REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

HAVI FOOD SERVICES PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6306

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 05 2003
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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of EIGHTEEN MILLION SIX HUNDRED NINETY SEVEN THOUSAND FIVE HUNDRED SIXTY SIX PESOS (P18,697,566.00), allegedly representing excess creditable withholding taxes for the calendar year 1999.

Petitioner is a domestic corporation duly organized and existing under and by virtue of Philippines laws, with principal office at Sumulong Highway, Marikina City, Metro Manila. It is engaged in the business of cold and warm storage of perishable goods (*par. 1, Joint Stipulation of Facts, CTA Docket, p. 49*).

For the year 1999, petitioner realized taxable income amounting to One Million One Hundred Eighty Seven Thousand Forty Four Pesos (P1,187,044.00) and an aggregate income tax due amounting to One Hundred Fifteen Thousand One Hundred Sixty Five Pesos (P115,165.00). For the same year, petitioner had creditable withholding taxes in the total amount of Eighteen

Million Eight Hundred Twelve Thousand Seven Hundred Thirty One Pesos (P18,812,731.00).

Thus, with these figures, on April 3, 2000, petitioner filed with the Bureau of Internal Revenue its Annual Income Tax Return for the calendar year ending December 31, 1999, indicating therein its intention to be refunded. Petitioner reported a refundable income tax in the amount of Eighteen Million Six Hundred Ninety Seven Thousand Five Hundred Sixty Six Pesos (P18,697,566.00), computed as follows:

Taxable Income		P 1,187,044.00
Amount of tax due using normal tax rate of 33%	P 391,725.00	
Minimum Corporate Income Tax or MCIT	378,954.00	
Tax Due (Normal Income Tax or MCIT, whichever is higher)		P 391,725.00
Less: Unexpired Excess of Prior Year's Excess MCIT over Normal Income Tax Rate		P 276,560.00
Aggregate Income Tax Due		P 115,165.00
Less: Creditable Tax Withheld for the year		P 18,812,731.00
Amount Refundable		**P 18,697,566.00**

(Exhibit "A")

On May 9, 2000, petitioner filed with the Bureau of Internal Revenue (BIR) District Office No. 45 of Marikina City an administrative claim for refund of its excess withholding taxes for the calendar year ended December 31, 1999 in accordance with Sections 204 and 229 of the Tax Code (*par. 5, Joint Stipulation of Facts, CTA Docket, p. 50; Exhibit "C"*). Petitioner cited as legal basis of its claim Section 69 (now 76) of the Tax Code.

As there was no action on the part of the respondent, petitioner deemed it proper to file this appeal to us for proper action on June 20, 2001.

Respondent filed his answer through registered mail on July 25, 2001, interposing the following Special and Affirmative Defenses:

> 5. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 6. Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action.

In a resolution promulgated on May 29, 2003, this case was deemed submitted for decision sans the memorandum of the respondent.

In their Joint Stipulation of Facts and Issues, the parties submitted the following issue for this court's resolution:

Whether or not petitioner is entitled to be refunded its excess creditable withholding taxes for the calendar year 1999 by showing that ---

> 1. the creditable withholding taxes amounting to Eighteen Million Six Hundred Ninety Seven Thousand Five Hundred Sixty Six Pesos (P18,697,566.00) are duly supported by Certificates of Creditable Tax Withheld At Source;
>
> 2. the income from which these creditable taxes were withheld were duly declared as part of petitioner's income in its Annual Income Tax Return for the calendar year ended December 31, 1999;
>
> 3. petitioner has shown that it did not carry over its unutilized creditable withholding taxes for the calendar year ended December 31, 1999 to the succeeding taxable year.

Petitioner anchored its claim for refund or issuance of a tax credit on Section 76, in relation to Sections 204 and 229 of the 1997 Tax Code, hereunder quoted for easy reference:

> **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 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.

Section 204. ***Authority of the Commissioner to Compromise, Abate, and Refund or Credit Taxes.*** - The Commissioner may:

x x x x x x x x x

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

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.

<u>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</u> 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)

Likewise, petitioner cited Section 10 of Revenue Regulations No. 6-85 (now Section 2.58.3 of Revenue Regulations No. 2-98 otherwise known as the Withholding Tax Regulations) which sets forth the three basic requirements before a tax refund or issuance of a tax credit certificate may be granted.

To support its claim, petitioner presented the following documents, to wit:

	DOCUMENT	EXHIBIT
1	1999 Annual Income Tax Return	"A" (incl. of sub-markings)
2	2000 Annual Income Tax Return	"B" (incl. of sub-markings)
3	Written claim for refund	"C"
4	Certificates of Creditable Tax Withheld at Source	"D", "D-1" to "D-124"
5	Non-Resident Withholding Tax Deduction Certificates	"D-125" to "D-127"
6	Sales Invoices issued to McDonald's	"E" & "F" (incl. of sub-markings)
7	Official Receipt issued to McPhillip	"G" (incl. of sub-markings)
8	Reconciliation Schedule	"K" (incl. of sub-markings)
9	Schedule of Income Tax Withheld by Havi Foods Services (Thailand)	"L" (incl. of sub-markings)
10	Reconciliation of Income per Certificates and Per ITR	"M" & "O" (incl. of sub-markings)
11	2001 Annual Income Tax Return	"N"

Respondent, however, failed to present controverting evidence and was considered to have waived his right to present evidence for failure to appear for two (2) consecutive times. He likewise failed to file his memorandum.

After a careful evaluation of the evidence adduced solely by petitioner and after considering the laws and jurisprudence applicable, this court resolves to partially grant petitioner's claim for refund.

Time and again, this court has held that there are three (3) basic requirements in claims for refund or issuance of tax credit certificate arising from the excess or unutilized creditable withholding tax at source. They are as follows:

1. That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

2. That the income upon which the taxes were withheld was included as part of the gross income declared in the income tax return of the recipient; and

3. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom. [*Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

Anent the first requirement, petitioner's administrative and judicial claims were timely filed. Based on the records, petitioner filed its annual income tax return for the taxable year ending December 31, 1999, on April 3, 2000. It filed its administrative claim for refund or issuance of a tax credit certificate with the BIR on May 9, 2000. Consequently, petitioner, not having heard from the Commissioner with regard to its administrative claim, filed its judicial claim before us on June 20, 2001. To reconcile, the allowable two-year period within which to file its claim for refund or issuance of a tax credit certificate, pursuant to Sections 204 and 229 of the 1997 Tax Code, ended on April 3, 2002. Thus, petitioner's compliance with the first requirement is conceded.

We shall proceed to discuss the second and third requirements jointly. In its 1999 Annual Income Tax Return, petitioner declared the following as its income: (Exhibit "A")

Schedule of Sales/Revenues/Receipts/Fees

Sale of Goods/Properties	P	2,339,617,316.00
Sale of Services		168,869,442.00
Total	P	2,508,486,758.00

Schedule of Taxable Other Income

Gain on sale of fixed assets	P	50,000.00
Rentals		649,687.00
Back haul revenue		6,979,257.00
Others		1,328,414.00
Total Other Income	P	9,007,358.00
Total Income	**P**	**2,517,494,116.00**

Moreover, petitioner submitted the following Certificates of Creditable Tax Withheld At Source:

(a) Contractor's fees

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
MCGEORGE FOOD INDUSTRIES	D	P	413,665,163.05	P	4,136,651.64
MCGEORGE FOOD INDUSTRIES	D-1		444,429,894.55		4,444,298.94
MCGEORGE FOOD INDUSTRIES	D-2		393,542,660.18		3,935,426.60
MCGEORGE FOOD INDUSTRIES	D-3		514,369,895.56		5,143,698.97
ALFONSO NG	D-4		227,190.68		2,271.90
ALFONSO NG	D-5		233,570.78		2,335.70
ALFONSO NG	D-6		224,218.47		2,242.18
ALFONSO NG	D-7		238,659.46 *		2,386.60
ALFONSO NG	D-8		167,718.13		1,677.17
ALFONSO NG	D-9		200,837.59		2,008.37
ALFONSO NG	D-10		195,093.49 *		1,950.93
ALFONSO NG	D-11		206,311.22		2,063.11
TGY & KIDS, INC.	D-12		366,284.18		3,662.84
TGY & KIDS, INC.	D-13		385,535.56		3,855.36
TGY & KIDS, INC.	D-14		323,066.84		3,230.66
TGY & KIDS, INC.	D-15		289,428.98		2,894.29
EDWARD GOCHECO	D-16		249,608.68		2,496.08
EDWARD GOCHECO	D-17		307,131.76		3,071.07

EDWARD GOCHECO	D-18	255,329.08	2,553.29
EDWARD GOCHECO	D-19	317,642.69	3,176.43
EDWARD GOCHECO	D-20	95,044.91	950.45
EDWARD GOCHECO	D-21	132,143.27	1,321.44
EDWARD GOCHECO	D-22	103,825.85	1,038.26
EDWARD GOCHECO	D-23	126,780.30	1,267.80
EDWARD GOCHECO	D-24	389,153.00	3,891.53
GMC FOODS	D-25	401,638.00	4,016.38
GMC FOODS	D-26	336,626.01	3,366.26
ANCEL "A" CORPORATION	D-27	205,421.14	2,054.21
ANCEL "A" CORPORATION	D-28	237,656.14	2,376.56
ANCEL "A" CORPORATION	D-29	216,129.66	2,161.30
ANCEL "A" CORPORATION	D-30	218,160.48	2,181.60
ANCEL "A" CORPORATION	D-31	172,720.50	1,727.20
ANCEL "A" CORPORATION	D-32	199,576.68	1,995.77
ANCEL "A" CORPORATION	D-33	136,712.40	1,367.12
ANCEL "A" CORPORATION	D-34	180,699.51	1,807.00
DOUBLE RISE FOODS	D-35	166,421.43	1,664.21
DOUBLE RISE FOODS	D-36	210,117.89	2,101.18
DOUBLE RISE FOODS	D-37	158,444.51	1,584.45
DOUBLE RISE FOODS	D-38	186,044.78	1,860.45
DOUBLE RISE FOODS	D-39	83,839.59	838.40
DOUBLE RISE FOODS	D-40	150,477.24	1,504.69
DOUBLE RISE FOODS	D-41	83,391.38	833.91
DOUBLE RISE FOODS	D-42	117,367.31	1,173.67
MCREY FOOD ENTERPRISE	D-55	268,367.54	2,683.67
MCREY FOOD ENTERPRISE	D-56	193,473.89	1,934.74
MCMIGHTY FOOD CORP	D-61	87,986.69	879.87
MCMIGHTY FOOD CORP	D-62	126,719.23	1,267.19
MCMIGHTY FOOD CORP	D-63	111,686.25	1,116.86
MCMIGHTY FOOD CORP	D-64	142,703.66	1,427.04
MCDANIEL'S FOOD CORP	D-65	191,201.45	1,912.01
MCDANIEL'S FOOD CORP	D-66	204,015.09	2,040.15
MCDANIEL'S FOOD CORP	D-67	187,944.76	1,879.44
MCDANIEL'S FOOD CORP	D-68	179,263.48	1,792.63
GENEVA FOOD, INC.	D-69	285,320.00	2,853.20
GENEVA FOOD, INC.	D-70	360,131.37	3,601.32
GENEVA FOOD, INC.	D-71	247,407.82	2,474.07
GENEVA FOOD, INC.	D-72	346,548.26	3,465.47
MCCOLBY'S INC	D-73	403,060.82	4,030.61
MCCOLBY'S INC	D-74	456,058.33	4,560.58
MCCOLBY'S INC	D-75	381,348.83	3,813.48
MCCOLBY'S INC	D-76	389,267.85	3,892.68
MCCOLBY'S INC	D-77	110,144.64	1,101.45
MCCOLBY'S INC	D-78	127,401.44	1,274.02
MCCOLBY'S INC	D-79	103,361.82	1,033.62
MCCOLBY'S INC	D-80	114,187.92	1,141.87
MCCOLBY'S INC	D-81	177,398.64	1,773.98

MCCOLBY'S INC	D-82		240,926.99		2,409.27
MCCOLBY'S INC	D-83		162,210.98		1,622.11
MCCOLBY'S INC	D-84		182,226.58		1,822.26
MCGILL FOOD INDUSTRIES	D-85		360,302.81	*	3,603.03
MARIEL FOOD CORP	D-89		135,341.72		1,353.41
MARIEL FOOD CORP	D-90		169,566.00		1,695.66
MARIEL FOOD CORP	D-91		164,298.42		1,642.98
MARIEL FOOD CORP	D-92		178,071.42		1,700.72
MARIEL FOOD CORP	D-93		164,846.41		1,648.46
MARIEL FOOD CORP	D-94		183,099.15		1,830.99
MARIEL FOOD CORP	D-95		163,587.97		1,635.88
MARIEL FOOD CORP	D-96		184,143.16		1,841.43
NEE MEE FOOD CORP	D-99		223,030.87		2,230.30
KSL FOOD SERVICES	D-101		576,089.00		5,760.89
KSL FOOD SERVICES	D-102		196,434.34		1,964.34
KSL FOOD SERVICES	D-103		173,501.00		1,735.01
KSL FOOD SERVICES	D-104		143,108.36		1,431.08
KSL FOOD SERVICES	D-105		152,221.99		1,522.21
KSL FOOD SERVICES	D-106		107,656.42		1,076.57
KSL FOOD SERVICES	D-107		99,511.95		995.12
RSA FOOD SERVICE	D-108		134,785.91		1,347.86
RSA FOOD SERVICE	D-109		225,904.47		2,259.05
RSA FOOD SERVICE	D-110		224,958.50		2,249.59
RSA FOOD SERVICE	D-111		247,563.42		2,475.04
GOLDEN SOUTHFOODS, INC.	D-112		7,382,166.07		73,821.65
Total		P	1,791,874,186.60	P	17,918,660.83

(b) Service fees

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
GIANT ARCHES FOOD CORP.	D-43	P	448,730.55	P	4,487.31
GIANT ARCHES FOOD CORP.	D-44		476,371.46		4,763.71
GIANT ARCHES FOOD CORP.	D-45		357,576.26		3,575.76
GIANT ARCHES FOOD CORP.	D-46		363,679.44		3,636.80
GIANT ARCHES FOOD CORP.	D-47		172,303.64		1,723.04
GIANT ARCHES FOOD CORP.	D-48		351,743.20		3,517.43
GIANT ARCHES FOOD CORP.	D-49		312,604.58		3,126.04
GIANT ARCHES FOOD CORP.	D-50		310,585.81		3,105.86
NEE MEE FOOD CORP	D-97		186,754.92		1,867.55
NEE MEE FOOD CORP	D-98		262,672.58		2,626.73
NEE MEE FOOD CORP	D-100		243,794.67		2,437.95
Total		P	3,486,817.11	P	34,868.18

(c) Freight

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
MCGILL FOOD INDUSTRIES	D-86	P	406,725.12	P	4,064.34
MCGILL FOOD INDUSTRIES	D-87		500,392.01		5,003.91
MCGILL FOOD INDUSTRIES	D-88		426,481.95		4,264.81
Total		P	1,333,599.08	P	13,333.06

(d) Rental

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
BLUE DAIRY CORP	D-113	P	262,725.60	*P	13,136.29
BLUE DAIRY CORP	D-114		259,185.60		12,959.28
BLUE DAIRY CORP	D-115		265,065.60		13,253.28
BLUE DAIRY CORP	D-116		273,495.60		13,674.78
GENOSI, INC.	D-118		387,023.40		19,351.17
GENOSI, INC.	D-119		620,437.20		31,021.86
Total		P	2,067,933.00	P	103,396.66

(e) Professional Fees

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
MAN-GO AND COMPANY	D-121	P	116,584.25	P	5,829.21
MAN-GO AND COMPANY	D-122		105,146.00		5,257.30
MAN-GO AND COMPANY	D-123		193,768.35		9,594.49
MAN-GO AND COMPANY	D-124		184,845.00		9,242.25
Total		P	600,343.60	P	29,923.25

(f) Payment made by Top 5000 Corporations

WITHHOLDING AGENT	EXHIBIT		INCOME PAYMENT		TAX WITHHELD
MCJOLA, INC	D-51	P	8,992,958.91	P	89,929.53
MCJOLA, INC	D-52		9,256,590.74		92,565.89
MCJOLA, INC	D-53		7,858,027.27		78,580.28
MCJOLA, INC	D-54		9,529,821.11		95,298.22
EDSA FOOD INDUSTRIES	D-57		4,501,944.51		44,948.06

EDSA FOOD INDUSTRIES	D-58	5,748,962.86	57,490.46
EDSA FOOD INDUSTRIES	D-59	5,721,682.76	57,576.54
EDSA FOOD INDUSTRIES	D-60	5,833,446.52	58,834.87
BLUE DAIRY CORP	D-113	31,263.00	312.63
BLUE DAIRY CORP	D-114	30,449.00	304.49
BLUE DAIRY CORP	D-115	37,897.00	378.97
BLUE DAIRY CORP	D-116	32,078.00	320.78
GENOSI, INC.	D-117	2,935,218.00 *	29,352.18
GENOSI, INC.	D-118	4,578.00	45.78
GENOSI, INC.	D-119	4,904.00	49.04
GENOSI, INC.	D-120	69,643.00	696.43
Total		P 60,589,464.68	P 606,684.15
(g) Others – HAVI Thailand	D-125 to D-127	P 705,792.93	P 105,868.94
Grand Total		**P 1,860,658,137.00**	**P 18,812,735.07**

As can be gleaned from the aforementioned data, the total income declared by herein petitioner under its Annual Income Tax Return for the taxable year 1999 in the amount of P2,517,494,116.00 is higher that the total income corresponding to the creditable taxes withheld in the amount of P1,860,658,137.00. To justify such discrepancy, petitioner, in its Memorandum, cited the following reasons, to wit:

(a) not all income payors withhold taxes from their income payments to petitioner;

(b) differences in classification of income payments between petitioner and customers/withholding agents; and

(c) timing difference between recording of income in the books of petitioner and date/receipt by petitioner of the certificates.

However, if we compare each type of income per income tax return with those of the income classification reflected in the certificates of creditable tax withheld, the following disparities are obvious:

Nature of Income	**Per ITR**	**Per Certificates**	**Over/ (Under declared)**
Sale of Goods	P 2,339,617,316.00	P 60,589,464.68	P 2,279,027,851.32
Service fees	168,869,442.00	1,795,961,347.31	(1,627,091,905.31)
Rental	649,687.00	2,067,933.00	(1,418,246.00)
Back haul revenue	6,979,257.00	1,333,599.08	5,645,657.92
Gain on sale of fixed assets	50,000.00	-	50,000.00
Others	1,328,414.00	705,792.93	622,621.07
Total	**P2,517,494,116.00**	**P1 ,860,658,137.00**	**P 656,835,979.00**

In the hearing dated March 14, 2002, Ms. Nora Miguel, Finance Director of petitioner, explained that the discrepancies were due to the different classifications of income used by petitioner and those of its withholding agents. Pertinent portions of her testimony are hereby quoted as follows:

> Q. Now, Ms. Witness, you mentioned that the Certificate contains also the tax withheld by the customers or by the withholding agents. Now, my question is: Does the amount of the income from which tax withheld arose as indicated in the Certificates and as classified by the withholding agent tally with the way this is reflected with the Books of Accounts or FS of the company?
>
> MS. MIGUEL:
>
> A. No.
>
> ATTY. AQUINO:
>
> Q. Why is that so?
>
> MS. MIGUEL:
>
> A. Because we have a different way of classifying their income payments to us. In our Books, we classify this based on actual nature of the transaction.
> (*TSN, page 12, March 4, 2002)*

To corroborate said testimony, petitioner presented the Reconciliation of Income Per Certificates and Per Income Tax Return/Financial Statements and Summary of Taxes Withheld and Income for 1999 (*Exhibits M & O, inclusive of sub-markings).*

After a meticulous examination of the relevant documents submitted, this court finds that only the amount of P1,849,340,399.91 was included as part of the gross income declared in its 1999 income tax return (see attached Annex "A"). Moreover, we noted that petitioner's creditable taxes withheld included foreign taxes in the total amount of P105,868.94 withheld by HAVI Food Services, Thailand from its 1999 royalty payments to petitioner in the amount of P705,792.93 *(Exhibits D-125 to D-127).* It bears stressing that the creditable withholding taxes mandated under Section 57(B) of the Tax Code as implemented by Section 2.57.2 of Revenue Regulations No. 2-98 represent advance income tax payments by a taxpayer to the national government. Since the amount of P105,868.94 was withheld and remitted to the Thailand government, the same cannot be credited against petitioner's income tax liability and should consequently be disallowed from petitioner's claim for refund.

Therefore, per this court's evaluation, creditable taxes withheld in the total amount of P211,988.38 should be disallowed, computed as follows:

Income per certificate of creditable taxes withheld at source	P	1,860,658,137.00
Less: Income declared in 1999 ITR per court's verification		1,849,340,399.91
Undeclared income	P	11,317,737.09
Less: Income from HAVI Thailand		705,792.93
Income subjected to 1% tax rate	P	10,611,944.16
Multiply to tax rate		1%
Creditable taxes withheld subjected to 1% tax rate	P	106,119.44
Add: Creditable taxes withheld from HAVI-Thailand		105,868.94
Total creditable taxes withheld corresponding to income not declared in 1999 ITR	**P**	**211,988.38**
		===========

We give credence to petitioner's submitted income tax return considering that "respondent has not issued any deficiency assessment nor disputed the correctness of the tax return" (*Tokyo Shipping Co. LTD vs. The Commissioner of Internal Revenue, CTA Case No. 3260, September 15, 1983; Dataprep (Phils.), Inc. vs. Commissioner of Internal Revenue, CTA Case No. 3600, March 30, 1984; Jardine Fleming (Philippines), Inc. vs. The Acting Commissioner of Internal Revenue, CTA Case No. 3667, January 20, 1988; Citytrust Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4099, May 28, 1991 and affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Banking Corporation, CA G.R. SP No. 26839, July 31, 1992; AB Capital and Investment Corporation v. Commissioner of Internal Revenue, CTA Case No. 5798, July 5, 2000).* Also, the 1999 income tax return of the petitioner was supported by audited financial statements and was accompanied by a certification from an independent CPA attesting to the fairness of presentation of the financial position of petitioner pursuant to Section 232 of the Tax Code.

In the case of ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997,*** the court emphasized that:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the commissioner of internal revenue by the NIRC which requires the commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return. In San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct. In fact, even without petitioner's tax claim, the commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in accordance with Section 16 of the present NIRC."

And as held by this court in the case of ***Ateneo de Manila University vs.***

***Commissioner of Internal Revenue, CTA Case No. 3213, July 28, 1989*:**

> "No controverting evidence was presented by respondent. Neither was any evidence disputing petitioner's entitlement to its claim for refund was presented by respondent and this case having been submitted for decision on the pleadings and on the face of the unrebutted evidence of petitioner showing that it is entitled to the refund of P67,123.23 under the second cause of action, respondent may be considered to have no serious objection or opposition to petitioner's entitlement to the refund. The circumstances obtaining in the case at bar compels us therefore to sustain the tenability of petitioner's right to the refund of P67,123.23 based on the evidence and pleadings."

Thus, in view of the above findings, we find petitioner entitled to a refund or issuance of a tax credit certificate but in the reduced amount of P18,485,577.62, detailed as follows:

Amount of claim	P 18,697,566.00
Less: Disallowance per court's verification	211,988.38
Amount Refundable	**P 18,485,577.62**

WHEREFORE, petitioner's claim for refund or issuance of a tax credit certificate of excess unutilized creditable withholding tax for the taxable year 1999 is hereby **GRANTED** but in the reduced amount of P18,485,577.62.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

LOVELL R. BAUTISTA
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

HAVI FOOD SERVICES PHILS., INC.
CTA CASE NO. 6306
SUMMARY OF INCOME DECLARED IN 1999 ITR
(In Philippine Pesos)

ANNEX A

Withholding Agent	AMOUNT OF INCOME PER CERTIFICATES							AMOUNT PER RECONCILIATION OF PETITIONER REVENUE PER FINANCIAL STATEMENTS			*TOTALS*	*PER CTA*
	Rental of Real Property	Payment to Contractors	Payment by Top 5000 Corp	Professional Talent Fee	Service Fees	Others	*TOTAL*	SALES	SERVICE FEE	OTHER INCOME		
McGeorge Food Industries		413,665,163.05										
McGeorge Food Industries		444,429,894.55										
McGeorge Food Industries		393,542,660.18										
McGeorge Food Industries		514,369,895.56										
		1,766,007,613.34					***1,766,007,613.34***		1,926,561,474.51	139,340,708.65	***2,065,902,183.16***	***1,766,007,613.34***
Alfonso Ng (McDonald's Sta. Mesa)		227,190.68										
Alfonso Ng (McDonald's Sta. Mesa)		233,570.78										
Alfonso Ng (McDonald's Sta. Mesa)		224,218.47										
Alfonso Ng (McDonald's Sta. Mesa)		238,659.46										
		923,639.39					***923,639.39***		12,579,415.96	929,844.69	***13,509,260.65***	***923,639.39***
Alfonso Ng (McDonald's SM Centerpoint)		167,718.13										
Alfonso Ng (McDonald's SM Centerpoint)		200,837.59										
Alfonso Ng (McDonald's SM Centerpoint)		195,093.49										
Alfonso Ng (McDonald's SM Centerpoint)		206,311.22										
		769,960.43					***769,960.43***		10,062,996.11	769,778.92	***10,832,775.03***	***769,960.43***
TGY & Kids, Inc. (McDonald's Sucat)		366,284.18										
TGY & Kids, Inc. (McDonald's Sucat)		385,535.56										
TGY & Kids, Inc. (McDonald's Sucat)		323,066.84										
TGY & Kids, Inc. (McDonald's Sucat)		289,428.98										
		1,364,315.56					***1,364,315.56***		19,945,050.80	1,459,305.37	***21,404,356.17***	***1,364,315.56***
Edward Gocheco (McDonald's Commonwealth)		249,608.68										
Edward Gocheco (McDonald's Commonwealth)		307,131.76										
Edward Gocheco (McDonald's Commonwealth)		255,329.08										
Edward Gocheco (McDonald's Commonwealth)		317,642.69										
		1,129,712.21					***1,129,712.21***		15,433,455.24	1,119,797.86	***16,553,253.10***	***1,129,712.21***
Edward Gocheco (McDonald's Ever Gotesco)		95,044.91										
Edward Gocheco (McDonald's Ever Gotesco)		132,143.27										
Edward Gocheco (McDonald's Ever Gotesco)		103,825.85										
Edward Gocheco (McDonald's Ever Gotesco)		126,780.30										
		457,794.33					***457,794.33***		5,748,475.81	452,651.24	***6,201,127.05***	***457,794.33***
GMC Foods (McDonald's E. Rodriguez)		389,153.00										
GMC Foods (McDonald's E. Rodriguez)		401,638.00										
GMC Foods (McDonald's E. Rodriguez)		336,626.01										
		1,127,417.01					***1,127,417.01***		15,791,691.21	1,164,110.14	***16,955,801.35***	***1,127,417.01***
Ancel "A" Corp. (McDonald's Tarlac)		205,421.14										
Ancel "A" Corp. (McDonald's Tarlac)		237,656.14										
Ancel "A" Corp. (McDonald's Tarlac)		216,129.66										
Ancel "A" Corp. (McDonald's Tarlac)		218,160.48										
		877,367.42					***877,367.42***		12,394,297.23	874,367.95	***13,268,665.18***	***877,367.42***
Ancel "A" Corp. (McDonald's Tarlac 2)		172,720.50										
Ancel "A" Corp. (McDonald's Tarlac 2)		199,576.68										
Ancel "A" Corp. (McDonald's Tarlac 2)		136,712.40										
Ancel "A" Corp. (McDonald's Tarlac 2)		180,699.51										
		689,709.09					***689,709.09***		9,778,301.30	691,709.37	***10,470,010.67***	***689,709.09***
Double Rise Foods, Inc. (McDonald's Capas Tarlac)		166,421.43										
Double Rise Foods, Inc. (McDonald's Capas Tarlac)		210,117.89										
Double Rise Foods, Inc. (McDonald's Capas Tarlac)		158,444.51										
Double Rise Foods, Inc. (McDonald's Capas Tarlac)		186,044.78										
		721,028.61					***721,028.61***		14,261,914.62	1,111,123.67	***15,373,038.29***	***721,028.61***

Double Rise Foods, Inc. (McDonald's Tarlac Town Center)		83,839.59										
Double Rise Foods, Inc. (McDonald's Tarlac Town Center)		150,477.24										
Double Rise Foods, Inc. (McDonald's Tarlac Town Center)		83,391.38										
Double Rise Foods, Inc. (McDonald's Tarlac Town Center)		117,367.31										
		435,075.52					***435,075.52***		5,246,434.57	385,017.46	***5,631,452.03***	***435,075.52***
Giant Arches Food Corp. (McDonald's Baguio)					448,730.55							
Giant Arches Food Corp. (McDonald's Baguio)					476,371.46							
Giant Arches Food Corp. (McDonald's Baguio)					357,576.26							
Giant Arches Food Corp. (McDonald's Baguio)					363,679.44							
					1,646,357.71		***1,646,357.71***	23,857,822.83	1,646,357.71		***25,504,180.54***	***1,646,357.71***
Giant Arches Food Corp. (McDonald's Baguio 2)					172,303.64							
Giant Arches Food Corp. (McDonald's Baguio 2)					351,743.20							
Giant Arches Food Corp. (McDonald's Baguio 2)					312,604.58							
Giant Arches Food Corp. (McDonald's Baguio 2)					310,585.81							
					1,147,237.23		***1,147,237.23***	14,165,432.36	1,003,487.11		***15,168,919.47***	***1,147,237.23***
McJOla Inc. (McDonald's Bacolod)			8,992,958.91									
McJOla Inc. (McDonald's Bacolod)			9,256,590.74									
McJOla Inc. (McDonald's Bacolod)			7,858,027.27									
McJOla Inc. (McDonald's Bacolod)			9,529,821.11									
			35,637,398.03				***35,637,398.03***	35,815,945.74	2,213,870.86		***38,029,816.60***	***35,637,398.03***
McRey Food Enterprises (McDonald's Retiro)		268,367.54										
McRey Food Enterprises (McDonald's Retiro)		193,473.89										
		461,841.43					***461,841.43***	15,420,752.73	1,130,312.34		***16,551,065.07***	***461,841.43***
EDSA Food Ind. Inc. (McDonald's Julia Vargas)			4,501,944.51									
EDSA Food Ind. Inc. (McDonald's Julia Vargas)			5,748,962.86									
EDSA Food Ind. Inc. (McDonald's Julia Vargas)			5,721,682.76									
EDSA Food Ind. Inc. (McDonald's Julia Vargas)			5,833,446.52									
			21,806,036.65				***21,806,036.65***	20,082,052.14	1,464,665.74		***21,526,717.88***	***21,526,717.88***
McMighty Foods Corp. (McDonald's Divisoria)		87,986.69										
McMighty Foods Corp. (McDonald's Divisoria)		126,719.23										
McMighty Foods Corp. (McDonald's Divisoria)		111,686.25										
McMighty Foods Corp. (McDonald's Divisoria)		142,703.66										
		469,095.83					***469,095.83***	6,531,100.22	509,821.72		***7,040,921.94***	***469,095.83***
McDaniels Food Corp. (McDonald's Masangkay)		191,201.45										
McDaniels Food Corp. (McDonald's Masangkay)		204,015.09										
McDaniels Food Corp. (McDonald's Masangkay)		187,944.76										
McDaniels Food Corp. (McDonald's Masangkay)		179,263.48										
		762,424.78					***762,424.78***	10,487,380.64	762,424.79		***11,249,805.43***	***762,424.78***
Geneva Food Inc. (McDonald's K.P. Tower)		285,320.00										
Geneva Food Inc. (McDonald's K.P. Tower)		360,131.37										
Geneva Food Inc. (McDonald's K.P. Tower)		247,407.82										
Geneva Food Inc. (McDonald's K.P. Tower)		346,548.26										
		1,239,407.45					***1,239,407.45***	16,197,918.70	1,221,198.30		***17,419,117.00***	***1,239,407.45***
McColby's Inc. (McDonald's Dagupan)		403,060.82										
McColby's Inc. (McDonald's Dagupan)		456,058.33										
McColby's Inc. (McDonald's Dagupan)		381,348.83										
McColby's Inc. (McDonald's Dagupan)		389,267.85										
		1,629,735.83					***1,629,735.83***	22,161,551.43	1,578,807.23		***23,740,358.66***	***1,629,735.83***
McColby's Inc. (McDonald's Dagupan 2)		110,144.64										
McColby's Inc. (McDonald's Dagupan 2)		127,401.44										
McColby's Inc. (McDonald's Dagupan 2)		103,361.82										
McColby's Inc. (McDonald's Dagupan 2)		114,187.92										
		455,095.82					***455,095.82***	6,428,317.57	458,156.17		***6,886,473.74***	***455,095.82***
McColby's Inc. (McDonald's Urdaneta)		177,398.64										
McColby's Inc. (McDonald's Urdaneta)		240,926.99										
McColby's Inc. (McDonald's Urdaneta)		162,210.98										
McColby's Inc. (McDonald's Urdaneta)		182,226.58										
		762,763.19					***762,763.19***	10,881,274.27	754,543.10		***11,635,817.37***	***762,763.19***

McGill Food Ind. Inc. (McDonald's Iloilo)		360,302.81										
McGill Food Ind. Inc. (McDonald's Iloilo)		406,725.12										
McGill Food Ind. Inc. (McDonald's Iloilo)		500,392.01										
McGill Food Ind. Inc. (McDonald's Iloilo)		426,481.95										
		1,693,901.89					***1,693,901.89***	11,287,484.61	735,090.32		***12,022,574.93***	***1,693,901.89***
Mariel Food Corp. (McDonald's Baliuag)		135,341.72										
Mariel Food Corp. (McDonald's Baliuag)		169,566.00										
Mariel Food Corp. (McDonald's Baliuag)		164,298.42										
Mariel Food Corp. (McDonald's Baliuag)		178,071.42										
		647,277.56					***647,277.56***	9,206,747.88	678,342.08		***9,885,089.96***	***647,277.56***
Mariel Food Corp. (McDonald's Pulilan)		164,846.41										
Mariel Food Corp. (McDonald's Pulilan)		183,099.15										
Mariel Food Corp. (McDonald's Pulilan)		163,587.97										
Mariel Food Corp. (McDonald's Pulilan)		184,143.16										
		695,676.69					***695,676.69***	9,160,520.65	644,112.83		***9,804,633.48***	***695,676.69***
Nee Mee Food Corp. (McDonald's La Union)		186,754.92										
Nee Mee Food Corp. (McDonald's La Union)		262,672.58										
Nee Mee Food Corp. (McDonald's La Union)		223,030.87										
Nee Mee Food Corp. (McDonald's La Union)					243,794.67							
		672,458.37			243,794.67		***916,253.04***	12,509,562.36	896,123.20		***13,405,685.56***	***916,253.04***
KSL Food Services (McDonald's Tagaytay)		576,089.00										
KSL Food Services (McDonald's Tagaytay)		196,434.34										
KSL Food Services (McDonald's Tagaytay)		173,501.00										
		946,024.34					***946,024.34***	11,413,999.89	829,723.09		***12,243,722.98***	***946,024.34***
KSL Food Services (McDonald's Tagaytay 2)		143,108.36										
KSL Food Services (McDonald's Tagaytay 2)		152,221.99										
KSL Food Services (McDonald's Tagaytay 2)		107,656.42										
KSL Food Services (McDonald's Tagaytay 2)		99,511.95										
		502,498.72					***502,498.72***	7,525,854.56	556,074.54		***8,081,929.10***	***502,498.72***
RSA Foods (McDonald's RFC Molino)		134,785.91										
RSA Foods (McDonald's RFC Molino)		225,904.47										
RSA Foods (McDonald's RFC Molino)		224,958.50										
RSA Foods (McDonald's RFC Molino)		247,563.42										
		833,212.30					***833,212.30***	11,669,230.95	893,286.98		***12,562,517.93***	***833,212.30***
Golden South Foods Inc. (McDonald's Petron South)		7,382,166.07					***7,382,166.07***	36,830,612.69	2,594,628.71		***39,425,241.40***	-
Blue Dairy Corp	262,725.60		31,263.00									
Blue Dairy Corp	259,185.60		30,449.00									
Blue Dairy Corp	265,065.60		37,897.00									
Blue Dairy Corp	273,495.60		32,078.00									
	1,060,472.40		131,687.00				***1,192,159.40***	136,362.74		1,095,004.32	***1,231,367.06***	***1,192,159.40***
GENOSI	-		2,935,218.00									
GENOSI	387,023.40		4,578.00									
GENOSI	620,437.20		4,904.00									
GENOSI	-		69,643.00									
	1,007,460.60		3,014,343.00				***4,021,803.60***	63,883.68		1,007,460.60	***1,071,344.28***	***1,071,344.28***
Man-Go & Co.				116,584.25								
Man-Go & Co				105,146.00								
Man-Go & Co.				193,768.35								
Man-Go & Co.				184,845.00								
				600,343.60			***600,343.60***			649,687.44	***649,687.44***	***600,343.60***
HAVI Food Services Thailand						91,606.73						
HAVI Food Services Thailand						297,492.73						
HAVI Food Services Thailand						316,693.47						
						705,792.93	***705,792.93***					-
OTHER INCOME										6,255,205.04	***6,255,205.04***	-
GRAND TOTALS	**2,067,933.00**	**1,793,657,213.18**	**57,683,598.86**	**600,343.60**	**3,037,389.61**	**705,792.93**	***1,860,658,137.00***	**291,813,808.64**	**2,068,374,534.18**	**9,007,357.40**	***2,517,494,143.54***	***1,849,340,399.91***