REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ASIAN TRANSMISSION CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6648

Members:

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

Promulgated:
MAR 2 0 2006

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DECISION

CASANOVA, C., J.:

This case involves a claim for the issuance of a tax credit certificate or refund in the amount of P28,509,578.00 representing excess/unutilized creditable income taxes withheld as of December 31, 2001 of petitioner Asian Transmission Corporation.

The following facts are established by the records of the case:

Petitioner is a corporation organized and existing under and by virtue of Philippine laws, with principal office at Carmelray Industrial Park, Canlubang, Calamba, Laguna. It is principally engaged in the manufacture of automotive parts, such as transmission, engine and axle.[1]

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[1] Paragraph 1, Statement of Facts Admitted, page 63, Records.

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On April 10, 2001, petitioner filed its 2000 Annual Income Tax Return[2] reflecting a net loss from operation but with a minimum corporate income tax due (MCIT) in the amount of P7,410,642.00 which was offset against the total tax credits in the amount of P38,301,198.00 thereby leaving an excess tax credit of P30,890,556.00 as of December 31, 2000, computed as follows:

MCIT		P 7,410,642.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	P23,250,734.00	
b. Creditable Tax Withheld for First Three Quarters	11,868,132.00	
c. Creditable Tax Withheld for for the Fourth Quarter	3,121,256.00	
d. Foreign Tax Credits	61,076.00	38,301,198.00
Total Overpayment		*P30,890,556.00*

In the said 2000 return, petitioner manifested its intention to "To be issued a Tax Credit Certificate" for the above overpayment.[3]

On April 15, 2002, petitioner filed its 2001 Annual Income Tax Return[4] declaring, among others, MCIT in the amount of P6,456,796.00 and an excess income tax payment in the amount of P51,760,312.00, detailed as follows:

MCIT		P 6,456,796.00
Less: Tax Credits/Payments		
a. Prior Year's Excess Credits	*P30,890,556.00*	
b. Creditable Tax Withheld for First Three Quarters	12,405,573.00	
c. Creditable Tax Withheld for for the Fourth Quarter	14,920,979.00	58,217,108.00
Total Overpayment		P51,760,312.00

On the face of the 2001 annual income tax return, petitioner again opted "To be issued a Tax Credit Certificate" for the excess income tax payment.[5]

[2] Exhibit A, inclusive of submarkings.
[3] Exhibit A-10
[4] Exhibit B, inclusive of submarkings.
[5] Exhibit B-9

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Petitioner explained that the 2000 creditable withholding taxes of P15,050,464.00 was applied against the 2000 MCIT of P7,410,642.00. The balance of P7,639,822.00[6] was carried over and partially applied against the 2001 MCIT of P6,456,796.00, leaving an unapplied 2000 creditable taxes of P1,183,026.00, broken down as follows:

		Amount
Creditable Tax Withheld for the First Three Quarters of 2000	P	11,868,132.00
Creditable Tax Withheld for the Fourth Quarter of 2000		3,121,256.00
Foreign Tax Credits for 2000		61,076.00
T o t a l	P	15,050,464.00
Less: 2000 MCIT		7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	P	7,639,822.00
Less: 2001 MCIT		6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	P	1,183,026.00

On April 9, 2003, petitioner filed with respondent's Large Taxpayers Assistance Division II an administrative claim for the issuance of tax credit certificate or cash refund in the amount of P28,509,578.00 representing excess/unutilized creditable income taxes withheld as of December 31, 2001,[7] to wit:

Remaining Unutilized 2000 Creditable Taxes Withheld			P	1,183,026.00
Unapplied 2001 Creditable Taxes Withheld:				
a. Creditable Tax Withheld for the First Three Quarters of 2001	P	12,405,573.00		
b. Creditable Tax Withheld for the Fourth Quarter of 2001		14,920,979.00		27,326,552.00
T o t a l			P	28,509,578.00

On April 10, 2003, or just a day after, petitioner filed the instant Petition for Review with this Court without waiting for an action from the respondent, lest it will be barred under Section 229 of the National Internal Revenue Code of 1997.

[6] P15,050,464.00 less P7,410,642.00 equals P7,639,822.00. The latter amount was included in the sum of P30,890,556.00 which was reflected as "Prior Year's Excess Credit in petitioner's 2001 return.
[7] Exhibit C.

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On May 23, 2003, respondent filed his Answer raising the following Special and Affirmative Defenses:

3. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

4. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

5. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation;

6. Petitioner must prove the following:

a. That the petitioner incurred a net loss of P279,926,225.00 and P37,869,455.00 during the taxable year 2000 and 2001, respectively;

b. That the income from which the taxes were withheld was included in petitioner's income tax return;

c. That it has complied with the provisions of Section 204(c) and 229 of the 1997 National Internal Revenue Code on prescriptive period for claiming tax refund/credit;

d. That the fact of withholding is established by a copy of statement (BIR Form 1743.1) duly issued by the payor (withholding agent) showing the amount paid and the amount of tax withheld therefrom.

7. Petitioner alleges that the unutilized creditable income taxes for the year ended December 31, 2000 was carried over to the year 2001. Since the option to carry over is irrevocable, petitioner is not allowed to claim a refund or issuance of a tax credit certificate for the unutilized creditable income taxes for the year 2000 (Section 76, Tax Code).

The jointly stipulated issues to be resolved by the Court are as follows:

1. Whether petitioner's claim for refund was filed within two-year prescriptive period as prescribed under Sections 204 and 229 of the NIRC;

2. Whether the income upon which the creditable taxes were withheld were included and reported as income in the income tax returns of Petitioner for both years;

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3. Whether the creditable withholding taxes are duly substantiated by the necessary statement issued by the withholding agent to Petitioner, showing the amount paid and the amount of the tax withheld therefrom;

4. Whether petitioner incurred a net loss of P279,926,225.00 and P37,869,455.00 during the taxable years 2000 and 2001, respectively;

5. Whether petitioner is entitled to the refund and/or credit of the amount of P28,509,578.00 representing its excess/unutilized creditable income taxes as of December 31, 2001.

Petitioner anchors its claim for the refund or issuance of a tax credit certificate on the provisions of Section 76 and Section 204 of the National Internal Revenue Code of 1997 in relation to Section 229 of the same Code, quoted hereunder for easy reference:

> 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 net 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 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 therefor.
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> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx 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

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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.

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 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.

In the case of ***Citibank N.A. vs. Court of Appeals***,[8] the Supreme Court emphasized that the burden of proving the factual basis of his claim for tax credit or refund is upon claimant. Thus, for a claim tax credit or refund to be granted, the taxpayer must establish that:[9]

(i) The claim for refund was filed within two years as prescribed in Sec. 230 (now 229) of the Tax Code;

(ii) The income upon which the taxes were withheld were included in the return of the recipient; and

(iii) The fact of withholding is established by a copy of a statement (BIR Form 1743-A) duly issued by the payer (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom.

Applying the above rule, the following are evident:

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[8] 280 SCRA 459.

[9] Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue, G.R. No. 119286, October 13, 2004; and Calamba Steel Center, Inc. (formerly JS Steel Corporation) vs. Commissioner of Internal Revenue, G.R. No. 151857, April 28, 2005-10-25.

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One, petitioner complied with the first requirement. The claim for refund of petitioner for the calendar years ended December 31, 2000 and December 31, 2001 were filed within the two-year prescriptive period reckoned from the date of payment of the tax. The phrase "date of payment of the tax" is construed to mean the dates of the filing of the 2000 and 2001 annual income tax returns.[10] Petitioner filed its 2000 and 2001 original annual income tax return on April 10, 2001 and April 15, 2002, respectively. The administrative and judicial claims for refund were filed on April 9, 2003 and April 10, 2003, respectively. Both filings of claim for refund and Petition for Review were made within the two-year prescriptive period.

Two, petitioner was able to establish its qualified compliance with requirement numbers two and three. In the admitted 2000 and 2001 Certificates of Creditable Withholding Tax At Source,[11] the following amounts of income payments and withholding taxes were reflected –

For 2000

Withholding Agent	Exh.	Income Payment	Tax Withheld
Mitsubishi Motors Phils. Corp.	J	463,425,860.00	P 4,634,258.60
Nidec-Shimpo Philippines Corp.	K	248,390.19	2,483.90
Mitsubishi Motors Phils. Corp.	L	388,175,065.00	3,881,750.65
Nidec-Shimpo Philippines Corp.	M	198,631.68	1,986.33
Mitsubishi Motors Phils. Corp.	N	334,443,824.00	3,344,438.24
Nidec-Shimpo Philippines Corp.	O	321,436.45	3,214.35
Mitsubishi Motors Phils. Corp.	P	311,850,868.00	3,118,508.68
Sub-Total		P1,498,664,075.32	P14,986,640.75

For 2001

Withholding Agent	Exh.	Income Payment	Tax Withheld
Mitsubishi Motors Phils. Corp.	S	P 300,603,978.00	P 3,006,039.78
Nidec-Shimpo Philippines Corp.	T	195,263.12	1,952.63
Mitsubishi Motors Phils. Corp.	U	363,266,839.00	3,632,668.39

[10] Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., The Court of Tax Appeals and The Court of Appeals, G.R. No. 105208, May 29, 1995; Commissioner of Internal Revenue v. TMX Sales Inc. and The Court of Tax Appeals, G.R. No. 83736, January 15, 1992; ACCRA Investment Corp. vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals, G.R. No. 96322, December 20, 1991; Commissioner of Internal Revenue vs. Asia Australia Express Ltd., represented by Soriamont Steamship Agencies, Inc. and Court of Tax Appeals, G.R. No. 85956, April 10, 1989.

[11] Resolution dated April 8, 2005, pages 260 – 261, Records.

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Nidec-Shimpo Philippines Corp.	V	137,659.10	1,376.59
Mitsubishi Motors Phils. Corp.	W	576,146,311.00	5,761,463.11
Nidec-Shimpo Philippines Corp.	X	137,659.10	1,376.59
Mitsubishi Motors Phils. Corp.	Y	488,449,635.00	4,884,496.35
Nidec-Shimpo Philippines Corp.	Z	103,611.44	2,072.23
MMC Sittipol Co. Ltd.	AA	44,683,912.73	6,702,586.91
MMC Sittipol Co. Ltd.	BB	22,212,158.06	331,824.00
Sub-Total		P1,795,937,026.55	P24,325,856.58
Totals		P3,294,601,101.87	P39,312,497.33

We have traced the above income payments in the 2000 and 2001 income tax returns and found out that petitioner declared the same.[12] It should be noted though that the substantiated 2000 and 2001 creditable taxes amounted only to P14,986,640.75 (instead of P15,050,464.00) and P24,325,856.58 (instead of P27,326,552.00), respectively. Hence, We recomputed the supported unapplied creditable taxes withheld as of December 31, 2001, to wit:

	Amount
2000 Supported Creditable Taxes Withheld	P14,986,640.75
Less: 2000 MCIT	7,410,642.00
Unutilized 2000 Creditable Taxes Withheld	P 7,575,998.75
Less: 2001 MCIT	6,456,796.00
Remaining Unutilized 2000 Creditable Taxes Withheld	P 1,119,202.75
Add: 2001Supported And Unapplied Creditable Taxes Withheld	24,325,856.58
Supported Unapplied Creditable Taxes Withheld as of December 31, 2001	P25,445,059.33

Therefore, while it is apparent that petitioner was able to meet the three basic requirements, still, it is not fully entitled to the substantiated creditable taxes withheld.

Under Section 76 earlier cited, a taxpayer is given three options in case it has an excess income tax payment of either to (1) carry-over; or (2) credit; or (3) refund, as the case may be, the overpaid tax against its estimated quarterly income tax liabilities for the taxable quarters of the **succeeding taxable years**. However once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable

[12] We also considered Exhibits E, F, CC and DD in tracing.

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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**.

We agree with the respondent that petitioner cannot be issued a tax credit certificate for the remaining 2000 unutilized creditable taxes pursuant to Section 76. Records reveal that petitioner changed its original option "To be Issued a Tax Credit Certificate" for its 2000 creditable taxes to carry over. Petitioner even applied its 2000 excess payment against its 2001 MCIT. Inasmuch as the chosen option "To be Issued a Tax Credit Certificate" was not really exercised by the petitioner since it actually exercised the option of carry over, then, the actual act of carry-over is controlling and now becomes irrevocable pursuant to Section 76. In the case of ***Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6274, dated April 4, 2003,***[13] this Court held thus:

> In its amended Annual Income Tax Return for the taxable year ended December 31, 1998 (Exhibit B), petitioner indicated its intention to refund the excess payment of P1,729,368.00 by placing an "x" mark on the appropriate box. However, on the following year 1999, petitioner again carried over the same amount. In line with our previous pronouncements on the matter, once an option to carry-over the excess credit is exercised, said option becomes irrevocable. Even though it indicated in the amended 1998 income tax return "To be refunded", it however, already carried-over the overpaid income tax to taxable year 1999. Petitioner's original option to refund the excess tax is actually negated by his very act of carrying over said excess amount to the succeeding taxable year. It had exercised the option to carry-over the excess tax credit to the succeeding taxable year and the option is irrevocable per abovementioned provision. Although there is the original option to refund, what is controlling is the actual exercise of the option, which in this case is the carry-over. Consequently, petitioner is no longer entitled to the refund or tax credit of the overpaid income tax for 1998, as it already opted to carry over said overpaid amount to the succeeding taxable quarter. *(Underlining supplied)*

In fact, We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the

[13] With Entry of Judgment and Writ of Execution both dated July 18, 2003.

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taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year.[14] Nevertheless, petitioner is not left without recourse, the remaining substantiated 2000 excess income tax payment of P1,119,202.75 may be carried over to succeeding taxable years and credited against future income tax liabilities.

Lastly, We do not agree with respondent that petitioner is required to prove that it incurred net losses for the years 2000 and 2001. The implied allegation of irregularity in the declared operational losses is a matter which must be proven by competent evidence. And the burden of proof as to whether petitioner incurred net losses from its operations rests on the respondent.[15] This is the reason why respondent is authorized by law[16] to examine petitioner's books and accounting records to ascertain the truthfulness of petitioner's declaration in its income tax return. In the absence of any showing that there is irregularity in claimed losses for 2000 and 2001 business operations and taking into account that income tax returns are prepared under penalty of perjury, We consider the returns of petitioner to be accurate and regular.

In sum, petitioner is only entitled to the issuance of a tax credit certificate with respect to its 2001 substantiated unapplied creditable taxes of P24,325,856.58, computed as follows:

Income Payment	Tax Withheld	Withholding Agent	Exh.
P 300,603,978.00	P 3,006,039.78	Mitsubishi Motors Phils. Corp.	S
195,263.12	1,952.63	Nidec-Shimpo Philippines Corp.	T
363,266,839.00	3,632,668.39	Mitsubishi Motors Phils. Corp.	U
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	V

[14] Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner Internal Revenue, CTA Case No. 6074, April 19, 2002; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002; Roxas Land Corp. vs. Commissioner of Internal Revenue, CTA Case No. 6063, August 29, 2002; Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, dated April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, dated April 3, 2003; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, dated May 16, 2003.

[15] Citibank, N.A vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997.

[16] Under Section 203 of the National Internal Revenue Code of 1997.

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576,146,311.00	5,761,463.11	Mitsubishi Motors Phils. Corp.	W
137,659.10	1,376.59	Nidec-Shimpo Philippines Corp.	X
488,449,635.00	4,884,496.35	Mitsubishi Motors Phils. Corp.	Y
103,611.44	2,072.23	Nidec-Shimpo Philippines Corp.	Z
44,683,912.73	6,702,586.91	MMC Sittipol Co. Ltd.	AA
22,212,158.06	331,824.00	MMC Sittipol Co. Ltd.	BB
P1,795,937,026.55	**P24,325,856.58**		

WHEREFORE, the instant petition for review is hereby *PARTIALLY GRANTED.* Respondent is ordered to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of P24,325,856.58 representing the unutilized creditable withholding taxes for taxable year 2001.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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