. 1 to	Jardine Davies		
	Dec 31, '97	Transport Serv, Inc.	Phil. Appliance Corp.	1,132.79
G12	Oct. 1 to	Jardine Davies		
	Dec 31, '97	Transport Serv, Inc.	Phil. Appliance Corp.	17,507.31
H12	Feb. 10 to	Jardine Davies		
	Dec 31 '97	Transport Serv, Inc.	Pure Foods Corp.	11,896.89
I12	Jan 1 to Mar 31 '97	United Terminals Serv	Phil. Conso. Invest.	1,469.54
J12	Jan. to Dec. '97	United Terminals Serv	KPPI Food Corp.	9,353.40
J12	Jan. to Dec. '97	United Terminals Serv	KPPI Food Corp.	22,252.73
K12	Jan 1 to Mar 31 '97	United Terminals Serv	Procter & Gamble Phils.	2,120.75
L12	Oct 1 to Dec 31, '97	United Terminal Serv	Robert Dan & Co., Inc.	657.73
M12	Apr 30 - Jun 30 '97	United Terminals	Robert Dan & Co., Inc.	570.15
N12	Apr. to June '97	United Terminals	Rohm & Haas Phils	470.00
O12	Jan 1 to Dec 31 '97	United Terminal Serv	Royal Cargo Corp.	2,232.00
P12	Jan 1 to Dec 31 '97	UTS Transport	Royal Cargo Corp.	39.00
Q12	Jan 1 to Sept 30 '97	United Terminals	Royal Heavylift, Inc.	4,554.08
R12	Oct 1 to Dec 31, '97	United Terminals	Royal Heavylift, Inc.	296.10
S12	Jan. to Dec. '97	United Terminals Serv	Surigao Dev. Corp.	6,939.00
T12	Jan 1 to Mar 31, '97	Jardine Davies Trans	Temic Telefunken	1,196.55
U12	Jul 31 - Sept 30 '97	Jardine Davies Trans	Temic Telefunken	7,233.95
V12	Apr 1 - Jun 30 '97	Jardine Davies Trans	Temic Telefunken	2,565.78
W12	Jul 31- Sept 30 '97	United Terminals	Temic Telefunken	4,631.18
X12	Oct 1 to Dec 31, '97	United Terminals	Temic Telefunken	6,636.21
Y12	Oct to Dec. 31 '97	Jardine Davies, Inc.	Thorn Lighting (Phils.)	6,912.99
Z12	Apr 1 to Jun 30 '97	Jardine Davies, Inc.	Thorn Lighting (Phils.)	2,940.00
A13	Jan 1 to Mar 31, '97	Jardine Davies, Inc.	Thorn Lighting (Phils.)	30.00
B13	Jan 1 to Mar 31 '97	United Terminals Serv	Toyota Motor Phils.	4,538.00
C13	Apr 1 to Jun 30 '97	United Terminal Serv	Toyota Motor Phils.	4,764.50
D13	Jul 1 to Sept 30, '97	United Terminals Serv	Toyota Motor Phils.	4,914.50

E13	Oct 1 to Dec 31, '97	United Terminals Serv	Toyota Motor Phils.	5,979.00
F13	Jan 1 to Dec 31 '97	Jardine Davies		
		Transport Serv, Inc.	UTS Transport Co., Inc.	3,164.00
G13	Oct 1 to Dec 31, '97	Jardine Davies		
		Transport Serv, Inc.	Van Melle (Phils.) Inc.	294.71
H13	Jul 1 to Sept 30, '97	United Terminals	Robert Dan & Co., Inc.	1,025.20
I13	Oct 1 to Dec 31, '97	Jardine Davies Trans	Temic Telefunken	9,715.05
Total: <u>P2,308,822.60</u>				

While it may be observed that some of the above certificates were issued under the name of United Terminals Services, the same pertain to the account of the Petitioner since it operates under the said business name as shown on its Certificate of Registration of Business Name (Exh. J-13), hence the said certificates were extended credence and probative value by this Court.

However, this Court found out, after a thorough scrutiny of Petitioner's documents that there are several certificates which do not pertain to Petitioner's account, hence, were disallowed, to wit:

<u>Exh.</u>	<u>Period Covered</u>	<u>Payee</u>	<u>Payor (Withholding Agent)</u>	<u>Income Tax Withheld</u>
QQQ	Oct. to Dec. '96	UTS Transport Co., Inc.	Johnson & Johnson	P 1,614.55
DDDD	Jan to Dec '96	UTS Transport Co., Inc.	KPPI Foods Corporation	14.00
XXXXX	Jan. 1 to Dec. 31, '97	Jardine Freight Services, Ltd.	Jardine Aboitiz Int'l Forwarders, Inc.	8,159.50
P12	Jan. 1-Dec. 31 '97	UTS Transport	Royal Cargo Corp.	39.00
Y12	Oct-Dec. 31 '97	Jardine Davies, Inc.	Thorn Lighting (Phils.), Inc.	6,912.99
Z12	Apr. 1-June 30 '97	Jardine Davies, Inc.	Thorn Lighting (Phils.), Inc.	2,940.00
A13	Jan. 1-Mar. 31, '97	Jardine Davies, Inc.	Thorn Lighting (Phils.), Inc.	30.00
Total: <u>P 19,710.04</u>				

In the same breath, Petitioner failed to establish the authenticity of the following documents whose originals were not presented before the Court for comparison, viz:

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<u>Exh.</u>	<u>Period Covered</u>	<u>Payee</u>	<u>Payor (Withholding Agent)</u>	<u>Income Tax Withheld</u>
AAAA	Jan. 1 to Dec 31, '96	Jardine Davies Transport Serv, Inc.	KPPI Foods Corp.	P 12.00
BBBB	Jan 1- Dec 31, '96	United Terminal Serv	KPPI Foods Corp.	7,015.05
CCCC	Jan 1 - Dec 31, '96	United Terminals Serv	KPPI Foods Corp.	13,542.05
YYYY	Jan. 1 to Dec 31, '97	Jardine Davies Transport Services, Inc.	Apollo Trading & Mfg. Corp.	1,332.04
CCCCC	Jan. 1 to Dec 31, '97	Jardine Davies Transport Services, Inc.	Avantex Mill Corp.	12,571.15
KKKKK		Jardine Davies Transport Services	Cebu Fil-Veneer Corp.	267.00
OOOOO	Mar. 29 to Jun 28, '97	Jardine Davies Transport Services	Goodyear Phils., Inc.	1,101.79
TTTTT	July 1 to Sept 30, '97	Jardine Davies Transport Services	Shemberg Mktg. Corp.	6,327.11
UUUUU	Jan. 1 to Mar 31, '97	Jardine Davies Transport Services, Inc.	TA Philippines, Inc.	1,592.44
YYYYY	Jan 1 to Dec 31, '97	United Terminals	Allegro Microsys. Phils.	491.92
HHHHHH	Apr 1 to Jun 30, '97	Jardine Davies	Caltex Phils., Inc.	4,736.70
IIIII	Oct 1 to Dec 31, '97	Jardine Davies	Caltex Phils., Inc.	1,355.49
JJJJJ	Jul 1 to Sept 30, '97	Jardine Davies	Caltex Phils., Inc.	3,215.81
UUUUUUU	Jan 1 to Dec 31, '97	United Terminals Serv	Isla Comm. Co., Inc.	1,412.08
V8	Apr. to June '97	United Terminals	OOCL (Phils.), Inc.	1,000.92
X8	Apr. to June '97	United Terminals Serv	OOCL (Phils.), Inc.	635.30
Y8	Apr. to June '97	UTS	OOCL (Phils.), Inc.	226.26
Z8	Apr. to June '97	UTS	OOCL (Phils.), Inc.	7.50
A9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	2.00
B9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	22.50
C9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	530.65
D9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	387.95
E9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	84.20
F9	Apr. to June '97	UTS	OOCL (Phils.), Inc.	152.43
Total: P				58,022.34

Likewise, We disallowed the aggregate amount of P36,114.08 creditable withholding taxes since their corresponding certificates do not bear the dates or period when the indicated creditable taxes were withheld:

<u>Exh.</u>	<u>Period Covered</u>	<u>Payee</u>	<u>Payor (Withholding Agent)</u>	<u>Income Tax Withheld</u>
H		United Terminal Serv	Bacardi Jardine Prod'n	P 46.50
J		United Terminals Serv	Birkart-East West Freight	35,697.96
HH		United Terminal Serv	Famous Pacific	252.00
KK		United Terminal Serv	Famous Pacific	117.62
Total: P				36,114.08

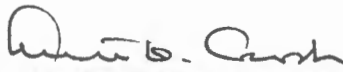
Prescinding from the aforesaid disallowances, Petitioner was able to substantiate only the amount of P2,194,976.14 out of the total creditable withholding taxes of P2,308,822.60.

Anent the last requirement, it could be clearly seen from its 1996 and 1997 annual income tax returns/audited financial statements (Exhs. A and D) that Petitioner declared the corresponding income payments from which the creditable withholding taxes with valid certificates of P2,194,976.14 were withheld.

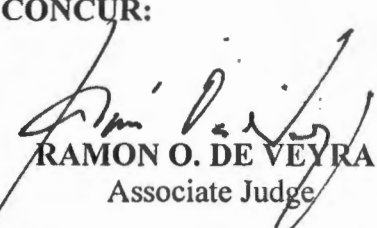
Having complied with the requisites laid down by this Court, We grant the claim for refund but only in a reduced amount of P2,194,976.14.

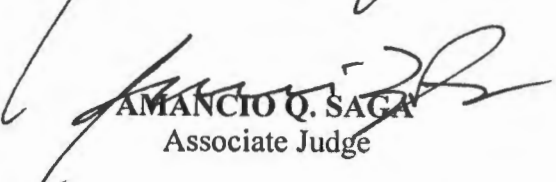
WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate in the amount of P2,194,976.14 in favor of the Petitioner representing excess unutilized creditable withholding taxes for taxable years 1996 and 1997.

SO ORDERED.


ERNESTO D. ACOSTA
Presiding Judge

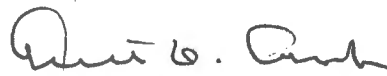
WE CONCUR:


RAMON O. DE VEYRA
Associate Judge


AMANCIO Q. SACA
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