REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

AYALA THEATRES, MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6646

Members:

CASTAÑEDA, JR., *Chairman*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

APR 2 6 2006

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DECISION

UY, J.:

This case involves the claim of petitioner Ayala Theaters Management Incorporated for the issuance of tax credit certificate in the amount of P436,005.00 allegedly representing excess/unutilized creditable withholding taxes for the taxable year 2000 filed on April 10, 2003.

The antecedent facts as borne by the records of this case are as follows:

Petitioner is a duly organized and existing under the laws of the Philippines, authorized to engage in theater and cinema management with principal place of business located at the 5th Floor Glorietta 4, Ayala Center, Makati City, Metro Manila.

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Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, authorized among others, to decide, approve and grant tax credit and/or refund overpaid or refundable income tax with office address at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 10, 2001, petitioner filed its Annual Income Tax Return for taxable year 2000 *(Exhibit "A")* declaring a taxable income of P159,378.00 with the corresponding income tax due of P51,001.00. Likewise, petitioner declared a total amount of P2,845,858.00 tax credits, which consisted of the prior year's excess credits of P2,409,853.00 and creditable taxes withheld during the year 2000 of P436,005.00. The prior year's excess credits of P2,409,853.00 was applied against the income tax due of P51,001.00 leaving an excess amount of prior year's credits of P2,358,852.00. Thus, petitioner's return reflected an income tax overpayment of P2,794,857.00 as of December 31, 2000, which represents the sum of the unused prior year's excess credits of P2,358,852.00 and creditable taxes withheld during the year 2000 of P436,005.00, as follows:

Sales/Revenues/Receipts/Fees	P8,516,126.00
Add: Non-Operating & Other Income	51,341.00
Total Gross Income	P8,567,467.00
Less: Deductions	8,408,089.00
Taxable Income	P 159,378.00
Tax Rate	32%
Income Tax Due	P 51,001.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	P2,409,853.00
Creditable Tax Withheld for the First Three Quarters	336,041.00
Creditable Tax Withheld Per BIR Form No. 2307 for the 4th Quarter	99,964.00
Total Tax Credits/Payments	P2,845,858.00
Overpayment	**(P2,794,857.00)**

In the said return, petitioner, chose the option "To be issued a tax credit certificate" for the alleged excess and unutilized creditable withholding taxes of P2,794,857.00 which includes the P436,005.00, subject claim of the instant petition.

On December 5, 2001, petitioner filed with the Bureau of Internal Revenue (BIR) an administrative claim for the issuance of a tax credit certificate in the amount of P2,794,857.00 covering calendar years 1998 to 2000 (representing its reported prior year's excess credits of P2,358,852.00 and excess tax credits for taxable year 2000 of P436,005.00).

On April 9, 2003, petitioner filed another letter with the BIR reiterating its request for the issuance of a tax credit certificate corresponding to its reported excess/unutilized creditable withholding taxes for taxable year 2000 in the amount of P436,005.00 *(Exhibit "HH")*.

There being no action from the respondent relative to its subject application for the issuance of tax credit certificate, and in order to stop the running of the two-year prescriptive period, petitioner filed a Petition for Review with this Court on April 10, 2003.

In his Answer filed by registered mail on June 6, 2003, respondent asserts the following Special and Affirmative Defenses:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.
>
> 5. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

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7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

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, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor citing the case of Western Minolco Corp. vs. Commissioner of Internal Revenue (124 SCRA 121)."

During trial, petitioner's lone witness, Emilia I. Petiza, its Financial Control Officer, testified to prove its claim for the issuance of tax credit certificate and identified numerous documents in relation thereto. Respondent, on the other hand, submitted the case for decision based on the pleadings after manifesting during the July 11, 2005 hearing that this case has no report of investigation. Both parties were allowed to file their respective memorandum within a period of thirty (30) days from receipt of the Resolution promulgated on August 4, 2005. Only petitioner filed its Memorandum.

Hence, this decision.

In their Joint Stipulation of Facts and Issues filed on October 9, 2003, the parties submitted the following issues for this Court's resolution:

"1. Whether or not the administrative claim or application for issuance of a tax credit certificates for year 2000 excess and unutilized creditable withholding taxes of P436,005.00 was filed within the two (2)-year prescriptive period provided under Section 204(C) in relation to Section 229 of the Tax Code of 1997;

2. Whether or not the income payments from which the creditable withholding taxes were withheld (and) were included in Petitioner's gross income/income tax return for the year 2000;

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> 3. Whether or not the excess creditable withholding taxes of P436,005.00 remain unapplied and unutilized by the Petitioner at the end of calendar year December 31, 2000;
>
> 4. Whether or not the Petitioner has carried over to the succeeding taxable year/s as 'Prior Year's Excess Credits' its alleged excess and unutilized creditable withholding taxes for year 2000;
>
> 5. Whether or not the petitioner's excess and unutilized creditable withholding taxes for calendar year 2000 are properly substantiated."

The Court notes that the stipulated issues in this case are interrelated or intertwined; hence, discussion of said issues will be tackled jointly for convenience and brevity.

Petitioner basically anchors its claim on Section 76, in relation to Sections 204 (C) and 229 of the 1997 National Internal Revenue Code (1997 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 therefor."
>
> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** -- The Commissioner may --

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> (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 writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: x x x"
>
> "**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: x x x"

Based on the foregoing, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (in the form of cash or tax credit certificate) or carried-over/applied to the succeeding taxable years. Provided, that in case of a refund, the claim for refund should be made within the two (2)-year period allowed by law.

As can be gleaned from the documentary evidence submitted before Us, petitioner's income tax return for taxable year 2000 shows that the excess tax credits of P2,795,857.00 as of December 31, 2000 consisted of the balance of the prior year's excess credits of P2,358,852.00 and creditable taxes withheld during the year 2000 of P436,005.00 as shown below:

Income Tax Due	P 51,001.00
Less: Prior Year's Excess Credits	2,409,853.00
Balance of Prior Year's Excess Credits	P 2,358,852.00
Add: Creditable Taxes Withheld - Year 2000	436,005.00
Excess Tax Credits as of December 31, 2000	P 2,794,857.00

Petitioner opted to be issued a tax credit certificate for its excess tax credits for taxable year 2000 in the amount of P436,005.00, as shown by the "x" mark in the box corresponding to the said choice in the return. Moreover, in its 2001 income tax return, petitioner reflected no amount of prior year's excess credits *(Exhibits "B" and "B-3")*. In view thereof, the reported excess tax credits for taxable year 2000 in the amount of P436,005.00 maybe a proper subject of its claim for issuance of a tax credit certificate pursuant to Section 76 of the 1997 NIRC.

However, records reveal that no documentary evidence was submitted by petitioner such as certificates of creditable withholding taxes to prove the existence of the prior year's excess credits of P2,409,853.00.

Hence, the income tax liability of P51,001.00 should first be deducted from petitioner's total claim of P406,005.00 in order to properly determine its excess tax credits for the year 2000, thereby leaving the refundable balance of P385,004.00 which petitioner must still substantiate by complying with the following three (3) basic requirements:

1. That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment (Section 229, NIRC);

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 it must be shown in the return of the recipient that the income payment received was declared as part of the gross income ***(Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459;***

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ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957)

Applying the foregoing standards, this Court finds that petitioner has complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return ***(ACCRA Investments Corporation vs. Court of Appeals, supra; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184[1992])***.

Petitioner filed its annual income tax return for the taxable year ended December 31, 2000 on April 10, 2001 *(Exhibit "A")*. Counting from this latter date, petitioner had until April 10, 2003 within which to file a claim for refund/issuance of tax credit certificate corresponding to its 2000 excess creditable withholding taxes. Thus, petitioner's administrative claim for the issuance of tax credit certificate filed on December 5, 2001 and the instant Petition for Review filed on April 10, 2003 fell within the two-year prescriptive period provided under Section 204 (C) in relation to Section 229 of the 1997 NIRC.

As regards the second requirement, the petitioner substantiated the fact of the withholding of its income by its payor, through the Certificates of Creditable Tax Withheld at Source duly issued to it by Ayala Land, Inc. for taxable year 2000 *(Exhibits "JJ" to "MM")*. However, as correctly indicated in the Summary of Creditable Taxes Withheld At Source *(Exhibit "RR")* submitted by petitioner, the creditable withholding taxes reflected in the certificates amounted only to P375,576.78 instead of the reported amount of P436,005.00.

Lastly, with respect to the third requirement, a perusal of the records readily reveals that petitioner's revenues from management and services rendered to Ayala

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Land, Inc. were declared as part of petitioner's gross income in its income tax return for taxable year 2000 subject to the following observations.

As declared in its income tax return for taxable year 2000, it appears that petitioner's revenues from management and services rendered to Ayala land, Inc. in the amount of P8,516,126.00 *(Exhibits "A-7" and "A-8")*, was lower than the P8,939,731.60 gross management and services fees received by petitioner as reflected in the certificates issued by Ayala Land, Inc., for the same year. Petitioner explained the discrepancy of P423,605.60 (P8,939,731.60 less P8,516,126.00) in its Reconciliation of Gross Income (CWT Certificates issued by Ayala Land Inc vs ITR) For Calendar Year 2000 *(Exhibit "SS")*, as follows:

AYALA THEATERS MANAGEMENT, INC.
Reconciliation of Gross Income (CWT Certificates issued by ALI vs ITR)
For Calendar Year 2000

2000 Mgt Fees per Certificates of Creditable Tax Withheld at Source Issued by ALI (Schedule A)			P 8,939,731.60
Add (Deduct)			
Mgt fees deducted from payments to ALI (Schedule D-1)		P 1,000,000.00	
Erroneous Mgt Fees grossed-up		(1,428,196.00)	
2000 Mgt Fees received in 2001 (Schedule D-2)			
OR# 12515 (Satellite Entertainment)	P 16,200.00		
12514 (Satellite Entertainment)	8,100.00		
12523 (Ayala Land, Inc.)	46,147.50		
12522 (Ayala Land, Inc.)	151,071.75		
12526 (Satellite Entertainment)	8,100.00		
12587 (Satellite Entertainment)	16,200.00		
12983 (Alabang Commercial Corp)	8,100.00	253,919.25	
1999 Mgt Fees received in 2000 (Schedule D-3)			
OR# 12218 (Ayala Land, Inc.)	45,086.00		
12244 (Ayala Land, Inc.)	248,792.00		
12309 (Satellite Entertainment)	24,300.00		
12234 (Alabang Commercial Corp.)	4,050.00		
12214 (Satellite Entertainment)	8,100.00		
12983 (Alabang Commercial Corp.)	8,100.00	(338,428.00)	
ACC/Satellite booking fees		89,100.00	(423,604.75)
Adjusted Balance per ITR			**P 8,516,126.85**

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Based on the above reconciliation schedule, certain income items were added to the P8,939,731.60 gross income per certificates, indicating that these were reported in petitioner's 2000 income tax return but were not subjected to creditable withholding tax during the year 2000. Undoubtedly, since these income items do not have bearing on petitioner's claim, the same shall be disregarded, namely:

a.) Management fees deducted from payments to Ayala Land, Inc. in the amount of **P1,000,000.00** *(Schedule D-1)*;

b.) 2000 Management fees received in 2001 in the amount of **P253,919.25** *(Schedule D-2)*; and

c.) ACC/Satellite booking fees in the amount of **P89,100.00** *(Schedule D-3)*.

However, this Court finds it necessary to examine the management fees which were deducted from the P8,939,731.60 gross income per certificates because these were reflected in the certificates but were not reported in petitioner's 2000 income tax return, to wit:

a.) Erroneous management fees grossed-up in the amount of **P1,428,196.00**; and

b.) 1999 Management fees received in 2000 in the amount of **P338,428.00**.

As to the deduction of P1,428,196.00, petitioner's Financial Controller Officer Emilia Petiza testified that the said amount represents an overstatement of the income reflected in the certificates issued by Ayala Land, Inc. for the months of *February, April, June and September 2000.* The overstatement allegedly resulted from the erroneous grossing-up of the income payments using the tax rate of one (1%) percent instead of five (5%) percent. The alleged correct total income payment should have been P357,048.85 instead of P1,785,245.00 or an overstatement of P1,428,196.15 *(TSN, November 10, 2004, pp. 17-19)*.

A scrutiny of the official receipts issued by petitioner to Ayala Land, Inc. for the months of *February, March, June and September 2000* and the corresponding statements of accounts discloses further that Ayala Land, Inc. actually withheld a five (5%) percent creditable tax in the total amount of P17,852.44 on gross management fees of P357,048.44 received by petitioner for the months of *February, March, June and September 2000*, broken down as follows:

Exhibits				
Official Receipt	**Statement Of Account**	**Date Per Official Receipt**	**Creditable Tax Withheld**	**Income Payment**
YYYY	CCC	Feb. 16, 2000	P 6,361.87	P 127,237.44
GGGGG	III	Mar. 29, 2000	6,928.90	138,577.90
RRRRR	SSS	June 20, 2000	2,254.30	45,086.00
EEEEEE	FFFF	Sept. 12, 2000	2,307.38	46,147.50
			P 17,852.44	P 357,048.84

On the other hand, the Certificates issued by Ayala Land, Inc. to petitioner and the Monthly Remittance Returns of Creditable Income Taxes Withheld (Expanded) filed by Ayala Land, Inc. for *February, April, June and September 2000* showed that Ayala Land, Inc. withheld the same amount of creditable tax of P17,852.44 but erroneously indicated a total gross income payment of P1,785,245.00 which was arrived at by dividing the creditable tax withheld of P17,852.44 by one (1%) percent instead of the actual tax rate of five (5%) percent, thus:

Exhibits			
Certificate of Creditable Tax W/held at Source	Monthly Remittance Return of Cred. Tax Withheld	Creditable Tax Withheld	Income Payment
JJ	K-5	P 6,361.87	P 636,187.00
KK	M-5	6,928.90	692,890.00
KK	O-5	2,254.30	225,430.00
LL	R-5	2,307.38	230,738.00
		P 17,852.44	P 1,785,245.00

Evidently from the foregoing, the discrepancy of P1,428,196.16 (P1,785,245.00 less P357,048.84) between the income amounts as reflected in the said certificates and in petitioner's 2000 income tax return was a mere result of the error made by the withholding agent, Ayala Land, Inc. and not by petitioner. In other words, petitioner properly declared the gross income of P357,048.84 related to the creditable withholding taxes of P17,852.44.

As to the deduction of P338,428.00, it was indicated in the schedule that this amount allegedly represents management fees earned in 1999 but received in 2000. Inasmuch as petitioner failed to submit its 1999 income tax return, this Court cannot determine whether the gross income of P338,428.00 was actually declared by petitioner in the said return. Therefore, the creditable withholding taxes of P16,921.40 (5% of P338,428.00), pertaining to the income payment of P338,428.00, cannot be allowed.

In sum, this Court finds petitioner to have sufficiently complied with all the abovementioned requirements and proven its entitlement to the issuance of a tax credit certificate representing its excess creditable withholding taxes for taxable year 2000, but only to the extent of P307,654.38, computed as follows:

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Gross Income		P 8,567,467.00
Less: Deductions		8,408,089.00
Taxable Income		P 159,378.00
Income Tax Due (32%)		P 51,001.00
Less: Creditable Taxes Withheld during the year 2000 with Certificates	P 375,576.78	
Less: Creditable Taxes Withheld Pertaining to Management Fees Earned in 1999	16,921.40	358,655.38
Refundable Excess Tax Credits		**P 307,654.38**

WHEREFORE, the instant petition is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P307,654.38 representing excess creditable taxes withheld for the taxable year 2000.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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ATTESTATION

I attest 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.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, 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