REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UPSI MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7436

Members:

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

Promulgated:
MAR 12 2009 [illegible]

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DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the refund or issuance of tax credit certificate in the amount of P2,089,252.00, allegedly representing petitioner's excess/unutilized creditable withholding tax for taxable year 2003.

UPSI Management, Inc. (Petitioner) is a corporation duly incorporated and existing under Philippine laws, with business address at 1122 General Luna Street, Paco, Manila.[1]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with powers, among others, to act upon and grant claims for refund or tax credit of overpaid internal revenue taxes. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

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[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts, *Rollo*, p. 93.

On April 15, 2004, petitioner filed its Annual Income Tax Return (ITR)[2] which reflected the following:

Taxable income (net loss)	P (1,257,482.00)
Minimum Corporate Income Tax(MCIT)	58,719.00
Prior year Excess Credit	2,546,619.00
Creditable Tax Withheld	2,089,252.00
Total Excess Credit	P 4,577,152.00

Petitioner did not choose an option in the said Return as regards its excess credit. On November 12, 2004, however, petitioner amended its ITR[3] reflecting the aforesaid amount, but now with a marking in the option box of "To be issued a Tax Credit Certificate".

On June 1, 2005, petitioner filed with the BIR its claim for refund or issuance of tax credit certificate, but limiting the claim in the amount of P2,089,252.00, representing its unutilized creditable income taxes for taxable year 2003.[4] The same remains unacted up to this date. Hence, on April 11, 2006, petitioner filed the instant Petition for Review, pursuant to Section 204(C) and 229 of the National Internal Revenue Code (NIRC).

On May 19, 2006, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "8. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually remitted to the Bureau of Internal Revenue in accordance with the provisions of the Tax Code.
>
> 9. The petition is premature considering that the petitioner's application for the refund/tax credit of the alleged excess/unutilized creditable withholding tax for taxable year 2003 in the amount of P2,089,252.00 is still pending investigation with Revenue District Office No. 34, Revenue Region No. 6, Manila.
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> 10. Petitioner's exercise of both options to refund partly and to carry over partly alleged overpayment/excess credit for taxable year 2003 is not in consonance with existing tax laws and regulations giving taxpayers with overpayment/excess credit the option/choice whether to refund the same or to be issued a Tax Credit Certificate or be carried over as tax credit next taxable year, which, once the choice is made, the same is irrevocable.

[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "D".

11. Claim for refund is construed strictly against the claimant and should not be allowed unless proven explicitly and categorically.

12. The allegations regarding tax refundability do not ipso facto merit the refund claimed."

On September 6, 2007, petitioner filed its Formal Offer of Evidence, while respondent did not present any. Petitioner filed its Memorandum on March 11, 2008; while respondent filed his Memorandum on February 28, 2008. On June 18, 2008, this case was deemed submitted for decision.

The following are the jointly stipulated issues[5] for this Court's resolution:

"1. Whether or not the fact of withholding is established by a copy of a statement duly issued by the payors (withholding agents) to UPSIMI, showing the amount paid and the amount of tax withheld therefrom;

2. Whether or not the Annual Income Tax Return and the Amended Annual Income Tax Return, both for the calendar year 2003, show that the income payment received was declared as part of UPSIMI's gross income; and

3. Whether or not UPSIMI is entitled to be issued a tax credit certificate in the amount of P2,089,252 representing the unutilized creditable tax withheld in taxable year 2003."

The foregoing issues boil down to the sole issue of whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P2,089,252.00, representing alleged excess or unutilized creditable withholding taxes for taxable year 2003 on the basis of the evidence presented.

In resolving the aforesaid issue, the Court takes into account the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue**[6], where the Supreme Court laid down the basic requirements in claiming of refund of excess creditable withholding taxes, as follows:

1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

[5] Joint Stipulation of Facts, *Rollo*, pp. 93-98.
[6] G.R. No. 107434, October 10, 1997.

2. The fact of withholding is established by a copy of statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld were included in the return of the recipient.[7]

Pertinent to the first requisite are Sections 204(C) and 229 of the NIRC, which state:

"**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may –

xxx xxx xxx

(C) 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 stamped 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: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"**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."

According to the foregoing provisions, the written claim to the Commissioner (administrative) and the suit (judicial claim) must be filed within two (2) years from the date of payment of the tax. In a claim for refund of excess and unutilized creditable withholding

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[7] Now incorporated in Section 2.58.3(B) of Revenue Regulations No. 2-98.

tax, the two-year period shall commence from the date of filing of the Annual Income Tax Return[8].

In the present case, petitioner filed its Annual Income Tax Return for taxable year 2003 on April 15, 2004.[9] Counting from this date, petitioner had until April 17, 2006[10] within which to file its claim for refund/tax credit certificate for both administrative and judicial levels. And a review of the records reveals that petitioner filed its administrative claim on June 14, 2005[11] and its Petition for Review on April 11, 2006. These periods are both within the two-year prescriptive period prescribed under Section 229 of the NIRC of 1997. Therefore, the first requisite has been satisfied.

In compliance with the second requisite, petitioner presented its Certificates of Creditable Tax Withheld at Source[12] issued to it by various withholding agents which showed creditable withholding taxes in the total amount of P2,089,252.25, detailed as follows:

Payor/Withholding Agent	Exhibit No.	Income Payment	Tax Withheld
Yaman Lahi Foundation, Inc. – EAC	E	P 115,321.84	P 11,532.18
Yaman Lahi Foundation, Inc. – EAC	E-1	236,245.71	23,624.57
Yaman Lahi Foundation, Inc. – EAC	E-2	64,672.79	6,467.28
Yaman Lahi Foundation, Inc. – EAC	E-3	323,363.95	32,336.40
Yaman Lahi Foundation, Inc. – EAC	E-4	881,545.00	8,815.45
Hospital Management Services, Inc.	F	357,817.92	35,781.79
Hospital Management Services, Inc.	F-1	359,580.30	35,958.03
Hospital Management Services, Inc.	F-2	376,450.88	27,658.26
Hospital Management Services, Inc.	F-2-1	251,615.49	25,161.55
Hospital Management Services, Inc.	F-3	533,234.53	53,323.45
House of Knowledge	G	62,314.95	6,231.51
House of Knowledge	G-1	64,606.93	6,460.70
House of Knowledge	G-2	44,048.90	4,404.90
House of Knowledge	G-3	100,005.76	10,000.58

8 ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., G.R. No. 83736, January 15, 1992.
9 Exhibit "A".
10 April 15, 2006 being Saturday.
11 Exhibit "D".
12 Exhibits "E" to "N-3".

Pearl of the Orient Seas Hotel	H	366,656.25	36,665.61
Pearl of the Orient Seas Hotel	H-1	366,656.25	36,665.61
Pearl of the Orient Seas Hotel	H-2	499,872.23	49,987.23
Pearl of the Orient Seas Hotel	H-3	139,971.31	13,997.14
Immaculate Conception Academy	I	58,012.58	5,801.28
Rural Bank of Dasmarinas	J	48,343.83	4,834.38
Lope De Vega Tower Condominium Association	K-1	48,215.25	4,821.52
Lope De Vega Tower Condominium Association	K-2	45,985.84	4,598.59
Lope De Vega Tower Condominium Association	K-3	101,509.42	10,150.95
Lope De Vega Tower Condominium Association	K	32,143.55	3,214.35
UPSI Property Holdings Inc.-Manila	L	2,400,000.00	240,000.00
UPSI Property Holdings Inc.-Manila	L-1	3,200,000.00	320,000.00
UPSI Property Holdings Inc.-Manila	L-2	2,400,000.00	240,000.00
UPSI Property Holdings Inc.-Manila	L-3	1,600,000.00	160,000.00
UPSI Property Holdings Inc.-Cavite	M	29,006.30	2,900.63
UPSI Property Holdings Inc.-Cavite	M-1	19,337.40	1,933.74
UPSI Property Holdings Inc.-Cavite	M-2	38,671.20	3,867.12
UPSI Property Holdings Inc.-Cavite	M-3	29,006.40	2,900.64
UPSI Property Holdings Inc.-Cavite	N	2,010,757.00	201,075.70
UPSI Property Holdings Inc.-Cavite	N-1	1,849,737.60	184,973.76
UPSI Property Holdings Inc.-Cavite	N-2	1,486,096.70	148,609.67
UPSI Property Holdings Inc.-Cavite	N-3	1,244,976.90	124,497.69
TOTAL		**P 21,785,780.96**	**P 2,089,252.25**

While it may be observed that the total amount of tax withheld appearing in the certificates corresponds to the Total Tax Credits/Payments appearing in the Annual ITR[13], the certificate marked as *Exhibit "E-1"*, with the related withholding taxes in the amount of P23,624.57, was dated outside the subject period of claim; hence, cannot be included. Furthermore, the certificates which show the total amount of P6,767.76[14] were issued not in the name of petitioner. Thus, the amount of P30,392.33 must be deducted from the total claimed amount of P2,089,252.25.

[13] Exhibit "A-6".
[14] Exhibits "M-2" and "M-3".

As regards the third requirement, the sales revenues reported in petitioner's 2003 ITR[15], which were likewise reflected in its Audited Financial Statements as ascertained by the Court-commissioned Independent Certified Public Accountant (ICPA) in his Report[16] dated June 20, 2007 involving the same year, was in the amount of P20,555,721.00. The same was lower by P1,230,059.96 when compared with the total income payments reflected in its Certificates of Creditable Tax Withheld in the amount of P21,785,780.96, detailed as follows:

Payor/Withholding Agent	Exhibit No.	Tax Withheld	Income Payment Per Creditable Withholding Tax Certificates	Gross Income per ITR	Difference
Yaman Lahi Foundation, Inc. - EAC	E	P 11,532.18	P 115,321.84		
Yaman Lahi Foundation, Inc. - EAC	E-1	23,624.57	236,245.71		
Yaman Lahi Foundation, Inc. - EAC	E-2	6,467.28	64,672.79		
Yaman Lahi Foundation, Inc. - EAC	E-3	32,336.40	323,363.95		
Yaman Lahi Foundation, Inc. - EAC	E-4	8,815.45	881,545.00		
Sub-Total			1,621,149.29	P 501,752.03	P1,119,397.26
Hospital Management Services, Inc.	F	35,781.79	357,817.92		
Hospital Management Services, Inc.	F-1	35,958.03	359,580.30		
Hospital Management Services, Inc.	F-2	27,658.26	376,450.88		
Hospital Management Services, Inc.	F-2-1	25,161.55	251,615.49		
Hospital Management Services, Inc.	F-3	53,323.45	533,234.53		
Sub-Total			1,878,699.12	1,496,064.60	382,634.52
House of Knowledge	G	6,231.51	62,314.95		
House of Knowledge	G-1	6,460.70	64,606.93		
House of Knowledge	G-2	4,404.90	44,048.90		
House of Knowledge	G-3	10,000.58	100,005.76		
Sub-Total			270,976.54	269,600.37	1,376.17
Pearl of the Orient Seas Hotel	H	36,665.61	366,656.25		
Pearl of the Orient Seas Hotel	H-1	36,665.61	366,656.25		
Pearl of the Orient Seas Hotel	H-2	49,987.23	499,872.23		
Pearl of the Orient Seas Hotel	H-3	13,997.14	139,971.31		
Sub-Total			1,373,156.04	1,657,545.36	(284,389.32)
Immaculate Conception Academy	I	5,801.28	58,012.58	58,012.44	0.14
Rural Bank of Dasmarinas	J	4,834.38	48,343.83	58,012.44	(9,668.61)
Lope De Vega Tower Condominium Asso.	K-1	4,821.52	48,215.25		
Lope De Vega Tower Condominium Asso.	K-2	4,598.59	45,985.84		
Lope De Vega Tower Condominium Asso.	K-3	10,150.95	101,509.42		
Lope De Vega Tower Condominium Asso.	K	3,214.35	32,143.55		
Sub-Total			227,854.06	207,140.01	20,714.05

[15] Exhibit "A".
[16] Exhibit "RR".

UPSI Property Holdings Inc.-Manila	L	240,000.00	2,400,000.00		
UPSI Property Holdings Inc.-Manila	L-1	320,000.00	3,200,000.00		
UPSI Property Holdings Inc.-Manila	L-2	240,000.00	2,400,000.00		
UPSI Property Holdings Inc.-Manila	L-3	160,000.00	1,600,000.00		
Sub-Total			9,600,000.00	9,600,000.00	-
UPSI Property Holdings Inc.-Cavite	M	2,900.63	29,006.30		
UPSI Property Holdings Inc.-Cavite	M-1	1,933.74	19,337.40		
UPSI Property Holdings Inc.-Cavite	M-2	3,867.12	38,671.20		
UPSI Property Holdings Inc.-Cavite	M-3	2,900.64	29,006.40		
Sub-Total			116,021.30	116,025.01	(3.71)
UPSI Property Holdings Inc.-Cavite	N	201,075.70	2,010,757.00		
UPSI Property Holdings Inc.-Cavite	N-1	184,973.76	1,849,737.60		
UPSI Property Holdings Inc.-Cavite	N-2	148,609.67	1,486,096.70		
UPSI Property Holdings Inc.-Cavite	N-3	124,497.69	1,244,976.90		
Sub-Total			6,591,568.20	6,591,568.29	(0.09)
TOTAL		**P2,089,252.25**	**P21,785,780.96**	**P20,555,720.55**	**P1,230,060.41**

From the foregoing table, petitioner failed to prove that all the income reflected in the Certificates of Creditable Tax Withheld at Source were declared as part of its gross income in its Annual Income Tax Return for the year 2003. This conclusion is arrived at since some of the income reflected in its ITR[17] had lesser amounts than those stated in the certificates, such as the income received from Yaman Lahi Foundation, Inc., Hospital Management Services Inc., House of Knowledge, and Lope de Vega Tower Condominium Association. In this regard, it is proper that an adjustment must be made, allowing only the portion of income taxes withheld that corresponds to the income declared in petitioner's Annual Income Tax Return which are properly supported by Certificate of Creditable Tax Withheld at Source.

Accordingly, out of the total creditable withholding taxes of P2,089,252.25, which corresponds to the income payment of P21,785,780.96 per certificate, only the creditable withholding taxes of P2,026,166.25, with the related income payments of P20,555,720.55, were included in the Return of petitioner, as shown below:

[17] The details were reflected in the "Schedule of Creditable Withholding Tax that are Declared as Part of UPSIMI's Income" per Exhibit "Q".

Payor/Withholding Agent	Tax Withheld	Income Payment Per Creditable Withholding Tax Certificates	Gross Income per ITR	Tax Withheld of which the Related Income were Reported in the ITR
Yaman Lahi Foundation, Inc. - EAC	P 82,775.88	P 1,621,149.29	P 501,752.03	P 50,175.20 *
Hospital Management Services, Inc.	177,883.08	1,878,699.12	1,496,064.60	149,606.46 *
House of Knowledge	27,097.69	270,976.54	269,600.37	26,960.04 *
Pearl of the Orient Seas Hotel	137,315.59	1,373,156.04	1,657,545.36	137,315.59 **
Immaculate Conception Academy	5,801.28	58,012.58	58,012.44	5,801.24 **
Rural Bank of Dasmarinas	4,834.38	48,343.83	58,012.44	4,834.38 **
Lope De Vega Tower Condominium Assoc.	22,785.41	227,854.06	207,140.01	20,714.00 *
UPSI Property Holdings Inc.-Manila	960,000.00	9,600,000.00	9,600,000.00	960,000.00*/**
UPSI Property Holdings Inc.-Cavite	11,602.13	116,021.30	116,025.01	11,602.50*/**
UPSI Property Holdings Inc.-Cavite	659,156.82	6,591,568.20	6,591,568.29	659,156.83*/**
TOTAL	**P2,089,252.25**	**P 21,785,780.96**	**P20,555,720.55**	**P 2,026,166.25**

Note: * 10% of the Gross Income per ITR
** Taxes withheld per certificate which is lower than the 10% of the Gross Income per ITR and were actually declared in petitioner's Annual ITR

Based on the foregoing, petitioner have sufficiently complied with the requisites for the refund or issuance of tax credit certificate representing unutilized excess creditable withholding taxes for taxable year 2003 but in the reduced amount of P1,937,054.92, computed as follows:

Tax Withheld of which the Related Income were Reported in the ITR			P 2,026,166.25
Less:	Creditable Taxes Withheld with certificate dated outside the period of claim *(Exhibit "E-1")*	P 23,624.57	
	Creditable Taxes Withheld with certificate issued not in the name of the petitioner *(Exhibit "M-2")*	3,867.12	
	Creditable Taxes Withheld with certificate issued not in the name of the petitioner *(Exhibit "M-3")*	2,900.64	30,392.33
Substantiated Tax Withheld			P 1,995,773.92
Less:	Minimum Corporate Income Tax Due		58,719.00
Refundable Excess Creditable Taxes Withheld			**P 1,937,054.92**

However, aside from the requisites laid down in **Citibank N.A. vs. Court of Appeals, *et al.***[18] petitioner must prove that it did not carry-over its excess creditable withholding taxes to the succeeding taxable year in accordance with Section 76 of the NIRC of 1997, which states:

> "**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

[18] *Supra.*

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 therefor."

Based on the aforesaid provision, once a taxpayer chooses the option to carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall be allowed.[19] It is not necessary that said excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as the taxpayer elected to carry-over said amount to the succeeding taxable year, that choice is irrevocable for that taxable period.[20]

In the present case, the claim for refund or issuance of tax credit certificate in the amount of P2,089,252.00 covers unutilized creditable withholding taxes for taxable year 2003. A scrutiny of petitioner's 2003 Income Tax Return shows that petitioner reflected the same amount as an unutilized creditable tax withheld. Petitioner's failure to make the appropriate marking in its 2003 Income Tax Return and the fact that the claimed amount was actually carried over to the succeeding taxable year 2004[21] manifest petitioner's intention to carry-over the excess credits; thus, rendering its written claim for refund or issuance of tax credit certificate nugatory.

[19] Philam Asset Management Inc. vs. CIR, G.R. Nos. 156637 and 162004, December 14, 2005.
[20] Honda Cars Philippines, Inc. vs. CIR, CA-G.R. SP No. 75365, September 29, 2005.
[21] CTA Case No. 7602, Exhibit "A".

Since petitioner already exercised the option to carry-over its prior year's tax credit in the total amount of P4,577,152.00 (which included the present claim of P2,089,252.00) to its 2004 Annual Income Tax Return, it is already barred from claiming a refund/tax credit certificate corresponding thereto. Its subsequent amendments of its 2003 ITR[22] with the intention to request a tax credit certificate by checking the "To be issued a Tax Credit Certificate" option, and of its 2004 ITR[23] showing the amended amount of P2,487,900.00, which is actually the prior year's excess credit net of the claimed unutilized taxes withheld in the amount of P2,089,252.00 for the year 2003, do not alter the fact that it had already carried over the excess and unutilized creditable withholding tax for the year 2004; therefore, governed by the "irrevocability rule" under Section 76 of the NIRC of 1997. Petitioner's only recourse is to carry-over the amount of P1,937,054.92 to the succeeding taxable years until the same is fully utilized.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

[22] Exhibit "B".
[23] Exhibit "C".

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