REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA LIFE ASSURANCE, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5631

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 11 2000

x - x

DECISION

This is a judicial claim for refund of the amount of SEVEN MILLION FOUR HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED FOURTEEN PESOS (P7,458,414.00) allegedly representing unutilized excess creditable taxes withheld at source covering the year 1995.

The antecedent facts of this case are undisputed.

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

On April 15, 1996, Petitioner filed with the Bureau of Internal Revenue its Corporation Annual Income Tax Return for the calendar year ended December 31, 1995, reflecting an overpaid income tax in the amount of P13,989,801.00, computed as follows:

Gross Income		P766,919,483.00
Less: Deductions		768,679,726.00
Net Loss		(P 1,760,243.00)
Income Tax Payable		NIL
Less: Tax Credits/Payments	P 6,531,387.00	
Creditable Tax Withheld	7,458,414.00	13,989,801.00
Tax Refundable		(P 13,989,801.00)
		(Exhibit "A")

Of the aforesaid amount, P7,458,414.00 allegedly represents Petitioner's creditable tax withheld on its sale of assets and rental income for the taxable year 1995 which were not utilized or applied against any tax liability, since it allegedly incurred losses in the amount of P1,760,243.00 in the said year. Petitioner carried over the said amount to the succeeding year as prior year's excess credit.

In 1996, Petitioner allegedly suffered a net loss again in the amount of P43,052,197.00, thus the amount of P7,458,414.00 as creditable tax withheld remained unutilized as of 1996. (Exhibit "C")

On December 3, 1997, Petitioner filed an administrative claim for refund with the Bureau of Internal Revenue involving the aforesaid amount of P7,458,414.00 representing its 1995 unutilized creditable taxes withheld at source (Exh. B). Since respondent has not acted upon on its letter-request for refund, Petitioner elevated its case before this Court on April 15, 1998.

In his Answer to the Petition for Review, the Respondent interposed the following Special and Affirmative Defenses, to wit:

> 5. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;

6. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

7. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended;

8. In an action for tax refund, the burden of proof is upon the taxpayer to prove that he is entitled to the refund and failure to sustain the same is fatal to the action for refund.

In a Resolution promulgated on August 10, 1999, this case was deemed submitted for decision sans the memorandum of the Respondent.

The sole issue submitted for Our consideration is whether or not Petitioner was able to present sufficient evidence to support its claim for refund in the amount of P7,458,414.00.

In its Memorandum, Petitioner relied on the provisions of Section 76 and Section 58 of the Tax Reform Act of 1997 which, for the proper disposition of this case, are reproduced hereunder:

"**SECTION 76.** ***Fiscal 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:

x x x

"(C) Be credited or refunded with the excess amount paid, as the case may be.

x x x"

"SECTION 58. *Returns and payments of Taxes Withheld at Source.*
x x x

"(D) *Income of Recipient.* - Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.

"All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."

Likewise, to support its stance, Petitioner cited the thrust of Our ruling in the case of **Citytrust Finance Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4134 and 4046, dated November 11, 1991 and February 24, 1993, respectively)** where We laid down the requirements which a taxpayer must be able to comply with before it may be granted a refund of overpaid creditable withholding tax, to wit:

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 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.

After a careful perusal of all the evidence at hand, including the testimony of Petitioner's witnesses, and after considering carefully Respondent's failure to rebut Petitioner's evidence, thereby implying that it has admitted the truth of the contents of the exhibits, specifically the returns and the certificates of tax withheld, this Court finds for the Petitioner.

As correctly pointed out by the Petitioner, the grant of refund of overpaid creditable tax withheld at source is dependent upon compliance by the taxpayer with the following requirements, to wit:

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 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.

The Supreme Court has affirmed the aforementioned requirements in the case entitled Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459. Following the ruling laid down in this case, Exhibit "A", the final adjustment return for the year ending December 31, 1995 and Exhibit "C", the final adjustment return for the year ending December 31, 1996, show net loss operation on the part of the Petitioner in the amount of P1,760,243 and P43,052,197, respectively. Therefore, for the said years Petitioner incurred no income tax liabilities and that Petitioner was not able to utilize its excess creditable income taxes during the previous year on account of the net loss suffered in taxable year 1996. These facts remain undisputed by the Respondent. In fact, the claim for refund was submitted for decision by the Respondent's counsel without presenting any contrary evidence for failure on the part of the examining group of the BIR to investigate the said claim.

Thus, We now discuss Petitioner's compliance with the following requirements *ad seriatim.*

As regards the first requirement, the Petitioner has complied by filing its claim for refund with the Bureau of Internal Revenue on December 3, 1997 and elevated its case to this Court, by reason of the Respondent's inaction, on April 15, 1998, both dates of filing falling within the two year period from April 15, 1996, the latter date when Petitioner filed its 1995 annual income tax return, which is in compliance with Section 229 of the Tax Code quoted hereunder:

> "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."
>
> 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 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."

With regard to the second requirement, Petitioner declared in its 1995 income tax return its gain on sale of real estate of P142,331,443.00 and rental income of P28,462,093.00 from which the creditable income taxes of P6,058,496.00 and P1,399,918.00, respectively, were withheld as part of its gross income of P265,719,369.00 (Exh. A). Thus, Petitioner complied with the requirement that the income upon which the taxes were withheld must be included in the return of the recipient.

With respect of the third requisite, while We agree that Petitioner was able to prove the fact of withholding by presenting Certificates of Tax Withheld issued by its withholding agents showing the amount paid and the amount of tax withheld therefrom, this Court is not inclined to grant the entire amount prayed for inasmuch as only the amount of P5,553,095.22 was properly documented . In the same breath, we disallowed Exhibit A-26 (page 78, CTA records) representing Monthly Remittance of Income Taxes Withheld amounting to P 1,408,245. 90 from the summary which is not the proper BIR Form required per Sections 6 and 10 of Revenue Regulations No. 6-85 which provides, thus:

> "**Section 6.** – ***Statement of income payments made and taxes withheld. -*** Every withholding agent required to deduct and withhold taxes under these Regulations shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year a written statement (BIR Form 1743.1) showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom. xxx"

> "**Section 10.** – ***Claims for tax credit or refund.*** – Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income

payment received was declared as part of the gross income and the fact of withholding is established by a copy of the statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom."

It appearing therefore that Exhibit A-26 of the Petitioner pertains to income taxes withheld and remitted to the BIR by it as withholding agent/payor of income payments made to other corporate entities and not income taxes withheld from Petitioner's income which is manifestly not in pursuance to the mandate of the aforequoted provisions of law, We are constrained to exclude the same in the computation of the refundable amount to which the Petitioner is entitled to, to wit:

Exh.	Withholding Agent	Income Payment	Income Tax Withheld
A-1	Ayala Agricultural Devt. Corp.	103,305.60	5,165.28
A-2	Aromin, Sy & Associates, Inc.	717,120.00	35,856.00
A-3	Del Monte Fresh Prod. (Phils.), Inc.	259,995.20	12,999.76
A-4	Del Monte Fresh Prod. (Phils.), Inc.	194,996.40	9,749.82
A-5	Del Monte Fresh Prod. (Phils.), Inc.	324,994.00	16,249.70
A-6	Cartasano Caramutan Padlan & Co.	14,750.00	737.50
A-7	Davao Exotic Banana Corporation	56,210.00	2,810.50
A-8	Davao Multi Maritime & Mktg. Corp.	21,560.00	1,078.00
A-9	Davao Multi Maritime & Mktg. Corp.	22,344.00	1,117.20
A-10	Davao Multi Maritime & Mktg. Corp.	22,344.00	1,117.20
A-11	Davao Multi Maritime & Mktg. Corp.	22,344.00	1,117.20
A-12	DHL Philippines Corporation	162,181.60	8,109.08
A-13	Dr. Joseph P. Macasiray	194,400.00	9,720.00
A-14	Edinet Philippines, Inc.	803,887.10	40,194.38
A-15	Edinet Philippines, Inc.	862,801.55	43,140.12
A-16	Empire Sales Philippines, Corp.	194,400.00	9,720.00
A-17	E. B. Loredo Realty Corp.	180,225.00	9,011.25
A-18	E. de Leon Enterprises, Inc.	90,000.00	4,500.00
A-19	Jehu Trading Corporation	30,720.00	1,537.33
A-20	Makati Rotary Club Foundation	185,085.00	9,254.25
A-21	Murray Management Corp.	388,800.00	19,440.00
A-22	Management Asso. of the Phils.	486,000.00	24,300.00
A-23	United Janitorial & Manpower Svcs.	486,000.00	24,300.00

A-24	Ray Burton Development Corp.	93,005,000.00	4,650,250.00
A-25	Ayala Systems Technology, Inc.	100,339.00	5,016.95
A-27	Ayala Systems Technology, Inc.	3,175,105.60	158,755.28
A-28	Borden Int'l Phils., Inc.	201,675.96	10,083.80
A-29	Borden Int'l Phils., Inc.	192,375.00	9,618.75
A-30	Borden Int'l Phils., Inc.	9,301.00	465.65
A-31	Borden Int'l Phils., Inc.	192,375.00	9,618.75
A-32	Borden Int'l Phils., Inc.	192,375.00	9,618.75
A-33	Universal Reinsurance Corp.	2,599,422.00	129,971.12
A-34	Ayala Health Care, Inc.	2,511,900.00	125,595.00
A-35	BPI – Ayala West	1,103,830.00	55,191.50
A-36	Steven J. Leach, Jr. & Asso., Inc.		97,685.10
	T O T A L:	109,108,162.01	5,553,095.22

As to the remaining amount not properly substantiated, the same is also disallowed pursuant to the aforequoted Revenue Regulations No. 6-85.

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate in the amount of FIVE MILLION FIVE HUNDRED FIFTY THREE THOUSAND NINETY FIVE AND 22/100 PESOS (P5,553,095.22) in favor of the Petitioner representing unutilized excess creditable taxes withheld at source for the year 1995.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that 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