REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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GOLDEN ARCHES REALTY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7201

Members:

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

Promulgated:
MAY 17 2007; 10:45 AM

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DECISION

BAUTISTA, L., J.:

Before us is a Petition for Review wherein Golden Arches Realty Corporation seeks for the refund of its excess and unutilized creditable withholding taxes in the amount of Six Hundred Eighty Seven Thousand Two Hundred Ninety Four Pesos (P687,294.00) for the calendar year (CY) 2002.

The antecedent facts, culled from the records, are as follows:

Golden Arches Realty Corporation (Petitioner) is a corporation duly organized and existing under Philippine laws with principal office address at the 17th Floor, Citibank Centre, Paseo de Roxas, Makati City. It is a registered taxpayer with Revenue District Office No. 50, Revenue Region No. 8 of the Bureau of Internal Revenue (BIR), with Tax Identification No. 211-876-489-000. It is primarily engaged in the business of buying, selling and leasing real property.[1]

Commissioner of Internal Revenue (Respondent) is the duly appointed officer vested with the authority to carry out all the functions, duties, and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.[2]

On April 15, 2003, petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return (ITR) for CY ending December 31, 2002 and declared the following:

Total Gross Income			P	13,745,888.00
Less: Deductions				14,059,906.00
Taxable Income			P	(314,018.00)
Aggregate Income Tax Due				0.00
Less: Tax Credits/Payments				
Prior Year's Excess Credits				
Tax Payments for the First Three Quarters				
Creditable Tax Withheld for the First Three Quarters	P	509,776.00		
Creditable Tax Withheld for the 4th Q (BIR Form 2307)		177,518.00	P	687,294.00
Total Payable (Overpayment)			**P**	**(687,294.00)**

The total gross income declared by petitioner arose from the lease of its properties which were subjected to creditable withholding tax at the rate of 5%. Meanwhile, the total creditable tax withheld represented taxes withheld by Golden Arches Development Corporation (GADC) from its income payments to petitioner in CY 2002.[3]

[1] Annex "B" of Petition for Review, Paragraph 1 & 3, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, pages 61-62
[2] Paragraph 2, JSFI, *ibid*
[3] Exhibits "B", "C", "D", "E", Rollo, pages 128-131

Since it had suffered a net loss and no income tax was due therefrom[4], petitioner could not utilize its excess creditable withholding tax of P687,294.00. Petitioner did not carry over its excess creditable withholding tax as "Prior Year's Excess Credits" when it filed its original (not amended) Annual ITR for CY 2003[5] nor did it allegedly utilize the same in payment of its income tax liabilities for CY 2003.

On April 01, 2005, petitioner, through its tax consultant, filed an administrative claim for the refund of its unutilized creditable withholding taxes for CY 2002 in the amount of P687,294.00 with the Revenue Region No. 8 of Revenue District Office No. 50 of the BIR.[6] Since respondent neither approved nor denied petitioner administrative claim, petitioner filed the instant Petition for Review on April 13, 2005.

In the Answer, respondent alleges the following Special and Affirmative Defenses:

xxx xxx xxx

"4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

6. Petitioner's claim for refund/issuance of tax credit in the amount of **P687,294.00**, as alleged unutilized creditable income taxes withheld for taxable year 2002 were not duly substantiated.

7. Petitioner failed to prove that the amount of **P687,294.00,** as alleged unutilized creditable income taxes withheld for taxable year 2002 were included as part of its gross income for taxable year 2002, and that it did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.

8. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under ***Sections 204*** *in relation to* ***Section 230 (now 229)*** *of the Tax Code*. Otherwise, its failure to prove the same is fatal to its claim for refund.

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[4] No Minimum Corporate Income Tax (MCIT) was due because petitioner was only on its initial year of operation for CY 2002, Exhibit "K", *Rollo*, p. 204
[5] Exhibit "F", Rollo p. 132
[6] Exhibit "G", "H", pages 136-140

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***"

On March 20, 2006, the Court promulgated a Resolution admitting the "Amended Petition for Review" filed by petitioner on February 16, 2006. In its Amended Petition for Review, petitioner prayed in the alternative that it be issued a tax credit certificate (TCC) for its unutilized creditable withholding tax for CY 2002.[7]

On February 01, 2007, the case was submitted for decision after petitioner's submission of its memorandum on January 9, 2007, *sans* respondent's Memorandum.

The issues, jointly stipulated by the parties, submitted for this Court's resolution are the following:

"1. Whether or not petitioner's withholding tax credits of ₱687,294.00 for CY 2002 are duly substantiated by documentary evidence.

2. Whether or not the income from which the subject creditable taxes were withheld were reported as part of petitioner's revenues in its Annual Income Tax Return for CY 2002.

3. Whether or not said petitioner's unutilized creditable withholding taxes as of December 31, 2002 were applied against its income tax liability in the succeeding taxable year/s.

4. Whether or not petitioner filed its administrative claim for refund/tax credit in accordance with the provisions of Section 204(C) of the Tax Code.

5. Whether or not petitioner filed its judicial claim for refund/tax credit within the two-year period as provided under Section 229 of the Tax Code.

6. Whether or not petitioner is entitled to a refund of its unutilized creditable withholding taxes for CY 2002, in the amount of ₱687,294.00."

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[7] *Rollo*, pp. 99-104

Since the issues are intertwined, this Court shall discuss them simultaneously. The focal point of the controversy hinges on petitioner's entitlement to the refund of its excess or unutilized creditable withholding taxes for calendar year 2002 in the amount of P687,294.00.

In the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue** (*280 SCRA 459*), the Supreme Court laid down the basic requirements to avail of the 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;
>
> 2. 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
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> 3. The income upon which the taxes were withheld were included in the return of the recipient.[8]

This Court shall now determine whether or not petitioner complied with these basic requirements.

First Requisite

The provisions of the National Internal Revenue Code (NIRC) pertinent to claiming a tax refund are Sections 204(C) and 229:

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

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

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. xxx."

"**Section 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." (*Underscoring supplied*)

Based on the foregoing provisions, the written claim to the Commissioner (administrative claim) 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 tax, the 2-year period shall be reckoned from the date of filing of the Annual Income Tax Return.[9]

In the present case, petitioner filed its Annual Income Tax Return on April 15, 2003. Counting from this date, petitioner had until April 14, 2005[10] within which to file its administrative and judicial claims. Since petitioner filed its administrative and judicial claims on April 1, 2005[11] and April 13, 2005,[12] respectively, petitioner complied with the first requisite as both claims were filed within the 2-year period.

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[9] *ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992)*
[10] 2004 is a leap year
[11] Exhibit "G", Rollo, pp. 136-139
[12] Rollo, pp. 1-6

Second Requisite

To prove the fact of withholding, petitioner presented its Certificates of Creditable Tax Withheld at Source[13] (Certificates) issued to it by GADC for CY 2002 which showed creditable withholding taxes in the amount of P687,294.00, detailed as follows:

Tax Period	Exhibit	Income Payments		Tax Withheld	
1st Quarter, CY 2002	"B"	P	3,372,453.00	P	168,622.66
2nd Quarter, CY 2002	"C"		3,323,675.00		166,183.79
3rd Quarter, CY 2002	"D"		3,499,393.03		174,969.64
4th Quarter, CY 2002	"E"		3,550,366.40		177,518.32
TOTAL		**P**	**13,745,887.43**	**P**	**687,294.41**

After carefully reviewing these Certificates, the Court finds that the total amount of tax withheld appearing therein corresponds to the Total Tax Credits/Payments appearing in the Annual ITR, representing its excess creditable withholding tax for CY 2002.[14] In addition to these Certificates, petitioner presented its Withholding Tax Remittance Returns[15] to prove that the taxes withheld from petitioner's income payments were actually remitted to the BIR for CY 2002. After meticulously examining these documents, this Court also finds that the taxes withheld equivalent to five percent (5%) of the income payments were duly remitted to the BIR and are considered creditable withholding taxes under Section 57(B) of the NIRC.[16]

Since petitioner was able to substantiate by proper certificates its creditable withholding taxes of P687,294.00, petitioner complied with the second requisite.

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[13] Exhibits "B", "C", "D", "E"
[14] Exhibit "A-5"
[15] Exhibits "I" to "I-13", Rollo, pages 141-192
[16] Section 57. *Withholding of Tax at Source -*

xxx xxx xxx

(B) *Withholding of Creditable Tax at Source.-* The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

Third Requisite

To prove that the income payments it received were declared as gross income, petitioner presented its Annual ITR for CY 2002 and Certificates. After examining these documents, the Court finds that the sum of all income payments subject to creditable withholding tax appearing in the Certificates were the same as the total gross income declared in the Annual ITR for CY 2002.[17] Furthermore, a reading of petitioner's Audited Financial Statement, particularly its Statement of Income and Expenses for CY 2002, shows that P13,745,888.00 denominated as "Rent" was the same amount declared as Gross Income of petitioner in its Annual ITR.[18] Thus, petitioner complied with the third requisite because these findings prove that the income of the petitioner upon which the taxes were withheld was included in its return.

Aside from the requisites laid down in **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue**[19], 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 which states:

> "**Section 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

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[17] Exhibit "A-1", Rollo, p.116
[18] Exhibit "A-11" & "A-1", Rollo, pages 119-127 and 116, respectively
[19] *supra*

> 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." (*Underscoring supplied*)

To prove that it did not carry-over its excess creditable withholding tax to the succeeding year, petitioner presented its original Annual ITR for CY 2003.[20] An examination of that Annual ITR shows that petitioner indeed did not carry-over its excess creditable withholding tax. As proof thereof, the "Prior Year's Excess Credits" located in Line 27A of that Annual ITR was left blank.[21] Moreover, petitioner indicated its intention to be refunded of its unutilized excess creditable withholding tax when it marked an "x" in the box corresponding to the choice "To be refunded" in its Annual ITR for CY 2002.[22]

Having complied with all the requirements set by law, petitioner is entitled to the refund of the excess and unutilized creditable withholding tax on its rental income derived from its leasing business.

IN VIEW OF THE FOREGOING, the Petition for Review is **GRANTED.** Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of Six Hundred Eighty Seven Thousand Two Hundred Ninety Four Pesos (P687,294.00) representing excess and unutilized creditable withholding tax for Calendar Year 2002 in favor of petitioner.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

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[20] Exhibit "F", Rollo, p. 132
[21] Exhibit "F-1", ibid.
[22] Exhibit "A-7", Rollo, p. 116

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
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