**REPUBLIC OF THE PHILIPPINES**
**Court of Tax Appeals**
**QUEZON CITY**

***SECOND DIVISION***

**HAMBRECHT & QUIST PHILIPPINES, INC.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**C.T.A. CASE NO. 7384**

Members:

**CASTAÑEDA, JR.,** *Chairperson*
**UY,** *and*
**PALANCA-ENRIQUEZ,** *JJ.*

**Promulgated:**

JUL 19 2007

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# DECISION

**CASTAÑEDA, JR., *J.*:**

Before Us is a Petition for Review seeking the issuance of tax credit certificate in the amount of P909,282.00 allegedly representing excess creditable withholding tax of petitioner for the fiscal year ending September 30, 2003.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 22nd Floor PCIBank Tower 2, Makati Avenue, Makati City[1]. It is duly registered with the

[1] Joint Stipulation of Facts and Simplification of Issues, paragraph 1

Bureau of Internal Revenue (BIR) as engaged in the business or industry of providing management and administrative services.[2]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue vested with authority to exercise the functions of said office, including *inter alia*, the power to decide, approve and grant tax credit or refund of any national internal revenue tax 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. He is holding office at 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

The antecedent facts, as culled from the records are as follows:

Petitioner filed with the BIR its Annual Income Tax Return[4] (BIR Form No. 1702) for the fiscal year ended September 30, 2003 on December 15, 2003, showing the following pertinent details:

| | |
|---|---|
| Sales/Revenues/Receipts/Fees | P 9,340,178.00 |
| Less: Cost of Sales/Services | 8,029,800.00 |
| Gross Income from Operation | 1,310,378.00 |
| Add: Non-operating & Other Income | 46,423.00 |
| Total Gross Income | 1,356,801.00 |
| Less: Deductions | 3,503,452.00 |
| Taxable Income | (P2.146,651.00) |
| Tax Rate (except MCIT Rate) | 32% |
| Income Tax | **0.00** |
| Mininmum Corporate Income Tax (MCIT) | P 27,136.00 |
| | ============ |
| Aggregate Income Tax Due | P 27,136.00 |
| Less: Tax Credits/Payments | |
| Prior Year's Excess Credits | 0 |
| Tax Payments for the First Three Quarters | 0 |

[2] Exhibit "A", Certificate of Registration No. OCN 9RC0000132018
[3] Joint Stipulation of Facts and Simplification of Issues, paragraph 2
[4] Exhibit "B"

| | |
|---|---|
| Creditable Tax Withheld: | |
| First Three Quarters | 826,900.00 |
| Fourth Quarter | 109,518.00 |
| Total Tax Credits/Payments | P 936,418.00 |
| Tax Payable/(Overpayment) | **(P 909,282.00)** |

Likewise in the said return, petitioner placed an **"x"** mark in the box corresponding to the phrase "To be issued a Tax Credit Certificate", an indication of its intention to be issued a tax credit certificate for the amount of P909,282.00; the amount appearing as "Tax Overpayment"[5].

Alleging inaction on the part of respondent, petitioner filed the instant Petition for Review on December 14, 2005 in order to suspend the running of the two-year prescriptive period prescribed under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent filed his Answer on February 15, 2006 interposing the following Special and Affirmative Defenses:

> "4) Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5) Taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable.
>
> 6) In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.
>
> 7) It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.
>
> 8) Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxes (**Commissioner of Internal**

[5] Exhibit "B-9"

> **Revenue vs. Ledesma, G. R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs Commissioner of Internal Revenue, 124 SCRA 121**)."

During the hearing of this case, petitioner presented both testimonial and documentary evidences to bolster its claim. Respondent, however, failed to present any for his part.

In a Resolution dated February 5, 2007, this case was submitted for decision after considering petitioner's "Memorandum" sans respondent's "Memorandum".

Petitioner and respondent jointly stipulated on the following issues[6]:

"1. Whether or not income payments from which the taxes were withheld were included in petitioner's gross income for the fiscal year ending 30 September 2003.

2. Whether or not petitioner has excess/creditable withholding tax for the fiscal year ending 30 September 2003.

3. Whether or not petitioner has carried-over to the succeeding taxable year(s) the alleged excess/unutilized creditable withholding tax for the fiscal year ending 30 September 2003 (was duly substantiated).

4. Whether or not petitioner's right to claim for refund of the alleged excess/creditable withholding for the fiscal year ending 30 September 2003 was duly substantiated.

5. Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the sum of Php909,282.00 as alleged

[6] Joint Stipulation of Facts and Simplification of Issues, page 3

excess/unutilized creditable withholding tax on income payment for the fiscal year ending 30 September 2003."

Considering that the above issues are interrelated, they shall be discussed jointly.

Petitioner avers that it is entitled to the issuance of tax credit certificate in the amount of P909,282.00, anchoring its claim on Section 76 and Section 204(C) of the 1997 NIRC, as amended.

In support thereof, petitioner presented the following pieces of evidence: Annual Income Tax Return (*Exhibit "B"*); Certificates of Creditable Tax Withheld at Source (BIR Form 2307) for the four quarters of the fiscal year 2003 (*Exhibits "D", "E", "F", "H", "I", "J", "L", "M", "N", "P", "Q", and "R"*); Annual Income Tax Return for the fiscal year ending September 30, 2004 (*Exhibit "S"*); and its Quarterly Income Tax Returns for the fiscal year 2003 (*Exhibits "G", "K" and "O"*).

Section 76 of the 1997 NIRC, as amended, gives the taxpayer three options with respect to excess or overpaid tax, to quote:

> "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 maybe.**
>
> 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 therefor**." (*Emphasis supplied*)

Pursuant to the aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed the following alternative options: (a) be credited or refunded (either in the form of cash or credit certificate) with the excess amount paid; or (b) carry-over the excess credit. However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

A review of petitioner's Annual Income Return for the fiscal year 2003 would show that it has incurred "Tax Overpayment" in the amount of P909,282.00[7]. Likewise, petitioner's option to be to be issued with tax credit certificate for the said amount is manifested by the marking of the box corresponding to the option "To be issued with Tax Credit Certificate".

Furthermore, petitioner's choice was illustrated by the fact that no amount was written in the box corresponding to "Prior Year's Excess Credit"[8] in its 2004 Annual Income Tax Return[9], which means that petitioner did not

[7] Exhibit "B-9"
[8] Exhibit "S-2"
[9] Exhibit "S"

choose to carry over any tax overpayment it incurred in 2003 to the succeeding taxable year.

Thus, the amount of P909,282.00 may be a proper subject of a claim for the issuance of a tax credit certificate under Section 76 of the 1997 NIRC, as amended.

Nevertheless, the entitlement of petitioner to the issuance of tax credit certificate would also depend on its compliance with the following requirements, to wit:

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 (BIR Form No. 1743-A), 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 (*Citibank NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963*).

With regard to the first requirement, the Court reckons it appropriate to quote Sections 204(C) and 229 of the 1997 NIRC, thus:

> "SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
>
> xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of**

> **the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund**." (*Emphasis supplied*)
>
> "SEC. 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." (*Emphasis supplied*)

The most reasonable and logical application of Sections 204(C) and 229 of the 1997 NIRC, as amended would be to compute the two-year prescriptive period at the time of filing the Final Adjustment Return or the Annual Income Tax Return, when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax[10].

Also pertinent at this point is Section 2.58.3 of Revenue Regulations No. 02-98, which provides:

> "SECTION 2.58.3. Claim for Tax Credit or Refund. —
>
> (A) xxx

[10] TMX Sales, Inc., 205 SCRA 191 (1992)

> (B) xxx
>
> (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 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 therefor, 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." (*Emphasis supplied*)

Applying all the foregoing in the case at bar, petitioner's claim covers the fiscal year 2003 for which it filed its Annual Income Tax Return on December 15, 2003. Counting from this date, petitioner had until December 14, 2005 (2004 being a leap year) within which to file its claim for tax credit certificate both in the administrative and judicial levels.

Considering that petitioner's 2003 Income Tax Return already constitutes a formal application for the issuance of a tax credit certificate, it follows that petitioner's administrative claim is filed on December 15, 2003, the date when petitioner filed its 2003 Income Tax Return. On the other hand, the Petition for Review was filed on December 14, 2005. Therefore, both dates of filing are within the two-year prescriptive period.

Anent the second requirement, a summary of petitioner's various Certificates of Creditable Tax Withheld at Source would show the following details:

| EXH | WITHHOLDING AGENT | PERIOD INVOLVED | INCOME PAYMENT | INCOME TAX WITHHELD |
|---|---|---|---|---|
| *Payments for professional fees* | | | | |
| D | H & Q PHIL HOLDINGS, INC. | 10/1/02-12/31/02 | P 2,662,999.29 | P 266,299.93 |
| E | H & Q PHIL VENTURES II, INC. | 10/1/02-12/31/02 | 999,988.63 | 99,998.86 |
| H | H & Q PHIL VENTURES II, INC. | 1/1/03-3/31/03 | 1,046,966.53 | 104,696.65 |
| I | H & Q PHIL HOLDINGS, INC. | 1/1/03-3/31/03 | 1,463,008.92 | 146,300.89 |
| L | H & Q PHIL VENTURES II, INC. | 4/1/03-6/30/03 | 751,882.10 | 75,188.21 |
| M | H & Q PHIL HOLDINGS, INC. | 4/1/03-6/30/03 | 1,326,152.82 | 132,615.28 |
| P | CAPITAL ONE HOLDINS CORP. | 7/1/03-9/30/03 | 36,364.55 | 3,636.46 |
| Q | H & Q PHIL HOLDINGS, INC. | 7/1/03-9/30/03 | 1,052,814.83 | 105,281.48 |
| | | | P 9,340,177.67 | P 934,017.76 |
| *Payments for Rental of Real Property* | | | | |
| F | CAPITAL ONE HOLDINGS CORP. | 10/1/02-12/30/02 | P 12,000.00 | P 600.00 |
| J | CAPITAL ONE HOLDINGS CORP. | 1/1/03-3/30/03 | 12,000.00 | 600.00 |
| N | CAPITAL ONE HOLDINGS CORP. | 4/1/03-6/30/03 | 12,000.00 | 600.00 |
| R | CAPITAL ONE HOLDINGS CORP. | 7/1/03-9/30/03 | 12,000.00 | 600.00 |
| | | Subtotal | P 48,000.00 | P 2,400.00 |
| | | **Total** | **P 9,388,177.67** | **P 936,417.76** |

Based on the table above, the total amount of tax withheld by petitioner's withholding agents and supported by Certificates of Creditable Tax Withheld at Source is P936,417.76, which is the same amount appearing in petitioner's 2003 Annual Income Tax Return, reproduced as follows:

P826,900.00[11] (Creditable Tax Withheld for the First Three Quarters)
P109,518.00[12] (Creditable Tax Withheld for the Fourth Quarter)
P936,418.00[13]

[11] Exhibit "B-5"
[12] Exhibit "B-6"
[13] The slight difference is due to the rounding off of the amount.

Clearly therefore, there is compliance with the second requirement.

Finally, We delve on the last requirement. The income of petitioner from which taxes are withheld is made up of two types: a) income from professional fees, and b) income from rental of real property. We shall discuss them separately.

The Certificates of Creditable Tax Withheld at Source show that the amount of P934,017.76 is the amount of tax withheld for the income pertaining to professional fees in the amount of P9,340,177.67. Going back to petitioner's 2003 Return, the amount of P9,340,178.00[14] was declared as gross revenues coming from sales of services which is the same amount appearing in petitioner's Income Statement as income under the label Management Fees[15].

Since petitioner's income pertaining to professional fees was declared in its 2003 Annual Income Tax Return, it follows that it complied with the last requirement.

As to the creditable withholding taxes pertaining to rentals, the amount is P2,400.00, with the corresponding income of P48,000.00. In its 2003 Annual Income Tax Return[16], petitioner did not indicate any income amount from lease of real property. Although petitioner reported an amount of P40,000.00[17] as "Other Income", it cannot be verified from the records whether the same refers to petitioner's lease of real property.

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[14] Exhibit "B" line 14; Schedule 1, page 2 of Exhibit "B"
[15] Exhibit "C"
[16] Exhibit "B"
[17] Exhibit "B"; Schedule 4

Therefore, petitioner failed to prove that it declared in its 2003 Annual Income Tax Return the income of P48,000.00 related to the creditable withholding taxes of P2,400.00.

In sum, out of the reported creditable withholding taxes of P936,417.76 for fiscal year 2003, petitioner was able to sufficiently substantiate only the amount of P934,017.76.

Based on the foregoing, petitioner is entitled to the issuance of tax credit certificate in the amount of P906,881.76, which is the resulting amount after offsetting the MCIT of P27,136.00 from the substantiated creditable taxes of P934,017.76.

**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **P906,881.76**, representing excess creditable withholding tax for the fiscal year ending September 30, 2003.

**SO ORDERED**.

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

WE CONCUR:

**ERLINDA P. UY**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## ATTESTATION

I attest 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.

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

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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