REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

DUVAZ CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5800

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 12 2000

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DECISION

The case at bar seeks the refund/credit of the amount of P1,768,440.00 allegedly representing Petitioner's unapplied/unutilized income tax credits for the year 1996.

As represented, Petitioner is a corporation organized and existing under the laws of the Philippines with office address at the 10th Floor, The Peak Building, Alfaro St., Salcedo Village, City of Makati. It is the surviving entity in the merger between DUVAZ CORPORATION and RDR PROPERTY HOLDINGS, INC., approved by the Securities & Exchange Commission on February 5, 1997 (Par. 1, Joint Stipulation of Facts, Exh. A).

On April 15, 1997, Petitioner filed with the Philippine Veterans Bank (PVB) – Atrium its Corporate Annual Income Tax Return (ITR) for the calendar year 1996 (Exh. B), declaring a business loss of P25,463,496.00, a nil tax liability, a total tax credit of P7,648,557.00 [P5,880,117.00 as prior year's excess credit (Exh. B-1) and P1,768,440.00 as the creditable withholding tax (CWT) of Petitioner for 1996 (Exh. B-1)]. Considering that Petitioner has a zero tax liability for 1996, Petitioner likewise declared in its 1996 ITR the aforesaid tax credit of P7,648,557.00 as its refundable amount for 1996 (Exh. B-3), which it opted to be applied to the year 1997.

On June 18, 1998, Petitioner filed its Amended Corporate Annual Income Tax Return for the year 1997 (Exh. E) declaring therein a business loss of P47,989,685.00, a nil tax liability, tax credits/payments of P3,140,742.00 [P1,768,440.00 as prior year's excess credit (this is the 1996 CWT of Petitioner shown in Exh. B-1) and P1,372,302.00 as CWT of Petitioner for 1997]. In the said return, the above stated amount of P3,140,742.00 was declared by Petitioner as a refundable amount to be applied to the year 1998.

On April 15, 1999, Petitioner filed an administrative claim for refund and/or tax credit with the Bureau of Internal Revenue of its excess/unutilized creditable income taxes withheld for the year 1996 in the amount of P1,768,440.00 (Exh. G, Par. 5 of the Joint Stipulation of Facts) which include the CWT of RDR Property Holdings for the year 1996, as the latter was absorbed by Petitioner when the two corporations merged in 1996 (see TSN Sept. 9, 1999, p. 9 & 10).

On the same date, April 15, 1999, Petitioner filed with this Court the instant Petition for Review.

On May 28, 1999, Petitioner filed its Amended Corporate ITR for 1998 (Exh. F, Par. 4 of the Joint Stipulation of Facts) showing among others, that the amount of P1,768,440.00, Petitioner's unutilized CWT for 1996, which is the subject of the instant petition, was not carried over to the year 1998.

Petitioner presents the proposition as reason for its judicial action that it is entitled to the refund of the amount of ₱1,768,440.00 as this represents its excess/unutilized creditable withholding taxes for the calendar year 1996. It cited Section 69 (now Section 76) of the Tax Code, stated hereunder, as the basis of the instant claim for refund:

> **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.

Petitioner contends that the claim for refund was well within the two (2) year prescriptive period prescribed in Sections 204(3) [now Section 204(c)] and 230 (now Section 229) of the Tax Code, which provides:

> **Section 204.** ***Authority of the Commissioner to compromise, abate, and refund/credit taxes.*** - The Commissioner may:
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> x x x x x x x x x
>
> (3) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction, No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the

> Commissioner a claim for credit or refund within two years after the payment of the tax or penalty.

> **Section 230.** ***Recovery of tax erroneously or illegally collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; 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 begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *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.

Petitioner further represented that it has complied with the three (3) basic requirements set forth by Section 10 of Revenue Regulations No. 6-85, implementing Section 50 (now 57) of the Tax Code.

Respondent, on the other hand, in his answer asseverates that Petitioner is not entitled to the claimed refund on the following grounds: (1) Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/examination by the Respondent's Bureau; (2) The alleged tax sought to be refunded was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence the same is not refundable. Petitioner must prove that the income from which the tax sought to be refunded was paid and was declared in the gross income during the year under review; (3) Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit and it must prove that the alleged refundable/creditable tax was neither automatically applied as tax credit against the tax liability for the succeeding quarters of the succeeding year nor included as creditable tax declared and applied to the succeeding taxable years; (4) Claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as they partake of the nature of an exemption from tax, and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for refund/credit; (5) Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the 1997 Tax Code.

On September 8, 2000, this case was considered submitted for decision without any Respondent's evidence to dispute or controvert the testimonial and documentary evidence offered by Petitioner and *sans* the memorandum of the Respondent.

The pivotal issue which is presented for our consideration is whether or not the Petitioner was able to prove through documentary and testimonial evidence, its entitlement to the refund sought.

We rule in the affirmative.

Time and again, this Court has consistently held that for the grant of refund of excess creditable withholding taxes, the taxpayer must show *inter alia*, that it has complied with the following requirements, to wit:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 230 of the Tax Code;

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

3) That the income upon which the taxes were withheld were included in the return of the recipient.

These aforementioned requirements were affirmed by the Supreme Court in the case entitled *Citibank N.A. vs. Court of Appeals, Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997, 280 SCRA 459.*

A minutiose scrutiny of the records readily reveals that Petitioner satisfactorily complied with the first requirement. As could be gleaned from the factual background of this case, Petitioner seasonably filed its administrative claim for refund with the Respondent bureau on April 15, 1999 (Exh. G, Par. 5, Joint Stipulation of Facts) and its Petition for Review with this Court on April 15, 1999 well within the two-year prescriptive period provided under the Tax Code, reckoned from its filing of its original 1996 annual income tax return on April 15, 1997 (Exh. B, Par. 2, Joint Stipulation of Facts).

Petitioner likewise complied with the second requirement when it submitted in evidence its Certificates of Creditable Tax Withheld at Source issued by its and RDR withholding agents as well as that of (Exhs. C-1 to C-9), the RDR's capital gains tax returns/application for certificates authorizing registration (Exhs. C-10 to C-13) and monthly remittance returns of income taxes withheld at source corroborated by certified copies of certificates authorizing registration (Exhs. C-14 to C-20-A, inclusive). The CWT of RDR Property Holdings, Inc. for 1996 was considered by this Court for the reason that as the surviving corporation on the merger between DUVAZ and RDR, the former absorbed all the assets and liabilities of the latter.

While it is true that Revenue Regulations No. 6-85 provides for the presentation of the Certificate of Tax Withheld at Source as evidence of the fact of withholding, the same does not preclude the taxpayer from submitting other proofs of actual payment/remittance of creditable withholding taxes. In the case at bar, Petitioner was able to convince this Court that the taxes paid in 1996 reflected in its 1996 Monthly Remittance Returns (Exhs. C-14 to C-20-A, inclusive) and Capital Gains Tax Return (Exhs. C-10 to C-13) pertain to the creditable taxes it paid during the year 1996. This fact was clearly established by Petitioner when its witness Mr. Maximiano Sorongon testified under oath during the hearings on September 9, 1999 (pp. 17-18 TSN) and on October 11, 1999 (pp. 7-9 TSN) where he explained in this wise:

> "Q. Now, can you please explain to the Court why there are no Certificates of Creditable Income Taxes Withheld at Source for the transactions represented by this Capital Gains Tax?
>
> A. To clarify this matter, let me explain the mechanics of the sales of real property in the ordinary course of business.
>
> In the case of RDR Property Holdings...
>
> JUDGE DE VEYRA:
>
> Just answer the question: Why there are no Certificates of Creditable Income Taxes Withheld at Source?
>
> MR. SORONGON:
>
> A. No Certificates of Creditable Income Taxes Withheld at Source are issued because the Capital Gains Tax Returns already provides the name of the seller which is RDR Property Holdings. It also provides the name of the buyer, the amount of consideration or the income paid to RDR is also indicated, and also the amount of the creditable taxes is also indicated in the Capital Gains Tax Returns as well as the date of payment of the tax.

In, Short, the Capital Gains Tax Return takes the place of Certificate of Creditable Withholding Tax Withheld."

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"Q. Now, can you please tell us the significance of these Monthly Remittance Returns, Mr. Witness?

MR. SORONGON, JR.:

A. Ordinarily, these Returns were used by RDR Property Holdings to remain as Creditable Input Taxes to the BIR from income payments to its client. However, in these instances, these Returns were used to remit the Creditable Income Taxes in favor of RDR Property Holdings from sales of real property to its clients instead of Capital Gains Tax Returns Application for Certificates Authorizing Registration, Sir.

ATTY. SISON:

Q. Do you know the reason why, if any, these returns where used instead of the Capital Gains Tax Returns, Mr. Witness?

MR. SORONGON, JR.:

A. Well, the BIR run out of Capital Gains Tax Returns Application for Certificate Authorizing Registration when we were supposed to file the Returns. However, we were allowed to use these Returns to pay the taxes to meet the deadline for the payment of the income taxes, Sir."

Anent the third requirement, it was established by Petitioner that the income upon which these creditable withholding taxes were paid were included in Petitioner's annual income tax returns for the years 1996, 1992, 1993, 1994 and 1995 (Exhs. B, D, D-4, D-6, and D-2, respectively). Petitioner explained in detail the years where the said income from which the creditable Income Taxes were withheld were declared as income, thus:

"Q. Now, Mr. Witness, the Income Tax Return you are holding pertains to 1992 in which you stated the sales of real properties were declared, however, the Capital Gains Tax Returns and the Monthly Remittance Returns of Income Taxes withheld indicate that the taxes were withheld in 1996. There appears to be a time difference. Can you please explain to the Court the apparently timing difference?

MR. SORONGON, JR.:

A. Well, the transactions involved are installments sales of real properties. Under existing BIR Regulations were the initial payments exceeds twenty five percent (25%) of the gross selling price on the first year, the income from the whole contract must be reported in that initial year. In the case of RDR Property Holdings it sold several pieces of real properties in 1992 where the initial payments exceeded twenty five percent (25%) of the total price. RDR Property Holdings has to be (*sic*) declare the entire income from sale of real property in 1992. However, it was only in 1996 that the contract prices were fully paid, it was only then that the Creditable Income Taxes were paid so as to secure the CAR to effect the transfer of real properties in 1996, Sir.

ATTY. SISON:

Q. Now, in addition to the Income Tax Return of Petitioner for the year ended December 31, 1992, you likewise mentioned that Petitioner declared in its Income Tax Return for the year ended December 31, 1995, a portion of the saies of real property from which the Creditable Income Taxes were withheld. Now, this 1995 Income Tax Return that you are referring to, do you have it with you, Mr. Witness?

A. Yes, Sir.

x x x

ATTY. SISON:

Q. Now, from the said return, what is your proof that Petitioner declared a portion of its income from sales of real properties, Mr. Witness?

MR. SORONGON, JR.:

A. Well, as shown in Section C, marked as Exhibit "D-3," RDR Property Holdings declared its income from sale of real properties, Sir.

ATTY. SISON:

Q. Now, again, Mr. Witness, the Income Tax Return you are holding pertains to 1995 in which the sales of real properties were declared. However, the Capital Gains Tax Returns and the Monthly Remittance Returns of Income Taxes Withheld were dated 1996 and again there appears to be a time difference, can you please explain the time difference?

MR. SORONGON, JR.:

A. Well, as I said earlier, the transactions involve the installment sale of real properties under BIR Regulations which the initial payments exceeds twenty five percent (25%) in the first year of sale, the income from the entire contract must be recorded in the initial year. However, in the case of RDR Property Holdings there are several pieces of real properties in 1995 where the initial payments for some sale of real property exceeded twenty five percent (25%) of the contract price. RDR Property Holdings have to declare the entire income from sales of real properties in 1995. However, it was only in 1996 that the contract prices were fully paid. It was only then that the Creditable Income Taxes were paid so as to secure the CARs to effect the transfer of the said real properties, Sir."

Hence, the Court agrees with Petitioner that it has complied with the requisites laid down by the Supreme Court in the refund of CWT.

It was however noted that the Capital Gains Tax Returns/Application for Certificate Authorizing Registration, Exhibits C-10 and C-12, each in the amount of P54,000.00 or a total of P108,000.00 have no BIR proof of payment, such as the machine validation of the bank or official receipt. Thus, the said amount of P108,000.00 must be deducted from the amount of P1,768,440.00, the claimed excess/unutilized CWT of Petitioner for 1996.

Moreover, since the said excess CWT of Petitioner was not applied to the year 1997 (Exh. E) and neither was it carried over to the year 1998 (Exh. F), the excess income taxes paid must be refunded to the Petitioner pursuant to the explicit provision of Section

69 (now 76 of the Tax Code), except for the amount of P108,000.00, as discussed in the preceding paragraph.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of herein Petitioner in the amount of P1,660,440.00, without pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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

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