REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MILLENNIUM BUSINESS SERVICES, INC.,
Petitioner,

~ *versus* ~

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7441

Members:

Acosta, *PJ,*
Bautista, *and*
Casanova, *JJ.*

Promulgated:

FEB 1 1 2009 : 2:35 pm

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AMENDED DECISION

ACOSTA, *PJ:*

This resolves respondent's Motion for Reconsideration posted on January 5, 2009 assailing the Decision of the Court promulgated on December 9, 2008 which partially granted the claim for refund or tax credit in the amount of P1,143,065.38; and petitioner's Comment/Opposition thereto filed on January 19, 2009.

In her Motion, respondent questioned the Decision on the sole ground that it is contrary to applicable law inasmuch as the petitioner has failed to prove with reasonable certainty that it did not carry-over and apply its 2003 excess tax credits against its quarterly income tax liabilities for the quarters of the succeeding taxable years as provided for under Section 76 of the 1997 Tax Code, as amended. She therefore argued that the non-presentation of petitioner's 2004 quarterly income tax returns is fatal to petitioner's claim for refund since it cannot be determined whether petitioner has exercised the option to carry-over its unutilized creditable withholding taxes for the calendar year 2003 to the succeeding taxable quarters of 2004.

In its Comment/Opposition to the said Motion, petitioner counter-argued that it was able to prove with reasonable certainty that it did not carry-over, apply nor utilize its 2003 excess tax credits against any of its subsequent tax liabilities; and that the 2004 quarterly income tax returns are not indispensable in the establishment of the fact that the excess creditable withholding taxes in 2003 were not carried-over to the subsequent year since even this Court in the cases of Yupangco Cotton Mills, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5699, February 16, 2001 and Hopewell Tileman Power Systems, Inc. vs. Commissioner of Internal Revenue CTA Case No. 5682, July 7, 2000 held that the presentation of subsequent years Annual Income Tax Return is sufficient to establish the fact of non-utilization of excess creditable withholding taxes.

Respondent's stance is meritorious.

While petitioner's administrative claim on April 7, 2006 and its Petition for Review on April 12, 2006 were both filed within the two-year prescriptive period; the fact of withholding of P1,341,623.00 is established by a copy of certificates of creditable tax withheld at source issued by withholding agents; and petitioner's income from service of P13,478,144.67 upon which the creditable taxes of P1,341,623.00 is withheld were included in the return, petitioner, however, has failed to prove that it did not carry over its claimed excess creditable withholding taxes to the succeeding quarters of taxable year 2004. Records of the case disclosed that petitioner failed to present as evidence its 2004 quarterly income tax returns.

Although, petitioner presented its 2004 Annual Income Tax Return wherein it shows that it did not carry over as tax credit its claimed unutilized creditable withholding taxes of P1,341,623.00 to the succeeding taxable year

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2004, however, this evidence is not enough to conclude that petitioner did not apply the said unutilized creditable withholding taxes against the income tax due for the first three quarters of 2004. Petitioner should have presented its 2004 quarterly income tax returns. The said quarterly income tax returns could help the Court determine whether petitioner effectively opted to carry over the 2003 excess creditable withholding taxes to the subsequent taxable year. If petitioner applied the said unutilized creditable withholding taxes against the income tax due for the first three quarters of taxable year 2004, it therefore effectively exercised the option to carry over the 2003 unutilized creditable withholding taxes to the succeeding taxable year 2004; thus, its claim for refund should be denied pursuant to Sec. 76 of the 1997 Tax Code, which provides:

> **"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 <u>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>.**"

(Emphasis supplied)

In the case of *Benguet Management Corporation vs. Commissioner of Internal Revenue*,[1] the Court En Banc agreed with the findings of the Court *a quo* that petitioner therein indeed carried over its declared overpayment for 2001

[1] CTA EB No. 200, April 4, 2007 affirming the decision of Benguet Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6890, January 9, 2006.

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to the subsequent quarters as proved by its quarterly income tax returns of 2002, viz:

> "However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits *(Annexes C to E, Petition for Review, pp. 10-12)*. As petitioner's own evidence would show *(original/tentative annual ITR for CY 12/2001, Exhibit "A")*, <u>the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002</u> filed on June 11, 2002 *(Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review)*. <u>When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits</u> *(Quarterly Income Tax Return for the 2nd Quarter of 2002, Annex D, Petition for Review)*. <u>For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits</u> *(Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E, Petition for Review)*. The total amount of P5,700,272.00 subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 (Exhibit A-1)."
>
> "When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year's excess credits *(Exhibit F, Records, pp. 91-93)*. <u>The fact that petitioner amended its 2002 tax return</u> on October 9, 2003 *(Exhibit G, Records, pp. 94-96)* <u>does not alter the fact that petitioner in fact carried the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002</u>. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits.
>
> *(Emphasis supplied)*

In fact, Section 2.58.3 of Revenue Regulations No. 2-98 implementing Republic Act No. 8424 even provides:

> "Section 2-58-3. Claim for Tax Credit or Refund. –
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (B) Claims for tax credit or refund or any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.
>
> (C) Excess Credits – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit

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> arose, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate.
>
> 1. If in lieu of the automatic application of his excess credit, the taxpayer wants a cash refund or a tax credit certificate for use in payment of his other national internal revenue tax liabilities, he shall make a written request therefore, within two years after the payment of the tax (Ref. Secs. 204(c) and 229 of the Code), provided however, that if the taxpayer has indicated in his income tax return his option for either a cash refund or a tax credit certificate, such indication shall be considered sufficient for the purpose. Upon filing of his request, the taxpayer's income tax return showing the excess expanded withholding tax credits shall be examined. The excess expanded withholding tax so determined, shall be refunded/credited to the taxpayer.
>
> 2. Sample computation of application of excess credits-ordinary

Tax Period	1997	1998-QTR1	1998-QTR2	1998-QTR3
Tax Due	1,000	200	200	500
Less: Tax Withheld	(1,500)	(500)	(300)	0
Net Tax Payable/Creditable	(500)	(300)	(100)	500

> In the above illustration, there is an excess credit in 1997 that can be applied to the subsequent quarter. And if the option to apply the excess credit is ***initiated*** in the first quarter of 1998, the taxpayer cannot avail of a refund/tax credit certificate of the excess credit of P500 in 1997."

(Emphasis Supplied)

Thus, the presentation of the quarterly income tax returns is very important. Without which, it cannot be ascertained whether petitioner did not carry over the 2003 excess/unutilized creditable withholding taxes to the subsequent quarters of 2004. Petitioner may have carried over its 2003 unutilized creditable withholding taxes to its quarterly income tax returns for 2004, and it may have amended said returns whereby such unutilized creditable withholding taxes are no longer reflected therein; thus, it follows that its 2004 Annual ITR will likewise not show any amount of prior year's excess credit. This doubt could have been avoided had petitioner presented the quarterly income tax returns for 2004.

Aside from petitioner's failure to present the quarterly income tax returns for 2004, this Court noticed that petitioner's 2005 Annual ITR showed a prior

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year's excess credits of P2,853,712.[2] Said amount is more than the tax overpayment of P1,616,400 reflected in petitioner's 2004 Annual ITR. This apparent difference in the amount of P1,237,312 (which approximates the amount of claim) could only mean that the 2004 original Annual ITR has been amended and one possible amendment introduced therein is the carry over of the 2003 excess creditable withholding taxes. This fact could not be taken lightly since petitioner is not allowed to claim for refund when the 2003 excess creditable withholding taxes is already carried over and applied against the income tax due of the subsequent taxable years.

It is a settled rule that tax refunds, like tax exemptions, are construed strictly against the taxpayer and that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund.[3] Failure of the petitioner to present the quarterly income tax returns for 2004 is fatal to its claim for refund or tax credit.

WHEREFORE, respondent's Motion for Reconsideration is hereby **GRANTED**. The Decision dated December 9, 2008 is hereby **SET ASIDE**. Accordingly, petitioner's claim for refund or tax credit is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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[2] Exhibit C.
[3] Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB Case No. 298, January 18, 2008 *citing Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, 280 SCRA 459.*

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals, First Division in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

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