REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PILIPINAS TRANSPORT INDUSTRIES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6073

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 01 2002

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DECISION

This is a judicial claim for the refund of the amount of P4,675,788.00 filed by the Petitioner on April 14, 2000, representing alleged excess creditable withholding taxes for taxable years 1997 and 1998.

The antecedent facts may be summarized as follows:

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines.

Records show that on April 15, 1998, Petitioner filed its 1997 annual income tax return reflecting therein a net loss of P9,836,028.00 and excess creditable taxes withheld of P3,519,771.00 (Exhibit A).

Believing that it is entitled to a refund of alleged excess creditable withholding tax, Petitioner filed with the BIR Appellate Division a letter claim for the refund of the amount of P3,519,771.00 on November 23, 1998. In a letter dated December 8, 1998, the Appellate Division informed the Petitioner that its claim was referred to the Revenue District Office No. 41, Mandaluyong City for investigation (Exhibit J).

On April 15, 1999, Petitioner filed its annual income tax return for 1998 (Exhibit E) where Petitioner carried-over the alleged excess tax credits of P3,519,771.00. However, Petitioner was not able to utilize the entire amount since it only had a minimum corporate income tax liability for 1998 in the amount of P293,262.00, thus, leaving a balance of P3,226,509.00 as creditable withholding tax. Adding the aforesaid amount to Petitioner's alleged unutilized creditable taxes withheld in the amount of P1,449,279.00 for 1998, Petitioner allegedly had excess tax credits in the amount of P4,675,788.00 as of December 31, 1998, computed as follows:

1997 excess creditable withholding taxes	P 3,519,771.00
Less: 1998 Minimum Corporate Income Tax Due	293,262.00
Balance of 1997 excess creditable withholding taxes	P 3,226,509.00
Add: 1998 unutilized creditable withholding taxes	1,449,279.00
Total excess creditable withholding taxes – 1997 & 1998	P 4,675,788.00

On January 7, 2000, Petitioner filed with the BIR Appellate Division a letter-claim for refund representing its excess tax credits as of December 31, 1998 but in the amount of P4,969,050.00 instead of the amount of P4,675,788.00 reported in its 1998 income tax return (Exhibit "K").

Unable to obtain an affirmative relief and to toll the running of the period of prescription, Petitioner elevated its grievance to this Court on April 14, 2000 via Petition for Review.

In his Answer filed on May 25, 2000, Respondent traversed Petitioner's contentions and interposed the following by way of Special and Affirmative Defenses:

> "4. The Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/examination by the Respondent's Bureau;
>
> 5. The alleged tax sought to be refunded was collected pursuant to law and pertinent BIR implementing rules and regulations; hence, the same is not refundable;
>
> 6. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit;
>
> 7. Claims for tax refund or tax credit are construed in *strictissimi juris* against the taxpayer as they partake 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 on the part of the petitioner to prove the same is fatal to its claim for refund/credit;
>
> 8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the 1997 Tax Code.

In a resolution promulgated on October 18, 2001, after the parties have filed their respective memorandum, this case was considered submitted for decision.

The vortex of the controversy lies on whether or not Petitioner is entitled to a refund of its alleged excess unutilized creditable withholding taxes for taxable years 1997 and 1998.

Apropos to the disposition of the issue at bar are the following provisions of the National Internal Revenue Code, prior to the amendment by Republic Act No. 8424 and after amendments thereby, to wit:

> **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.

> **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. <u>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</u>. (Underscoring ours)

A cursory review of the factual milieu of this case unearthed the fact that Petitioner's claims are covered by two applicable laws. First, Petitioner's alleged excess unutilized creditable withholding tax for taxable year 1997 in the amount of P3,226,509.00 is covered by Section 69 of the Old Tax Code which allows the refund of excess tax credits or overpaid income tax of a given taxable year not otherwise utilized/applied against the taxpayer's tax liability in the succeeding year while the 1998 claim for refund is covered by Section 76 of the Tax Reform Act of 1997 which became effective on January 1, 1998.

Under Section 76 of the Tax Reform Act of 1997, the taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against its income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period. Thus, based on the said provisions, Petitioner's 1998 claim of P1,449,279.00 should be denied outright because the same was opted by Petitioner "To be carried as tax credit to next year" (Exhibit E). While Petitioner did not in fact carry-over/apply the 1998 excess tax credits of P1,449,279.00 as shown in its 1999 income tax return (see CTA records, page 232), the option to carry-over/apply the same was already made and it is irrevocable. Petitioner is left with no other recourse but to apply the 1998 excess tax credits of P1,449,279.00 to the succeeding years until the same are fully utilized.

On the other hand, Petitioner may validly claim a refund of the 1997 excess tax credits of P3,226,509.00. Section 69 of the old Tax Code clearly allows the refund of the excess tax credits or overpaid income tax of a given taxable year not otherwise utilized/applied in the succeeding year. Unlike in Section 76 of the 1997 Tax Code, there is no specific provision in Section 69 of the old Tax Code that declares that once the option to carry-over has been made it becomes irrevocable for that taxable period. Petitioner's 1997 and 1998 income tax returns show that after applying the 1997 excess tax credits of P3,519,771.00 against the 1998 minimum corporate income tax due of P293,262.00, the amount of P3,226,509.00 still remained unutilized. Although the 1997 excess tax credits of P3,226,509.00 were indicated in Petitioner's 1998 ITR as to be carried-over to the succeeding year 1999, nevertheless, Petitioner's 1999 income tax return shows that the same were not actually carried-over/applied in 1999.

However, in order to be entitled to the refund of the 1997 excess tax credits of P3,226,509.00, Petitioner must satisfy the following three basic requirements:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the income upon which the taxes were withheld were included in the return of the recipient;

3) That the fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

[Section 10, Rev. Regs. No. 6-85; see **Citytrust Finance Corporation vs. The Honorable 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; and Citytrust Finance Corporation (formerly Investor's 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 Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**].

Petitioner complied with the first requirement when it filed its original and amended administrative claims for refund on November 24, 1998 (Exhibit I) and January 7, 2000 (Exhibit K) as well as the Petition for Review on April 14, 2000. All of these dates fall within the two-year period prescribed under Section 204(3) [now Section 204(C)] in relation to Section 230 [now Section 229] of the Tax Code counted from April 15, 1998, the date when Petitioner filed its 1997 annual income tax return (Exhibit A).

The fact of withholding was established through the presentation of the Certificates of Creditable Tax Withheld at Source issued by various withholding agents to Petitioner for the year 1997 showing creditable withholding taxes of P3,519.770.99 or P3,519,771.00 detailed as follows:

Exhibit	Withholding Agent	Tax Withheld
M	Pilhino Sales Corporation	P 1,082,798.47
M-1	Pilhino Sales Corporation	838,848.31
M-2	Pilhino Sales Corporation	910,771.36
M-3	Pilhino Sales Corporation	672,515.92
N	Pilipinas Hino Incorporated	7,529.16
O	Pilipinas Maintenance Services Corp.	714.95
O-1	Pilipinas Maintenance Services Corp.	354.20
O-2	Pilipinas Maintenance Services Corp.	1,140.13
P	Palawan Tropical Forestry Protection Programme	218.51
P-1	Palawan Tropical Forestry Protection Programme	2,064.17
P-2	Palawan Tropical Forestry Protection Programme	459.21
P-3	Palawan Tropical Forestry Protection Programme	927.93
P-4	Palawan Tropical Forestry Protection Programme	1,305.99
Q	Subic Bay Metropolitan Authority	122.68
	Total – 1997	P 3,519,770.99

However, it was discovered that the above total creditable withholding taxes of P3,519,771.00 included creditable VAT of P122.68 withheld by Subic Bay Metropolitan Authority (Exhibit Q). Since the amount of P122.68 is creditable against Petitioner's output VAT liability as provided under Section 110(c) [now 114(C)] of the Tax Code and not against its income tax liability, it shall be disallowed from Petitioner's claim. Thus, only the creditable income taxes withheld of P3,519,648.32 were properly supported by certificates.

With reference to the third requirement, Petitioner proved that the income related to the 1997 creditable withholding taxes of P3,519,648.32 formed part of its 1997 declared gross income of P826,617,536.00 (Schedule 1, Section C of Exhibit A).

In sum, Petitioner complied with all the requirements for the refund of excess creditable withholding taxes for taxable year 1997 but only to the extent of P3,226,386.32 out of the total claim of P3,226,509.00 computed as follows:

1997 substantiated creditable taxes withheld	P 3,519,648.32
Less: 1998 Minimum Corporate Income Tax Due	293,262.00
Refundable 1997 excess creditable taxes withheld	P 3,226,386.32

WHEREFORE, in view of all the foregoing, the claim for refund representing the 1997 excess creditable withholding taxes is partially granted. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the amount of P3,226,386.32. The claim for refund pertaining to its 1998 excess creditable withholding taxes is **DENIED** based on the aforestated reasons.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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