Lit

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPLEAS
QUEZON CITY

AYALA LIFE ASSURANCE, INC.,
Petitioner,

- versus -

CTA Case NO. 5793

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 09 2001

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DECISION

This is a Petition for Review seeking for the refund of the amount of SEVENTEEN MILLION ONE HUNDRED FIFTY-SEVEN THOUSAND FOUR HUNDRED EIGHTY-NINE PESOS (P 17,157,489.00) allegedly representing the excess and unutilized creditable withholding taxes withheld at source for the calendar year ended December 31, 1996.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, authorized to engage in life insurance business with principal place of business located at the 9th Floor, Ayala Life Bldg., Ayala Avenue, Makati City.[1]

Records show that on April 23, 1997, Petitioner filed with the Bureau of Internal Revenue (through its BIR-Accredited Bank of the Philippine Islands, Makati Branch-001) its Corporation Annual Income Tax Return *(Exhibit A)* for the calendar year ended 31

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[1] *Joint Stipulation of Facts, item No.1, CTA docket p.36*

December 1996 reflecting the amount of P 24,615,903.00 as excess and/or unutilized creditable income tax withheld at source, computed as follows:

Gross Income	P 1,002,452,399.00
Less: Deductions	1,045,504,596.00
Taxable Income	(43,052,197.00)
Tax Due	N I L
Less: Tax Credits/Payments	24,615,903.00
Alleged Refundable Amount	P (24,615,903.00)

The breakdown of the aggregate tax credits/payments of P24,615,903.00 as above shown allegedly consists of the following items: (a) Prior Year's Excess Credit of P7,458,414.00; and (b) creditable tax withheld for the calendar year 1996 amounting to P17,157,489.00. The amount of P17,157,489.00 representing a portion of the total refundable excess creditable withholding taxes from income payments to the Petitioner during the calendar year 1996 comprising of gain from sale of real estate and rental income was carried over to the succeeding year 1997 as prior year's excess credit. However, since Petitioner incurred a net loss during the first quarter of calendar year 1997 *(Exhibit C)* and for the entire calendar year ended December 31, 1997 *(Exhibit D)*, said amount remained unapplied and unutilized.

True enough, for the first quarter of 1997, Petitioner incurred a net loss of P64,676,944.55 and an excess creditable withholding tax of P1,483,259.87 as evidenced by Petitioner's Quarterly Income Tax Return for the 1st Quarter of 1997 *(Exhibit C)* which was filed with the BIR on May 29, 1997. For the entire calendar year ended December 31, 1997, Petitioner likewise incurred a net loss in its business operations amounting to P1,735,207.00 and an excess creditable withholding tax of P31,118,917.00.

These amounts are clearly reflected in Petitioner's Corporation Annual Income Tax Return *(Exhibit D)* for the calendar year ended December 31, 1997, filed on April 15,1998. Said 1997 Annual Income Tax return reflected the following amounts:

Gross Income		P1,167,301,353.00
Less: Deductions		1,169,036,560.00
Taxable Income (Net Loss)		(1,735,207.00)
Tax Due		N I L
Less: Tax Credits/Payments		
(a) Prior Years Excess Credit	24,615,903.00	
(b) Quarterly Payments	0.00	
(c) Creditable Tax withheld	6,503,014.00	P 31,118,917.00
Tax Payable/Overpayment		(P 31,118,917.00)

As can be seen from the foregoing, the amount of P 24,615,903.00 representing prior years excess credit (P7,458,414.00 for 1995 and P 17,157,489 for 1996) was neither utilized nor applied in the year 1997 because of the Petitioner's net-loss position in its business operations.

On December 6, 1997 (should be December 3 as per Exhibit "B"), Petitioner filed with the BIR, Revenue Region No. 8, a letter request for tax credit/refund of the amount of P 17,157,489.00 for unutilized withholding tax for taxable year 1996.[2]

As the Respondent undertook no action on Petitioner's administrative claim for refund, Petitioner elevated his cause of action to this Court on April 14, 1999 via Petition for Review in order not to be barred from seeking judicial recourse to claim said refund/ tax credit by reason of prescription.

For his part, Respondent, on July 1, 1999, filed an Answer and raised therewith the following Special and Affirmative Defense, thus:

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[2] *ibid., item No.6, CTA docket p.37*

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1. In an action for tax refund, Petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;

2. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. *(Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);*

3. Taxes are presumed to have been paid and collected in accordance with law.

In order to substantiate its claim for refund, Petitioner presented the following documentary evidence which have been duly admitted by this court in its Resolution dated July 7, 2000 and March 2, 2001, to wit:

Exhibit	Description
A, D	Petitioner's Corporate Annual Income Tax Returns for the calendar years ending December 31, 1996 and 1997
B	Letter-claim for refund to the BIR
C	Corporate Quarterly Income Tax Return for the 1st Quarter of Calendar Year 1997
E to Y	Various Certificates of Creditable Taxes Withheld at Source for Taxable Year 1996 issued by various withholding agents with Petitioner as payee
AA, CC, and DD	Various Monthly Remittance Returns of Income Taxes withheld for the months of September, October & July 1996
EE	Monthly Remittance Return of Income Taxes withheld for the year 1996
FF	Summary of Petitioner's exhibits regarding creditable taxes withheld at source in 1996 from rental and sale of real property
FF & GG	(Supplemental Evidence) Letter request to the Chief of the Revenue Accounting Division of BIR and the Certification

attesting that the collections from Petitioner were verified against the Tax Returns/ ATAPs batch Control Sheets on file with the Division

On the other hand, counsel for the Respondent opted not to present any controverting evidence but instead submitted its case based on the pleadings. The case was submitted for decision on July 20,2001, after the Petitioner presented its memorandum.

The lone issue to be resolved by this Court, as jointly stipulated by the parties is centered on WHETHER OR NOT PETITIONER IS ENTITLED TO A TAX REFUND OF THE AMOUNT OF P 17,157,489.00 FOR UNUTILIZED CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 1996.

Petitioner cites Section 69 of the old Tax Code (now Section 76 of the 1997 Tax Reform Act) as its legal basis for the claim for refund, which is hereunder quoted as follows:

> "**Section 69.** ***Final adjustment return.*** - Every corporation liable to tax under Section 24 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 excess tax still due; or
>
> (B) Be refunded 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 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."

We agree with the Petitioner that a refund or tax credit is in order. A perusal of the records would show that the Petitioner's creditable taxes for taxable year 1996 were not applied to the income tax liability of the subsequent year because Petitioner incurred a net operating loss during the taxable year 1997 *(Exhibit D)*. However, since we are dealing with the refund of unutilized creditable withholding taxes, this Court has laid down three basic requirements [in the following cases: **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**] hereunder enumerated as follows:

1. That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;
2. That the income upon which the taxes vere withheld were included as part of the gross income declared in the income tax return of the recipient;
3. That the fact of withholding is established by a copy of the statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

These requirements were affirmed by the Supreme Court in the landmark case of ***Citibank N.A. vs. Court of Appeals, Commissioner of Internal Revenue, G.R. No. 107434, dated October 10, 1997.***

After an examination of all the documents presented in evidence, this Court finds that Petitioner has substantially complied with the aforesaid requirements.

As to the first requirement, records reveal that Petitioner filed with the BIR its written claim for refund on December 3, 1997 and the Petition for Review on April 14,1999. Since the counting of the two-year period commences to run on April 23, 1997, the date when the final adjustment return for taxable year 1996 was filed ***(Commissioner of Internal Revenue vs. Asia Australia Ltd., G.R. No. L-85956, April 10,1989),*** clearly Petitioner's action was filed well within the two-year period provided by law.

As to whether or not Petitioner included the income from which the taxes were withheld in the gross income declared in its income tax return, We are convinced that Petitioner has complied with the second requirement. Petitioner's income was derived from the rental and sale of real properties. Based on the 1996 ITR, Petitioner declared the gain on sale of real estate, land and building amounting to P198,445,995.00 in which the amount of P14,192,117.00 has been withheld, and the rental income amounting to P30,394,168.00 in which the amount of P2,965,372.00 has been withheld by the lessees. The total creditable taxes withheld for the calendar year 1996 amounted to P17,157,489.00. However, Petitioner made a typographical error when it interchanged the two amounts of withholding taxes. This was explained by Petitioner's witness, Ms. Maria Carmela L. Toribio, during the hearing held on December 14, 1999, and We quote, thus:

Q: Were there any sources of income that were subjected to withholding tax, Madame Witness?

A: Yes.

Q: Can you please point them out to us if it is shown in Exhibit "A".

A: The income subject to withholding tax are shown in Schedule 3 of the Income Tax Return. These are the gain on sale of real estate, land and building of P198,445,995.00 with the corresponding tax withheld of P14,192,117.00; Rental Income of P30,394,168.00 with the corresponding tax withheld of P2,965,372.00. We just noted that there was slight typographical error in the Income Tax Return that the amount of Tax Withheld on the Rental Income was typed beside from "Income or Gain of Sale".

Q: Do you tell us that this tax withheld corresponding to gain on sale should instead be the tax withheld for the rental income?

A: Yes.

Q: And, the tax withheld of P14,192,117.00 should be typed beside and refers to the tax withheld on gain of sale.

A: Yes.

However, the taxes withheld in the amount of P32,809.25 from the Bank of the Philippine Islands (Exhibit H-2) representing Petitioner's income from professional (juridical) services of P656,185.00 were not reflected in Petitioner's 1996 annual income tax return. Only the taxes withheld from rental income and sale of real properties were declared in the 1996 income tax return, hence, this Court deemed it proper to disallow the creditable withholding taxes referring to professional (juridical) services.

Petitioner's submission of the various certificates of Creditable Income Tax Withheld at Source indicates compliance with the third requirement. Petitioner presented the various Certificates of Creditable Taxes Withheld at Source-BIR Form 1743-750 and the payors' Monthly Remittance Returns of Income Taxes Withheld – BIR Form 1743W (Exhibits E to Y, inclusive of sub-markings, AA, and CC to EE). However, from the abovementioned documents, the certificate of creditable tax withheld at source issued by Radio Communications of the Philippines (Exhibit W) should be disallowed because the certificate has no date. Moreover, a comparison of the taxes withheld from the sale of real properties as reflected in the 1996 annual income tax return amounting to P14,192,117.00 is less than the amount of taxes withheld reflected in the monthly remittance returns in the total amount of P15,789,217.50. Only the amount declared in the annual income tax return should be allowed.

Based on the foregoing, this Court recommends the granting of Petitioner's claim for refund in the reduced amount of P14,797,996.97 computed as follows:

CREDITABLE TAXES WITHHELD FROM RENTAL INCOME

WITHHOLDING AGENT	EXHIBIT	PERIOD COVERED	INCOME PAYMENT	TAX WITHHELD
AROMIN, SIY & ASSOC.	E	1996	P 1,520,395.00	P 76,019.74
AYALA BAIN INSURANCE	F	Jul-Sep 96	3,240.00	162.00
AYALA INSURANCE	G	Apr-Jun 96	72,900.00	3,645.00
BANK OF THE PHIL IS.	H	Nov 96	20,475.00	1,023.75
BANK OF THE PHIL IS.	H-1	1996	81,900.00	4,095.00
BORDEN INTL	I	Feb-96	10,422.20	521.11
BORDEN INTL	I-1	Jul-96	10,422.20	521.11
BORDEN INTL	I-2	May-96	10,422.20	521.11
BORDEN INTL	I-3	Jan-96	222,750.00	11,137.50
BORDEN INTL	I-4	Feb-96	222,750.00	11,137.50
BORDEN INTL	I-5	Mar-96	222,750.00	11,137.50
BORDEN INTL	I-6	Apr-96	222,750.00	11,137.50
BORDEN INTL	I-7	May-96	222,750.00	11,137.50
BORDEN INTL	I-8	Jun-96	222,750.00	11,138.00
BORDEN INTL	I-9	Jul-96	222,750.00	11,137.50
BORDEN INTL	I-10	Nov-96	222,750.00	11,137.50

CEBAP LENDING HOUSE	J	1996	84,000.00	4,200.00
DEL MONTE FRESH PRODUCE	K	Jan-Mar 96	194,996.40	9,749.82
DEL MONTE FRESH PRODUCE	K-1	Apr-Jun 96	194,996.40	9,749.82
DEL MONTE FRESH PRODUCE	K-2	Oct-Dec 96	194,996.40	9,749.82
DHL PHILIPPINES	L	Jan-Mar 96	44,180.00	2,209.00
DHL PHILIPPINES	L-1	Apr-Jun 96	45,825.00	2,291.25
EDINET PHILS	N	1996	1,725,605.30	86,280.24
EMPIRE SALES	O	1996	218,700.00	10,935.00
E.B. LOREDO REALTY	P	1996	217,728.00	10,886.40
GLOBE TELECOM	Q	1996	105,000.00	5,250.00
JRS BUSINESS CORP	R	Apr-Jun 96	115,500.00	5,775.00
JRS BUSINESS CORP	R-1	Jul-Sep 96	122,472.00	6,006.00
J.P. TOLENTINO	S	1996	416,666.25	20,833.31
LBC EXPRESS	T	1996	637,211.00	31,860.55
MAKATI ROTARY CLUB	U	1996	256,122.00	12,806.10
MANAGEMENT ASSOC.	V	1996	328,050.00	16,402.50
UNIVERSAL REINSURANCE	X	1996	3,158,965.86	157,948.29
UNITED JANITORIAL	Y	1996	546,750.00	27,337.55
Subtotal			P 12,119,941.21	P 605,879.97

ADD: CREDITABLE TAXES WITHHELD FROM SALES OF REAL PROPERTIES

WITHHOLDING AGENT	EXHIBIT	PERIOD COVERED	INCOME PAYMENT	TAX WITHHELD
AYALA LIFE ASSURANCE	AA	Sep-96	P 41,408,000.00	P 2,070,400.00
AYALA LIFE ASSURANCE	CC	Oct-96	18,092,000.00	904,600.00
AYALA LIFE ASSURANCE	DD	1996	13,850,000.00	692,500.00
AYALA LIFE ASSURANCE	EE	1996	161,622,900.00	12,121,717.50
Subtotal			P 234,972,900.00	P 15,789,217.50

Less: Undeclared creditable taxes withheld	P 1,597,100.50
Allowable creditable taxes withheld from sales of real properties	P 14,192,117.00
AMOUNT REFUNDABLE	P 14,797,996.97

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WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE in favor of the Petitioner in the reduced amount of FOURTEEN MILLION SEVEN HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED NINETY SIX & 97/100 (P 14,797,996.97) representing unutilized creditable taxes withheld at source for the calendar year ended December 31, 1996.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

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

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