REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED INTERNATIONAL PICTURES AB,
Petitioner,

C.T.A. CASE NO. 7244

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 12 2007; 9:00AM

x - x

DECISION

CASANOVA, C., J.:

This is a Petition for Review seeking a refund or for the issuance of a Tax Credit Certificate ("TCC") in the amount of P4,898,955.00 allegedly representing unutilized excess creditable withholding taxes ("CWT") for the taxable year 2003.

Petitioner is the Philippine branch of United International Pictures AB, a corporation duly organized and existing under the laws of Sweden and licensed to engage in business in the Philippines, with office address at the 9th Floor of Pacific

Star Builiding, Makati Avenue, Salcedo Village, Makati City.[1] It is primarily engaged in the business of acquiring and leasing motion pictures and other activities compatible therewith.[2]

Respondent is the duly appointed Commissioner of International Revenue with authority to act as such, including, among others, the power to decide, approve and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. His office address is located at the BIR National Building, Diliman, Quezon City.[3]

On March 1, 2000, the petitioner entered into a Subdistribution Agreement[4] ("SA") with Viva Productions, Inc. ("VIVA") for the exclusive license (as of June 20, 2000) to exhibit and distribute in the Philippines feature motion pictures and their related trailers as may be designated by the petitioner. Under the SA, VIVA is entitled to deduct and retain as its distribution fee an amount equal to 6% of gross receipts from film rentals in respect of each picture generating gross receipts of P6 million or less, or 4% in respect of each picture generating gross receipts in excess of P6 million.[5]

According to the SA, any withholding, income or other similar tax imposed on any amount required to be paid by VIVA to the petitioner, VIVA shall deduct the sum of such tax from the payment and pay it to the competent taxing authority.[6]

On April 15, 2004, petitioner filed its Annual Income Tax Return ("ITR") for the year ended December 31, 2003 with the following information:[7]

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[1] *Joint Stipulation of Facts ("JSF"), Rollo, pp.54 -57, duly approved by this Court in a Resolution dated August 12, 2005, Rollo, p. 58.*
[2] *Exhibit B-2, Notes to Financial Statements, Rollo. p. 82.*
[3] *Paragraph 2 of JSF, Ibid.*
[4] *Exhibit I, Rollo. pp. 100-119.*
[5] *Exhibit B-4, Notes to Financial Statements, Rollo. p. 86*
[6] *Paragraph 17 of Exhibit I, Rollo. p. 111*
[7] *Exhibit A, Rollo. p.73-75 , Paragraph 3 of JSF, Ibid.*

Sales/Revenues/Receipts/Fees		**P 169,242,436.00**
Less:	Cost of Sales/Services	135,377,819.00
Gross Income from Operations		P 33,864,617.00
Add:	Non-operating and Other Income	419,152.00
Total Gross Income		P 34,283,769.00
Less:	Deductions	23,014,510.00
Taxable Income		P 11,269,259.00
Tax Rate		32%
Income Tax Due		**P 3,606,163.00**
Less:	Tax Credits/Payments	
	Prior Year's Excess Credits	P **- 0 -**
	Tax Payments for First Three Quarters	- 0 -
	Creditable Tax Withheld for the First Three Quarters	7,626,268.00
	Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	878,850.00
	Total Tax Credits/Payments	**P 8,505,118.00**
Tax Overpayment		**P 4,898,955.00**

On line 30 of the return, petitioner indicated its option to refund the excess creditable withholding tax for the year 2003 when it marked **"X"** the option **"To be refunded".**[8]

On April 15, 2005, petitioner filed its ITR for the year ended December 31, 2004 wherein it reported the following figures on the return:[9]

Sales/Revenues/Receipts/Fees		P 15,493,682.00
Less:	Cost of Sales/Services	10,697,294.00
Gross Income from Operations		P 4,796,388.00
Add:	Non-operating and Other Income	759,037.00
Total Gross Income		P 5,555,425.00
Less:	Deductions	4,830,212.00
Taxable Income		P 725,213.00
Tax Rate		32%
Income Tax Due		**P 232,068.00**
Less:	Tax Credits/Payments	
	Prior Year's Excess Credits	P **- 0 -**
	Tax Payments for First Three Quarters	- 0 -
	Creditable Tax Withheld for the First Three Quarters	636,108.00
	Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	-0- -
	Total Tax Credits/Payments	P 636,108.00
Tax Overpayment		**P 404,040.00**

[8] *Exhibit A-8, Rollo. p.73.*
[9] *Exhibit G, Rollo pp. 94-96, Paragraph 4 of JSF, Ibid.*

On line 30 of the return, petitioner indicated its option to carry over to the following year/quarter its excess creditable withholding tax for the year 2004 when it marked **"X"** the option **"To be carried over as tax credit for next year/quarter".**[10]

On March 31, 2005, petitioner filed its administrative application for refund with the Bureau of Internal Revenue ("BIR") – Revenue District Office No. 43 in the amount of P4,898,955.00 representing petitioner's excess creditable withholding taxes as of December 31, 2003.[11]

The inaction of the BIR on its claim for refund prompted the petitioner to institute the present Petition for Review before this Court on May 06, 2005.[12]

In his Answer filed on June 14, 2005, the Commissioner of Internal Revenue alleged, *inter-alia*, that the claim for refund is still under examination; the burden of proof is upon the petitioner to prove that it is entitled to the claim for refund; the grant of a claim for refund is tantamount to an exemption from taxation which is construed strictly against the claimant and in favor of the taxing authority; the taxes sought to be refunded were paid in accordance with law; and the burden of proof to the contrary is upon the petitioner-claimant to show with clear and unambiguous provision of law supporting the same.[13]

On November 22, 2006, the case was submitted for decision sans the memorandum of the respondent.[14]

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[10] *Line 30 of Exhibit G, Paragraph 4 of JSF, Ibid.*
[11] *Exhibit H, Rollo pp. 97-99, Paragraph 5 of JSF, Ibid.*
[12] *Rollo, p. 1*
[13] *Rollo pp. 39-41*
[14] *Rollo, p. 159*

The parties jointly stipulated that the issue to be resolved by this Court will be the following, to quote:

> "Whether petitioner is entitled to be refunded its excess creditable withholding taxes as of calendar year ended December 31, 2003 in the amount of P4, 898,955.00 by showing that—
>
> a) The creditable withholding taxes amounting to P8,505,118.00 for the year 2003 are duly supported by Certificates of Creditable Tax Withheld at Source;
>
> b) 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 calendar year December 31, 2003;
>
> c) Petitioner had shown that it did not carry over its unutilized creditable withholding taxes as of calendar year ended December 31, 2003 to the succeeding taxable year 2004.
>
> d) Petitioner had duly filed both the administrative and judicial claims for refund within the two-year prescriptive period provided under Sections 204 and 229 of the Tax Code, as amended."[15]

There are two basic issues that are to be resolved by Us, namely: (1) Whether or not petitioner has excess/unutilized creditable withholding tax for the calendar year ending December 31, 2003; and (2) whether or not petitioner is entitled for the refund or for the issuance of a TCC in its favor for its alleged excess creditable withholding tax and if legally entitled, whether or not the same is properly substantiated.

We proceed to resolve the first issue.

It is clear from the evidence presented that petitioner has excess/overpayment of creditable withholding tax for the calendar year ending December 31, 2003. Based on its 2003 ITR, petitioner was liable only for income tax amounting to P3,606,163.00 after applying the tax rate of 32% to its taxable income of P11,269,259.00. After deducting its income taxes withheld, in the amount of P8,505,118.00 of that year from the income tax due of P3,606,163.00, as dictated under the "Creditable Withholding Tax System" which considers income taxes withheld by the payor as creditable against the income taxes for that year, petitioner has excess/overpayment of creditable withholding tax for the calendar year ending December 31, 2003 of P4,898,955.00, detailed as follows:[16]

Taxable Income		P 11,269,259.00
Tax Rate		32%
Income Tax Due		**P 3,606,163.00**
Less:	Tax Credits/Payments	
	Prior Year's Excess Credits	P **- 0 -**
	Tax Payments for First Three Quarters	- 0 -
	Creditable Tax Withheld for the First Three Quarters	7,626,268.00
	Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	878,850.00
	Total Tax Credits/Payments	**P 8,505,118.00**
Tax Overpayment		**P 4,898,955.00**

Thus, petitioner has proven that it has excess/unutilized creditable withholding tax for the calendar year ending December 31, 2003. The issue of the legal justification for petitioner's refund or the issuance in its favor of a TCC will be discussed next.

Petitioner anchored its claim for its refund or the issuance in its favor of a TCC on Section 76 of the 1997 National Internal Revenue Code ("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:

[15] *Stipulation of Issues, JSF, Rollo. p. 56*
[16] *Exhibits A, A-5 and A-7, Rollo. p. 73.*

> **(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 therefore.**[17]

The law decrees that the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or claimed as a tax credit or carried over and applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. These remedies are to be availed of in the alternative and not cumulatively.

A perusal of petitioner's 2003 ITR[18] unmistakably shows that petitioner chose the option to refund as evidenced by an "X" mark in the box corresponding to the phrase "To be refunded". Furthermore, in its ITR for the succeeding year 2004[19], petitioner did not indicate any amount of prior year's excess credit[20], further proving the fact that it chose only one option, that is, to refund the excess amount paid rather than to carry-over. Thus, the amount of P4,898,955.00 may be a proper subject of a claim for refund under Section 76 of the 1997 NIRC, as amended.

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[17] *Underscoring supplied*
[18] *Exhibit A, Ibid.*
[19] *Exhibit G, Rollo. pp. 94-96*

Petitioner's entitlement to a refund, however, will still depend on its compliance with the three requirements prescribed under Section 2.58.3 of Revenue Regulations No. 2-98 (Withholding Tax Regulations), as amended, namely:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;

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 the income upon which the taxes were withheld was included in the return of the recipient.[21]

As to the first requirement, it is clear from the records that petitioner has complied with the same.

Long settled is the rule that the reckoning period of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual income tax return.[22] Petitioner's claim covers the calendar year 2003 for which it filed its ITR on April 15, 2004. [23] Counting the two-year prescriptive period from the said date of filing of its ITR, petitioner had until April 15, 2006 within which to file its claim for refund, both in administrative and judicial levels. Since petitioner's 2003 ITR already constitutes a formal application for refund when it had indicated in its ITR its option to refund the excess taxes,[24] petitioner's

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[20] *Exhibit G-1, Rollo. p. 94.*
[21] *Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963.*
[22] *ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957 (1991); Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184 (1992).*
[23] *Paragraph 3, JSF. Ibid.*
[24] *SECTION 2.58.3 Claim for Tax Credit or Refund.—*
(C) Excess Credits.— x x x

administrative claim is therefore considered filed on April 15, 2004, the date when petitioner filed its 2003 ITR. The Petition for Review, on the other hand, was filed with this Court on May 6, 2005. Hence, both dates of filing fell within the two-year prescriptive period.

Petitioner also satisfied the second requirement. To prove the fact of withholding, petitioner presented the Certificates of Creditable Tax Withheld at Source ("BIR Form No. 2307") issued by VIVA Productions, Inc. for the taxable year 2003 reflecting creditable withholding taxes in the amount of P8,505,117.52, which is lower by P.48[25] than the reported amount in the 2003 ITR of P8,505,118.00, detailed as follows:

Exhibit	Period Covered	Payor's Name	Income Payment	Tax Withheld
C	01-01-2003 to 03-31-2003	VIVA Productions, Inc.	P 35,975,102.40	P 1,798,755.12
D	03-01-2003 to 06-30-2003	VIVA Productions, Inc.	42,236,054.60	2,111,802.73
E	07-01-2003 to 09-30-2003	VIVA Productions, Inc.	74,314,200.40	3,715,710.02
F	10-01-2003 to 12-31-2003	VIVA Productions, Inc.	17,576,993.00	878,849.65
		TOTAL	P 170,102,350.40	P 8,505,117.52

As for the third requirement, the gross revenues reported in petitioner's 2003 ITR was P169,242,436.00, which is lower by P859,914.40 as compared with the total income payments reflected in its Certificates of Creditable Tax Withheld presented amounting to P170,102,350.40 as shown above.

To explain the difference, petitioner stated that the amount of P859,914.40 "pertains to advertising sales ("adsales") consisting of advertising materials shipped

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(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 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. (Emphasis supplied)*

[25] *Amount is too small and therefore immaterial.*

from petitioner's Head Office in Sweden to be distributed to cinemas exhibiting its motion pictures throughout the Philippines. The local cinema owners reimbursed petitioner the cost of "adsales" without mark up. As consistently adopted on a yearly basis by its external auditor SyCip Gorres Velayo and Company, the "adsales" do not form part of its gross receipts nor was it reported as deductible expenses in its annual income tax return and audited financial statements. However, since payments by cinema owners include reimbursement of "adsales" at cost, the gross receipts inclusive of the "adsales" were [was] subjected to withholding tax. Thus in its calendar year [CY] 2003 annual income tax return, petitioner's gross receipts is lower by an amount equal to the "adsales" of P859,914.27 when compared to its four (4) withholding tax certificates."[26]

The above assertion was supported by a notarized Certification[27] of petitioner's witness, Ms. Irene Jose.

However, this Court is not convinced with the above reasons given by petitioner in its compliance with the third requirement. Firstly, there was no specific mention in the Notes to Financial Statement in the Audited Financial Statement of their external auditor regarding the accounting treatment of "adsales" amounting to P859,914.27. Secondly, after a perusal of the Certification of Ms. Jose, there was no concrete evidence presented on the reimbursements of the "adsales". What was only presented is a monthly breakdown of the amount with no supporting documents/evidence annexed therewith proving actual reimbursements.

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[26] *Page 10 of Petitioner's Memorandum, submitted October 30, 2006, Rollo. pp. 145-157*
[27] *Rollo, pp. 120-122*

To quote again the third requirement,

> "3. That the income upon which the taxes were withheld was included in the return of the recipient."

Applying the above requirement here, the income upon which the taxes were withheld amounted to P170,102,350.40 however only P169,242,436.00 was included in the return of the recipient-petitioner. Therefore, of the P8,505,118.00 total amount of taxes withheld for the year 2003, only a portion of such will be allowed to be refunded because the whole P8,505,118.00 corresponds to P170,102,350.40. Thus, only the portion that corresponds to P169,242,436.00, the income reflected in the 2003, will be allowed as available for refund.

Hence, applying pro-rata, the amount of income included in the return (P169,242,436.00) over the amount of income reflected in the Certificates of Creditable Tax Withheld (P170,102,350.40) against the total taxes withheld (P8,505,118.00), the product will be P8,462,122.28 and after subtracting the amount of income tax due of P3,606,163.00 to the latter, the amount available for refund will only be P4,855,959.28, computed as follows:

			Taxes Withheld	Taxes Withheld Available for Refund
Amount of Income Reflected in the 2003 ITR	P169,242,436.00			
Amount of Income Relfected in the Certificates	P170,102,350.40	x	8,505,118.00	P8,462,122.28

Taxes Withheld Available for Refund	P8,462,122.28
Less: Income Tax Due	3,606,163.00
Tax Available for Refund	**P4,855,959.28**

Therefore, petitioner complied with the substantiation requirements with respect to its claim of excess/unutilized tax credits for the CY 2003 in the reduced amount of P4,855,959.28 as shown above. Considering that petitioner's chosen option, as indicated in its 2003 income tax return is "To be refunded", and, its claim with the BIR filed on March 31, 2005, was to refund its excess creditable withholding taxes,[28] the Court grants petitioner's claim for refund.

WHEREFORE, premises considered, the Petition is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** in favor of the petitioner the reduced amount of **Four Million Eight Hundred Fifty Five Thousand Nine Hundred Fifty Nine and 28/100 pesos** (P4,855,959.28) representing excess/unutilized creditable withholding taxes for taxable year 2003.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

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[28] *Exhibit H, Rollo. pp. 97-99*

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division