REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Petitioner,

C.T.A. EB No. 465
(C.T.A. Case No. 7200)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

C.T.A. EB No. 470
(C.T.A. Case No. 7200)

-versus-

GOLDEN ARCHES DEVELOPMENT CORPORATION,
Respondent.

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

Promulgated:
NOV 2 6 2009 3:15 pm

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D E C I S I O N

CASTAÑEDA, JR., J.:

In the case entitled, "*Commissioner of Internal Revenue vs. Golden Arches Development Corporation*" docketed as C.T.A. EB Case No. 470, the

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Commissioner of Internal Revenue assails the Decision dated October 15, 2008 partially granting the refund or the issuance of a tax credit certificate in the reduced amount of P49,921,610.64 representing unutilized creditable withholding taxes for the calendar year 2002 consolidated with the case entitled "*Golden Arches Development Corporation vs. Commissioner of Internal Revenue*" docketed as C.T.A. EB Case No. 465 for which Golden Arches Development Corporation questions the denial of the amount of P6,299,359.00 out of its claimed amount of P56,220,970.00.

Both parties likewise impugn the Resolution dated February 6, 2009, denying the Commissioner of Internal Revenue and Golden Arches Development Corporation's Motion for Reconsideration and Motion for Partial Reconsideration, respectively, due to lack of merit.

THE FACTS

Golden Arches Development Corporation ("GADC"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines is primarily engaged in establishing, maintaining, operating and managing for its own account or for the account of other entities or individuals, restaurants, cafes, bars, and general food catering services; while the Commissioner of Internal Revenue ("Commissioner") is vested by law to decide and grant refund claims or tax credit of erroneously or excessively paid taxes pursuant to the 1997 National Internal Revenue Code[1] ("NIRC").

On November 28, 2002, the Securities Exchange Commission ("SEC") approved the merger between GADC and McGeorge Food Industries, Inc.[2]

On April 21, 2003, GADC filed its 2002 Annual Income Tax Return for calendar year 2002 through electronic filing and payment system ("EFPS") with the Bureau of Internal Revenue ('BIR"), however, on November 25, 2003, it amended such return.[3]

Convinced that it is entitled to the unutilized creditable withholding taxes ("CWTs") for calendar year 2002, GADC sought with the BIR's Large Taxpayer's District Office the refund or issuance of a tax credit certificate in the amount of P56,220,970.00 on April 1, 2005.[4]

The Commissioner's inaction on its claim for refund prompted GADC to file a Petition for Review docketed as C.T.A. Case No. 7200 before the Court's Second Division on April 13, 2005.[5]

On April 24, 2006, the Court in Division granted GADC's Amended Petition praying that the Commissioner consider the alternative option for

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[1] Republic Act No. 8424.
[2] Joint Stipulation of Facts and Issues, Division Docket, p. 84
[3] Joint Stipulation of Facts and Issues, Division Docket, p. 83.
[4] Joint Stipulation of Facts and Issues, Division Docket, p. 83.
[5] See Division Docket.

the issuance of a tax credit certificate of its unutilized CWTs for calendar year 2002.[6]

In the Decision dated October 15, 2008, the Court in Division ordered the refund or issuance of a tax credit certificate in the reduced amount of P49,921,610.64 representing unutilized CWTs for the calendar year 2002, in favor of GADC.[7]

Dissatisfied, GADC moved for partial reconsideration and the Commissioner a reconsideration of the Decision dated October 15, 2008 which were both denied for lack of merit by the Court in Division in the Resolution dated February 6, 2009.[8]

Unfazed, both parties appealed to the Court *en banc* by way of Petitions for Review docketed as C.T.A. EB Nos. 465 and 470.

On March 19, 2009, the Court *en banc* ordered the consolidation of cases, CTA EB No. 470 with CTA EB No.465.[9]

The case was previously raffled to Presiding Justice Ernesto D. Acosta who expressed his opinion that the assailed Decision dated October 15, 2008 and the Resolution dated February 6, 2009 be reversed and set-aside. However, Associate Justices Juanito Castañeda Jr., Erlinda P. Uy and Olga Palanca-Enriquez voted to affirm the assailed Decision and

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[6] Division Docket, p. 215
[7] Rollo, EB Case No. 465, pp. 38-60. Penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.
[8] Rollo, EB Case No. 465, pp. 73-80.
[9] Rollo, EB Case No. 465, p.175.

Resolution; while Associate Justices Lovell R. Bautista and Caesar A. Casanova concurred with the stance of Presiding Justice Acosta. Considering that the affirmative votes of four (4) Justices of the Court *en banc* were not obtained to invalidate the assailed Decision and the Resolution under Section 3 of Rule 2 of the 2008 Revised Rules of the Court of Tax Appeals, the case was re-raffled and re-assigned to Associate Justice Juanito C. Castañeda, Jr. to write the prevailing opinion of the Court *en banc*.

THE ISSUES

In C.T.A. EB Case No. 465, GADC ascribes the following errors committed by the Division:

A. PETITIONER RESPECTFULLY SUBMITS THAT THE SECOND DIVISION ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND OF THE AMOUNT OF P151,227.76 ON THE GROUND THAT THE WITHHOLDING TAX CREDITS ARE SUPPORTED BY INVALID CERTIFICATES.

B. PETITIONER RESPECTFULLY SUBMITS THAT THE SECOND DIVISION ERRED IN DENYING PETITIONER'S CLAIM FOR REFUND OF THE AMOUNT OF P6,080,139.67 ON THE GROUND THAT THE EVIDENCE SUBMITTED BY PETITIONER

IS INSUFFICIENT TO PROVE THAT THE INCOME FROM WHICH THE SUBJECT CREDITABLE TAXES WITHHELD WAS REPORTED AS PART OF PETITIONER'S REVENUES.[10]

While in C.T.A. EB Case No. 470, the Commissioner raises the errors of the Division, specifically:

(1) THE SECOND DIVISION OF THE HONORABLE TAX COURT ERRED IN ORDERING THE REFUND IN FAVOR OF RESPONDENT ON ITS ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE CALENDAR YEAR 2002 DESPITE ABSENCE OF PROOF THAT RESPONDENT DID NOT APPLY THE SAID UNUTILIZED CREDITABLE WITHHOLDING TAXES AGAINST THE INCOME TAX DUE FOR THE FIRST THREE QUARTERS OF 2003.

(2) THE SECOND DIVISION OF THE HONORABLE TAX COURT ERRED IN NOT APPLYING THE RULE THAT TAX REFUNDS BEING IN THE NATURE OF TAX EXEMPTION ARE CONSTRUED STRICTISSIMI JURIS AGAINST THE PERSON OR ENTITY CLAIMING THE EXEMPTION.[11]

On April 24, 2009 and June 3, 2009, GADC filed its Comment and Memorandum, respectively.[12]

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[10] Rollo, EB No. 465, p. 14
[11] Rollo, EB No. 470, p. 8
[12] Rollo, EB Case No. 465, pp. 186 and 210.

THIS COURT'S RULING

THE COURT DULY COMPLIED WITH TAX REFUND REQUISITES SUPPORTING THE AMOUNT OF P49,921,610.64 REPRESENTING UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEAR 2002

GADC alleges that the Second Division erred in denying its refund claim in the amount of P151,227.76 on the basis that the withholding tax credits are supported by invalid certificates. It insists that the names of the payee/income recipient and withholding agent/payor indicated in the CWT certificates were inadvertently interchanged by the withholding agents. As shown on the face of the three (3) CWT certificates and as attested by Administrative Assistant, Ms. Margarita Villapando, the actual withholding agents/payors are Mc DLC Foods, Inc., DLC Foods, Inc. and DLC Foods(Balagtas), Inc. GADC is the true and correct payee/income recipient as reflected in the subject CWT certificates. Due to clerical error, GADC requested DLC Foods, Inc., DLC Foods(Balagtas), Inc. and McDLC Foods, Inc. to issue amended CWT certificates indicating GADC as the payee/income recipient. Since CWTs were withheld from GADC's income, and were actually remitted and paid to the BIR, it is proper that it be entitled to the amount of P151,227.76.

GADC further contends that the Second Division also erred in denying the claimed amount of P6,080,139.67 on the ground that the evidence it submitted is insufficient to establish that the income from which the subject CWTs withheld was reported as part of its revenues.

In addition to its 2002 annual income tax return, GADC presented documentary evidence such as deeds of sale, annual information return of creditable income taxes withheld, monthly withholding tax remittance returns, certificates of creditable tax withheld at source, and various reconciliation schedules, including the testimony of Senior Accounting Manager, Ms. Cornelia Naguit verifying that the income subject to CWTs was duly declared.

Detailed proof of the truthfulness of each and every item in the income tax return is not required because it is the Commissioner's duty to examine the taxpayer's returns and assess deficiency taxes, if any.

The Court in Division applied in this case quantum of evidence much more stringent than just mere preponderance of evidence.

In essence, GADC points that it either properly declared the income related to its refund claim forming part of its taxable income per return, or since no income was earned, it did not declare the same in its income tax return.

This Court is not persuaded.

Instead of presenting schedules, GADC should have submitted source documents of the transactions giving rise to CWTs showing that there were clerical errors in the entries of CWT certificates. Even if it has source documents of the transaction clarifying the existence of errors in the CWT certificates, GADC can no longer proffer them at this stage and prove that it is the payee/income recipient. The offer of evidence is imperative because it is the duty of the court to rest its findings of fact and its judgment only and strictly upon the evidence offered by the parties. Otherwise, document not offered is merely a scrap of paper bereft of probative weight. Mere identification of documents and the markings thereof as exhibits do not confer any evidentiary weight unless formally offered.[13]

Based on the findings of the Division, out of the P68,446,803.00 representing 2002 CWTs declared per income tax return, the amount of P62,147,443.64 are covered by valid CWT certificates and the corresponding income declared in its income tax return.[14]

THE LAW DOES NOT REQUIRE SUBMISSION OF QUARTERLY INCOME TAX RETURNS OF THE SUCCEEDING YEAR

[13] *Heirs of the Deceased Carmen Cruz-Zamora vs. Multiwood International*, Inc. G.R. No. 146428, January 19, 2009, 576 SCRA 137 & 145.
[14] Rollo, C.T.A. EB Case No. 465, pp. 49 & 58.

The Commissioner asserts that the non-presentation of GADC's 2003 quarterly income tax returns is fatal. Without such returns, it cannot be proven with reasonable certainty that GADC's 2002 excess tax credits were not carried-over and applied against its 2003 income tax liabilities under Section 76 of the 1997 NIRC.

According to the Commissioner, although in its 2003 annual income tax return, GADC did not indicate any amount of prior year's excess credit, this Court cannot ascertain on whether it had already exercised the irrevocable option to carry over the 2002 excess tax credits. If GADC did carry over its 2002 excess tax credits to the succeeding year, it may no longer apply for refund of its alleged unutilized creditable withholding taxes for the calendar year 2002 since such option is irrevocable in accordance with the law. GADC's chosen option to carry-over or apply as tax credit as reflected in its 2003 quarterly income tax returns cannot be modified in its 2003 final adjustment return. Otherwise, Section 76 of the 1997 NIRC would be rendered ineffectual. This also explains why the presentation of quarterly income tax returns is crucial. GADC may have carried over its 2002 unutilized CWTs as indicated in its quarterly income tax returns for calendar year 2003, and it may have amended said returns whereby such unutilized CWTs are no longer reflected therein; thus, it follows that its 2003 annual income tax return will likewise not show any amount of prior year's excess credit. This doubt could have been avoided had GADC presented its 2003 quarterly income tax returns.

GADC on the other hand, argues that its 2003 annual income tax return sufficiently proves that it did not carry over and apply its excess withholding tax credits for calendar year 2002 to the succeeding period. The annual income tax return or final adjustment return is the summation of all the taxpayer's income tax payments/tax credits and total tax liability for the four quarters of the current year.

Pursuant to Section 76 of the 1997 NIRC, GADC reported all of its withholding tax credits for the four quarters of calendar year 2003 in its 2003 annual income tax return. The carry over of "prior year's excess credits, if any, would have been shown in Line 27A of GADC's annual income tax return for calendar year 2003. The Court in Division correctly concluded that as indicated in GADC's 2003 annual income tax return, the excess tax credits for calendar year 2002 were not carried over to calendar year 2003.

The presentation of GADC's quarterly income tax returns for the first, second and third quarters of calendar year 2003 is not a legal requisite in the refund claim of its excess CWTs for calendar year 2002.

Clearly, the Commissioner has failed to adduce any evidence to substantiate his argument that GADC's excess withholding tax credits for calendar year 2002 were actually carried over and applied against its income tax liabilities for the first, second and third quarters of calendar year 2003.

This Court disagrees with the Commissioner's contention that presentation of quarterly income tax returns for the succeeding year is vital in refund claims of excess CWTs.

Nowhere is it required in Section 76 of the 1997 NIRC that income tax returns for the subsequent years are necessary to prove refund of excess creditable withholding taxes. In the case at bar, although GADC presented its 2003 annual income tax return, the submission of such document, including its 2003 quarterly income tax returns is not required as shown in recent Supreme Court Decisions in the cases of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*[15]; *State Land Investment Corporation vs. Commissioner of Internal Revenue*[16] *and Commissioner of Internal Revenue vs. PERF Realty Corporation*[17].

In the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,*[18] the Supreme Court explained the reason why under Section 76 of the 1997 NIRC, absence of final adjustment return for the succeeding year is not fatal to establish refund of claimant's excess creditable withholding taxes, reading:

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[15] G.R. Nos. 156637/162004, December 14, 2005, 477 SCRA 761 & 773.
[16] G.R. No. 171956, January 18, 2008, 542 SCRA 114 & 123.
[17] G.R. No. 163345, July 4, 2008, 557 SCRA 165, 169, 170, 176 & 177.
[18] Supra note 14, pp. 761 & 773.

> **Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.**
>
> First, **Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* – not the succeeding – taxable year.** Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR.[19] (Emphasis supplied.)

Citing the *Philam Asset Management* case, the Supreme Court made a similar ruling in the case of *State Land Investment Corporation vs. Commissioner of Internal Revenue* [20] attesting as unnecessary the presentation of the final adjustment return for the subsequent year as follows:

> As previously mentioned, after paying P4,187,523.00 as income tax due in 1998, there remained an unutilized tax credit of P9,742,270.51. It was not necessary on the part of petitioner to file with the BIR its income tax return for 1999. In *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, we held that the Tax Code merely **requires the filing of the final adjustment return for the preceding - not the succeeding - taxable year.** Indeed, any refundable amount indicated therein corresponding to the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. Requiring that the income tax return or the final adjustment return of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.[21]

It is futile to further require the claimant to present income tax returns of the succeeding year when there is compliance with the tax

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[19] *Ibid.*
[20] Supra note 15, pp. 114 & 123.
[21] *Ibid.*

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refund requisites in accordance with the case of *Citibank N.A. vs. Court of Appeals*[22], supporting the refund claim of P49,921,610.64. The presentation of subsequent income tax returns is a mere superfluity as declared by the Supreme Court in the case of *Commissioner of Internal Revenue vs. PERF Realty Corporation, viz*[23]:

> The CTA, citing Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals, determined the requisites for a claim for refund, thus:
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> "1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue 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."
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> xxx xxx xxx
>
> Further, **We sustain the CA that there is no need to rule on the issue of the admissibility of the 1998 ITR since the CTA ruled that PERF already complied with the requisites of applying for a tax refund. The verification process is not incumbent on PERF; it is the duty of the CIR to verify whether or not PERF had carried over the 1997 excess income taxes**. xxx xxx xxx.[24] (Emphasis supplied.)

In view of the foregoing, there is no cogent reason for this Court to further require GADC to submit subsequent quarterly income tax returns, relative to the refund claim of its excess CWTs for calendar year 2002.

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[22] G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[23] Supra note 16, pp. 165, 169, 170, 176 & 177.
[24] *Ibid.*

WHEREFORE, premises considered, GADC and the Commissioner's Petitions for Review are hereby **DISMISSED**. The assailed Decision dated October 15, 2008 and the Resolution dated February 6, 2009 are **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

(With Dissenting Opinion)
ERNESTO D. ACOSTA
Presiding Justice

(Concurs with the Dissenting Opinion of Presiding Justice Acosta)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(Concurs with the Dissenting Opinion of Presiding Justice Acosta)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ERNESTO D. ACOSTA
Presiding Justice