Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

**FIRST DIVISION**
**************

**UNITED INTERNATIONAL PICTURES AB,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NOS. 6912**

Members:

**ACOSTA,** *Chairperson*
**BAUTISTA,** *and*
**CASANOVA,** *JJ.*

**Promulgated:**

AUG 28 2008 2:40pm

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# DECISION

**CASANOVA, *J.*:**

Before Us is a Petition for Review seeking for a refund or the issuance of a Tax Credit Certificate ("TCC") in the amount of P7,239,399.00 allegedly representing unutilized excess creditable income taxes ("CWT") withheld as of December 31, 2002.

## THE FACTS OF THE CASE

Petitioner is the Philippine branch of United International Pictures AB, a corporation duly organized and existing under the laws of Sweden and licensed to engage in business in the Philippines, with office address then at the 7th Floor East Tower, Philippine Stock Exchange Center, Exchange Road, Ortigas Center, Pasig

City.[1] It is primarily engaged in the business of acquiring and leasing motion pictures and other activities compatible therewith in the Philippines.[2]

Respondent, on the other hand, is the duly appointed Commissioner of International Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. His office address is located at the BIR National Office Building, Diliman, Quezon City.[3]

On March 1, 2000, petitioner entered into a Sub-distribution Agreement[4] ("Agreement") with Viva Productions, Inc. ("VIVA") for the exclusive license (as of June 20, 2000) to exhibit and distribute in the Philippines feature motion pictures and their related trailers as may be designated by the petitioner. Under the Agreement, VIVA is entitled to deduct and retain as its distribution fee an amount equal to 6% of gross receipts from film rentals in respect of each picture generating gross receipts of P6 million or less, or 4% in respect of each picture generating gross receipts in excess of P6 million.[5]

Pursuant to its operations, petitioner filed its Annual Income Tax Return ("ITR") for the calendar years ending December 31, 2001 and December 31, 2002 with the following information:

| **Calendar Year**<br>**Filed on:** | **Original Return[6]**<br>**CY 2001**<br>**April 15, 2002** | **Original Return[7]**<br>**CY 2002**<br>**April 15, 2003** |
|---|---|---|
| Sales/Revenues/Receipts/Fees | P 227,456,383.00 | P 154,953,819.00 |
| Less: Cost of Sales/Services | 174,278,313.00 | 124,132,474.00 |
| Gross Income from Operations | P 53,178,070.00 | P 30,821,345.00 |
| Add: Non-operating and Other Income | 585,427.00 | 0.00 |

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, p. 69.
[2] Exhibit "H-2," *Rollo,* p. 138.
[3] Par. 2, JSFI, *Rollo*, pp. 69-70.
[4] Exhibit "O", *Rollo,* pp. 164-183.
[5] Ibid.
[6] Exhibit "A", *Rollo,* pp. 107-109.
[7] Exhibit "G," *Rollo,* pp. 125-127.

| | | | | |
|---|---|---|---|---|
| Total Gross Income | P | 53,763,497.00 | P | 30,821,345.00 |
| Less: Deductions | | 14,081,903.00 | | 23,876,731.00 |
| Taxable Income | P | 39,681,594.00 | P | 6,944,614.00 |
| Tax Rate | | 32% | | 32% |
| Income Tax Due | P | 12,698,110.00 | P | 2,222,276.00 |
| Less: Tax Credits/Payments | | | | |
| Prior Year's Excess Credits | P | 2,943,697.00 | P | 1,671,916.00 |
| Tax Payments for First Three Quarters | | | | 0.00 |
| Creditable Tax Withheld for the First Three Quarters | | 9,975,133.00 | | 5,372,953.00 |
| Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter | | 1,451,196.00 | | 2,416,806.00 |
| Total Tax Credits/Payments | P | 14,370,026.00 | P | 9,461,675.00 |
| **Tax Overpayment** | **P** | **(1,671,916.00)** | **P** | **(7,239,399.00)** |

On line 31 of its ITR for CY 2001, petitioner indicated its option to carry-over the excess creditable withholding tax for the year when it marked "X" the option "To be carried over as tax credit next year/quarter".[8]

On line 31 of its ITR for CY 2002, petitioner indicated its option to refund the excess creditable withholding tax for the year when it marked "X" the option "To be refunded".[9]

On November 5, 2003, petitioner filed its administrative application for refund with the Bureau of Internal Revenue ("BIR") — Revenue District Office No. 43 in Pasig City in the amount of P7,239,399.00 representing petitioner's excess creditable withholding taxes as of December 31, 2002.[10]

On April 15, 2004, to reflect its application for refund, petitioner filed its ITR for CY 2003 showing no amount in line 27A for "Prior Year's Excess Credits," to wit:

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[8] Supra note 6.
[9] Supra note 7.
[10] Par. 6, Petition for Review, *Rollo,* p. 4; JSFI, Par. 5, *Rollo,* p. 71.

| **Calendar Year:**<br>**Filed on:** | | **Original Return**[11]<br>**CY 2003**<br>**April 15, 2004** |
|---|---|---|
| Sales/Revenues/Receipts/Fees | P | 169,242,436.00 |
| Less: Cost of Sales/Services | | 135,377,819.00 |
| Gross Income from Operations | | 33,864,617.00 |
| Add: Non-operating and Other Income | | 419,152.00 |
| Total Gross Income | P | 34,283,769.00 |
| Less: Deductions | | 23,014,510.00 |
| Taxable Income | P | 11,269,259.00 |
| Tax Rate | | 32% |
| Income Tax Due | P | 3,606,163.00 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits | P | 0.00 |
| Tax Payments for First Three Quarters | | 0.00 |
| Creditable Tax Withheld for the First Three Quarters | | 7,626,268.00 |
| Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter | | 878,850.00 |
| Total Tax Credits/Payments | P | 8,505,118.00 |
| **Tax Overpayment** | **P** | **(4,898,955.00)** |

The inaction of the BIR on its claim for refund prompted the petitioner to institute the present Petition for Review before this Court on March 31, 2004.[12]

In her Answer filed on June 14, 2005, the Commissioner of Internal Revenue alleged the following Affirmative and Special Defenses: [13]

"6. [t]he claim for refund is still under examination;

7. [t]he burden of proof is upon the petitioner to prove that it is entitled to the claim for refund;

8. [t]he grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; [and]

9. [t]he taxes sought to be refunded were paid in accordance with law; the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same."

[11] Exhibit "M," *Rollo,* pp. 147-149.
[12] *Rollo,* pp. 1-5.
[13] *Rollo,* pp. 53-55.

During the hearing of this case, petitioner presented documents mainly comprised of ITR's, audited financial statements and Certificates of Creditable Withholding Taxes. It offered its documentary evidence on August 5, 2005.[14] Thereafter, *via* a Resolution[15] on February 16, 2006 this Court admitted its documentary evidence with the following observations:

> "1. Exhibit "C", described as "Certificate of Creditable Tax Withheld at source (BIR Form 2307) for the period January 01 to March 31, 2001 **<u>issued by Viva Productions Inc. (Viva) to Petitioner UIP",</u>** should read as "Certificate of Creditable Tax Withheld at Source (BIR Form 2307) for the period January 01 to March 31, 2001 **<u>issued by Petitioner UIP to Viva Productions Inc. (Viva)";</u>**
>
> 2. Exhibit "D", described as "Certificate of Creditable Tax Withheld at source (BIR Form 2307) for the period April 01 to June 30, 2001 **<u>issued by Viva Productions Inc. (Viva) to Petitioner UIP",</u>** should read as "Certificate of Creditable Tax Withheld at Source (BIR Form 2307) for the period April 01 to June 30, 2001 **<u>issued by Petitioner UIP to Viva;</u>**
>
> 3. Exhibit "E", described as "Certificate of Creditable Tax Withheld at source (BIR Form 2307) for the period July 01 to September 31, 2001 **<u>issued by Viva Productions Inc. (Viva) to Petitioner UIP",</u>** should read as "Certificate of Creditable Tax Withheld at Source (BIR Form 2307) for the period July 01 to September 31, 2001 **<u>issued by Petitioner UIP to Viva.</u>**
>
> xxx"

On September 13, 2006, petitioner filed a Motion to Re-open the Case for Trial and Leave of Court to Present Additional Evidence; and to Defer the Submission of Petitioner's Memorandum.[16] In said motion, petitioner prayed for the re-opening of the case for trial and introduction of additional evidence to establish that Viva Productions, Inc. is the constituted withholding agent who erroneously prepared the withholding tax certificates for the 1st and 2nd quarters, CY 2001[17]

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[14] Formal Offer of Evidence for the Petitioner, *Rollo*, pp. 99-106.
[15] *Rollo,* pp. 204-205.
[16] *Rollo,* pp. 213-216.
[17] Exhibits "C" and "D", *Rollo,* p. 121 and p. 122, respectively.

marked as Exhibits "C" and "D"; said exhibits erroneously indicated "United International Pictures" as payor when it should have been correctly reported as "Viva Productions."

On October 31, 2006, this Court granted[18] said motion permitting petitioner to present the necessary additional documents and witnesses to establish its allegation.

Petitioner filed its Supplemental Formal Offer of Evidence[19] on January 17, 2007. We admitted petitioner's additional documentary exhibits on February 23, 2007.[20]

On November 22, 2007, respondent manifested in open court that she is submitting the case for decision without presenting any further evidence.[21]

Petitioner filed its Memorandum[22] on April 4, 2008. This case was submitted for decision on May 7, 2008 *sans* respondent's Memorandum.[23]

## **ISSUE**

The parties' agreed issue is:

"[w]hether petitioner is entitled to be refunded its excess creditable withholding taxes as of calendar year ended December 31, 2002 in the amount of P7,239,399.00 by showing that –

a) the creditable withholding taxes amounting to P7,239,399.00 are duly supported by Certificates of Creditable Tax Withheld at Source[;]
b) [t]he income from which these creditable taxes were withheld were duly declared as part of [p]etitioner's income in its Annual Income Tax Return for the calendar years December 31, 2001 and 2002[;]

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[18] Resolution, *Rollo,* p. 226.
[19] *Rollo,* p. 228-230.
[20] Resolution, *Rollo,* p. 238.
[21] TSN, November 22, 2007, pp. 3-4; Resolution, *Rollo,* p. 253.
[22] *Rollo,* pp. 258-271.
[23] *Rollo,* pp. 276.

c) [p]etitioner had shown that it did not carry over its unutilized creditable withholding taxes as of calendar year ended December 31, 2002 to the succeeding taxable year 2003[; and]

d) [p]etitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period provided under Sections 204 and 229 of the Tax Code, as amended."[24]

## THE COURT'S RULING

There are two basic issues that are to be resolved by Us, namely: (1) whether or not petitioner has excess/unutilized creditable withholding tax for the calendar year ending December 31, 2002; and (2) whether or not petitioner is entitled for the refund or for the issuance of a TCC in its favor for its alleged excess creditable withholding tax and if legally entitled, whether or not the same is properly substantiated.

As to the first issue, We rule in the affirmative.

It is clear from the evidence presented that petitioner has excess/overpayment of creditable withholding tax for the calendar year ending December 31, 2002. Based on its 2002 ITR, petitioner was liable only for income tax amounting to P2,222,276.00 after applying the tax rate of 32% to its taxable income of P6,944,614.00. After deducting its income taxes withheld, in the amount of P9,461,675.00 of that year from the income tax due of P2,222,276.00, as dictated under the "Creditable Withholding Tax System" which considers income taxes withheld by the payor as creditable against the income taxes for that year, petitioner has excess/overpayment of creditable withholding tax for the calendar year ending December 31, 2002 of P7,239,399.00, detailed as follows:

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[24] JSFI, *Rollo,* p. 71-72.

| **Calendar Year Filed on:** | | **Original Return[25] CY 2002 April 15, 2003** |
|---|---|---|
| Taxable Income | P | 6,944,614.00 |
| Tax Rate | | 32% |
| Income Tax Due | P | 2,222,276.00 |
| Less: Tax Credits/Payments | | |
| Prior Year's Excess Credits | P | 1,671,916.00 |
| Tax Payments for First Three Quarters | | 0.00 |
| Creditable Tax Withheld for the First Three Quarters | | 5,372,953.00 |
| Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter | | 2,416,806.00 |
| Total Tax Credits/Payments | P | 9,461,675.00 |
| **Tax Overpayment** | **P** | **(7,239,399.00)** |

With respect to the second issue, We likewise rule in the affirmative.

Petitioner anchored its claim for refund or the issuance in its favor of a TCC on Section 76 of the 1997 National Internal Revenue Code ("NIRC"), to wit:

> "**SEC. 76. Final Adjustment Return** — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable 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 balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore."

[25] Supra note 8.

The law decrees that the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or claimed as a tax credit or carried over and applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. These remedies are to be availed of alternatively and not cumulatively.

Petitioner's income tax return for taxable year 2002 shows that it had excess tax credits in the amount of P7,239,399.00 which petitioner marked as "To be refunded"[26]. Inasmuch as no amount of prior year's excess credits was indicated in its 2003 income tax return[27], the excess tax credits of P7,239,399.00 appears to be refundable pursuant to Section 76 of the NIRC.

However, the validity of petitioner's claim will still depend on its compliance with the three requirements prescribed under Section 2.58.3 of Revenue Regulations No. 2-98, as amended, to wit:

> 1. that the claim for refund was filed within the two-year prescriptive period prescribed under Section 204 (C), in relation to Section 229 of the NIRC of 1997;
>
> 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 was included in the return of the recipient.

As to the first requirement, it is a long settled rule that the reckoning period of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return.

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[26] Exhibit "G".
[27] Exhibit "M-1".

Petitioner's claim covers the calendar year 2002 for which it filed its ITR on April 15, 2003. Counting the two-year prescriptive period from the said date of filing of its ITR, petitioner had until April 15, 2005 within which to file its claim for refund, both in the administrative and judicial levels. Since petitioner's 2002 ITR already constitutes a formal application for refund when it had indicated in its ITR its option to refund the excess taxes[28], petitioner's administrative claim is therefore considered filed on April 15, 2003, the date when petitioner filed its 2002 ITR. The Petition for Review, on the other hand, was filed with this Court on March 31, 2004. Hence, both dates of filing fell within the two-year prescriptive period.

Aside from the records, both parties even agreed to the timeliness of petitioner's filing of its administrative and judicial claims. [29]

Petitioner likewise complied with the second requisite. Petitioner submitted Certificates of Creditable Tax Withheld at Source [BIR Form 2307] showing that creditable taxes in the amount of P7,789,759.17 were withheld from income payments it received in 2002 relative to its Sub-Distribution Agreement[30] with its sole client, Viva Productions, Inc. Petitioner also submitted its income tax return for taxable year 2001[31] and the corresponding Certificates of Creditable Taxes

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[28] *United International Pictures AB vs. CIR,* CTA Case No. 7244, June 12, 2007;
SECTION 2.58.3 Cairn for Tax Credit or Refund. —
(C) Excess Credits. — . . .
(1) If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Secs. 204 (c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.

[29] JSFI, Par. 7, *Rollo*, p. 71.
[30] Exhibit "O"; TSN, January 11, 2007, pp. 8-9.
[31] Exhibit "A", *Rollo,* pp. 107-109.

Withheld[32] proving that it had prior year's (2001) excess credits in the amount of P1,671,916.00.

Below is the breakdown of the creditable taxes withheld of P7,789,759.17:

| EXH. | WITHHOLDING AGENT/PAYOR | PERIOD COVERED | | | INCOME PAYMENTS | TAX WITHHELD |
|---|---|---|---|---|---|---|
| I | Viva Productions, Inc. | 1/1/02 | To | 3/31/02 | P 22,419,805.40 | P 1,120,990.27 |
| L | Viva Productions, Inc. | 4/1/02 | To | 6/30/02 | 54,582,715.82 | 2,729,135.79 |
| J | Viva Productions, Inc. | 7/1/02 | To | 9/30/02 | 30,456,537.80 | 1,522,826.89 |
| K | Viva Productions, Inc. | 10/1/02 | To | 12/31/02 | 48,336,124.40 | 2,416,806.22 |
| | **TOTALS** | | | | **P 155,795,183.42** | **P 7,789,759.17** |

Going now to the third requisite, the 2002 withholding tax certificates revealed that the creditable income taxes of P7,789,759.17 were withheld from gross income payments of P155,795,183.42. On the other hand, petitioner's income tax return for 2002[33] disclosed a lower gross income amount of P154,953,819.00. As testified to by Ms. Irene Jose, Comptroller of Viva Productions, Inc., the discrepancy in gross income of P841,364.42 represents advertising (ad sales) recovery for the year 2002, broken down as follows:[34]

| | | |
|---|---|---|
| January | P | 21,727.28 |
| February | | 46,454.54 |
| March | | 76,727.27 |
| April | | 104,818.18 |
| May | | 73,181.82 |
| June | | 68,272.73 |
| July | | 57,091.81 |
| August | | 43,454.54 |
| September | | 87,090.91 |
| October | | 92,363.64 |
| November | | 92,727.27 |
| December | | 77,454.54 |
| TOTAL | **P** | **841,364.53** |

To explain the difference, petitioner stated that the amount of P841,364.53 pertains to ad sales consisting of advertising materials shipped from petitioner's Head Office in Sweden to be distributed to cinemas exhibiting its motion pictures

[32] Exhibits "C", "D", "E" & "F", *Rollo,* pp. 121-124.
[33] Exhibit "G-1".
[34] Exhibit "P", Annex 1

throughout the Philippines. The local cinema owners reimbursed petitioner the cost of ad sales without mark up. As consistently adopted on a yearly basis by its external auditor SyCip Gorres Velayo and Company, the ad sales do not form part of its gross receipts nor was it reported as deductible expenses in its annual income tax return and audited financial statements. However, since payments by cinema owners include reimbursement of ad sales at cost, the gross receipts inclusive of the ad sales was subjected to withholding tax. Thus in its calendar year 2002 annual income tax return, petitioner's gross receipts is lower by an amount equal to the ad sales of P841,364.53 when compared to its four (4) withholding tax certificates.[35]

Despite petitioner's explanation, this Court is not convinced with the above reasons given by petitioner. Firstly, there was no specific mention in the Notes to Financial Statement in the Audited Financial Statement[36] of their external auditor regarding the accounting treatment of ad sales amounting to P841,364.53. Secondly, after a perusal of the Certification[37] of Ms. Jose, there was no concrete evidence presented on the reimbursements of the ad sales. What was only presented is a monthly breakdown of the amount with no supporting documents/evidence annexed therewith proving actual reimbursements. Also, petitioner's audited financial statements for the year 2002 showed release costs of P53,810,022.00[38] but it was not shown whether the ad sales recovery of P841,364.42 was indeed deducted therefrom.

Thus, this Court finds Petitioner's compliance with the third requisite only to the extent of the claimed creditable withholding taxes of P7,200,302.97, computed as follows:

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[35] TSN, April 26, 2005, pp. 13-18.
[36] Exhibit "H", *Rollo,* pp. 133-142.
[37] Exhibit "P", *Rollo,* pp. 184-187.
[38] *Rollo,* p. 135.

| | |
|---|---|
| Gross income per income tax return | P154,953,819.00 |
| Divided by: Gross income per withholding tax certificates | ÷ P155,795,183.42 |
| Rate of Declared Gross Income | **99.46%** |
| Substantiated Claimed Excess Creditable Withholding Taxes | P 7,239,399.00 |
| Multiplied by: Rate of Declared Gross Income | x 99.46% |
| **Refundable Excess Creditable Withholding Taxes** | **P 7,200,302.97** |

Therefore, petitioner complied with the substantiation requirements with respect to its claim of excess/unutilized tax credits for the CY 2003 in the reduced amount of P7,200,302.97 as shown above. Considering that petitioner's chosen option, as indicated in its 2002 income tax return is "To be refunded", and, its claim with the BIR filed on November 5, 2003, was to refund its excess creditable withholding taxes, this Court grants petitioner's claim for refund.

**WHEREFORE**, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **Seven Million Two Hundred Thousand Three Hundred Two Pesos and 97/100 (P7,200,302.97)** representing excess/unutilized creditable withholding taxes for taxable year 2002.

**SO ORDERED.**

**CAESAR A. CASANOVA**
Associate Justice

WE CONCUR:

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**ERNESTO D. ACOSTA**
Presiding Justice
Chairperson, First Division