REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PILIPINAS HINO, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6074

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 19 2002

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DECISION

This case involves a claim for refund in the amount of ELEVEN MILLION FIVE HUNDRED SEVENTY SEVEN THOUSAND TWO HUNDRED FIFTY FIVE PESOS (P11,577,255.00) allegedly representing excess creditable withholding tax for the years 1997 and 1998.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at EDSA corner Madison Street, Mandaluyong City. It is engaged as an exclusive assembler and distributor of HINO buses in the Philippines.

On April 15, 1998, petitioner filed its Annual Income Tax Return for the year 1997 showing the following:

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Taxable Income	P 22,947,010.00
Tax Due	8,031,453.00
Less: Tax Credits/Payments	12,763,535.00
Tax Refundable	(P 4,732,082.00)
	(Exhibit "A")

Petitioner's 1997 tax credits consisted of creditable taxes withheld by its various customers/clients and payors on their income payments to the former amounting to a total of P12,763,535.99.

On November 24, 1998, petitioner filed a letter claim for tax refund with the Appellate Division of the Bureau of Internal Revenue (BIR), involving the 1997 excess tax credits in the amount of P4,732,082.00.

In a letter dated March 18, 1999, the Appellate Division of the BIR informed petitioner that the investigation for the tax refund claimed for 1997 is still pending, thus, petitioner carried forward its 1997 tax credits to the succeeding year, 1998 (Exhibit D).

On April 15, 1999, petitioner filed its Annual Income Tax Return for the taxable year 1998, showing the following:

Gross Income		P193,600,868.00
Less: Deductions		194,626,584.00
Net Loss		(P 1,025,716.00)
Tax Due (MCIT)		P 2,778,957.00
Less: Tax Credits/Payments		
(1) Prior Year's Excess Credits	P4,732,083.00	
(2) Creditable Tax Withheld	9,624,129.00	14,356,212.00
Tax Refundable		(P11,577,255.00)
		(Exhibit "B")

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On January 11, 2000, petitioner filed a letter claim for tax refund with the Appellate Division of the BIR amounting to P11,577,255.00 consisting of excess tax credits for the years 1997 and 1998 (Exhibit E).

To toll the running of the two-year prescriptive period, petitioner filed the instant Petition for Review with this Court on April 14, 2000.

To support its claim, petitioner submitted the following documents:

Exhibits	Particulars
A	1997 Income Tax Return
B	1998 Income Tax Return
C	Letter claim for refund dated November 23, 1998
D	Letter response of BIR Appellate Division dated March 18, 1999
E	Letter claim for refund dated January 11, 2000
F	Letter response of BIR dated January 13, 2000
G to PP (inclusive of sub-markings)	Various certificates of creditable tax withheld for the years 1997 and 1998
QQ	Schedule of creditable withholding tax for the year 1997
RR	Schedule of Creditable withholding tax for the year 1998

In his Answer dated May 25, 2000, respondent raised the following Special and Affirmative Defenses:

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"4. The petitioner's claim for tax refund/credits is still undergoing administrative routinary investigation/examination by the Respondent's Bureau;

5. The alleged tax sought to be refunded was collected pursuant to law and pertinent BIR implementing rules and regulations; hence, the same is not refundable;

6. Petitioner's allegation that it erroneously and excessively paid the tax during the year under review does not *ipso facto* warrant the refund/credit;

7. Claims for tax refund or tax credit are construed in *strictissimi juris* against the taxpayer as they partake the nature of an exemption from tax, and it is incumbent upon petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for refund/credit;

8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the 1997 Tax Code."

The sole issue for our consideration is whether or not petitioner is entitled to the refund of P11,577,255.00 representing excess creditable withholding taxes for the taxable years 1997 and 1998.

Petitioner's excess creditable withholding taxes for the years 1997 and 1998 were applied as follows:

1997 Excess Creditable Withholding Taxes (Exh. A)	P 4,732,082.00
Less: 1998 Income Tax Liability (Exh. B)	2,778,957.00
Excess Creditable Withholding Taxes for 1997	P 1,953,125.00
Add: 1998 Tax Credits/Withheld	9,953,125.00
Total Excess Creditable Withholding Taxes for the years 1997 and 1998	P11,577,254.00

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Since petitioner's claim consists of taxable years 1997 and 1998, provisions of the old Code and the 1997 National Internal Revenue Code shall apply in this case.

Section 69 of the old Code provides, viz:

> **Section 69.** ***Final Adjustment Return.*** - Every corporation liable to pay tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar year 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 tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a 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.

On the other hand, Section 76 of the 1997 NIRC provides, viz:

> **Section 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 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."

To be entitled to a refund, the following requirements must be met:

1) That the claim for refund was filed within two years as prescribed under Section 230 of the Tax Code;

2) That the fact of withholding is established by a copy of a 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.

3) That the income upon which the taxes were withheld were included in the return of the recipient;

[Section 10, Rev. Regs. No. 6-85; see **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; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**].

We shall first discuss the claim relating to petitioner's excess income taxes for the years 1997.

Records reveal that petitioner has satisfactorily complied with the aforementioned requirements. The administrative and judicial claims for refund were filed on November

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24, 1998 and April 14, 2000, respectively, which are well within the two-year prescriptive period referred to in requirement number 1. Reckoned from the date when petitioner filed its 1997 Income Tax Return on April 15, 1998, both the administrative and judicial claims filed by petitioner fall within the two-year prescriptive period provided under Section 204(3) [now 204(c)] in relation to Section 230 [now 229) of the NIRC, as amended.

Petitioner presented Certificates of Creditable Tax Withheld at Source issued by various withholding agents in order to comply with the second requirement and to establish the fact of withholding of the claimed creditable withholding taxes in the aggregate amount of P12,763,535.00. This amount was validly supported by the various certificates of withholding (see Annex A).

With regard to the third requirement, petitioner has likewise sufficiently complied with the same.

In its 1997 income tax return, petitioner declared the following sources of income:

Gross Sales	P1,450,672,801.00
Rental Income	4,940,686.00
Miscellaneous Income	19,751,598.00
TOTAL	P1,475,365,085.00

However, the various certificates of creditable withholding tax at source reflected an income in the aggregate amount of P1,162,204,212.98:

Gross Sales	P1,130,718,043.55
Rental Income	5,327,229.38

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Miscellaneous Income	26,052,002.05
Sale of Real Property	10,693,800.00
TOTAL	P1,162,204,212.98

Details of which are shown below:

WITHHOLDING AGENT	EXHIBIT	SALES	RENTAL	OTHERS	SALE OF REAL PROPERTY
ASIA BREWERY	G	521,072.02			
	G-1	24,454,545.46			
	G-2			8,251,818.19	
	G-3			522,727.27	
	G-4	228,552.00			
	G-5	591,277.56			
	G-6	206,100.06			
	G-7	34,381,818.19			
BALIWAG TRANSIT	H			1,380,000.00	
	H-1			12,500.00	
	H-2			920,000.00	
COCA COLA	I			2,618,182.00	
	I-1			6,099,091.00	
	I-2	19,418,181.00			
ILOILO PROV.	J			80,444.80	
ENG'R	J-1			114,116.00	
	J-2			164,390.40	
	J-3			93,898.40	
	J-4			91,544.00	
	J-5			31,569.20	
	J-6			123,964.00	
	J-7			41,601.00	
	J-8			40,637.60	
	J-9			41,841.60	
	J-10			32,462.40	
LAGAUE	K				10,693,800.00
LAPU-LAPU	L	872,727.27			

PACK'	L-1			63,636.36
MANILA AUTO	M	106,630.96		
SUPPLY	M-1	243,775.88		
	M-2	305,454.83		
	M-3	891,600.48		
METRO MLA TRANS	N			421,880.70
PANGASINAN FIVE	O	10,500.00		
PEPSI COLA	P	45,176,821.00		
BOTTLERS	P			3,192,728.00
PILIPINAS	Q		32,343.30	
AUTOMOTIVE	Q-1		32,343.30	
	Q-2		32,343.30	
	Q-3		32,343.30	
PHIL POSTAL	R			125,067.30
PILHINO SALES	S		598,338.60	
	S	183,953,481.70		
	S-1		598,338.60	
	S-1	83,198,925.00		
	S-2		598,338.60	
	S-3	186,755,781.00		
	S-3			400,000.00
	S-4		682,105.58	
	S-4	66,416,972.31		
	S-4	455,208.18		
PILIPINAS	T	295,829.55		
MAINTENANCE	T			75,000.00
	T-1			75,000.00
	T-1	2,346,548.00		
	T-2			75,000.00
	T-2	902,037.00		
PHILTRANCA	U	1,178,213.10		
PILIPINAS TRANS	V			725.70
	V		429,023.40	
	V			240,000.00
	V	89,854,319.00		
	V-1			605.10

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	V-1		429,023.40		
	V-1			240,000.00	
	V-1	155,102,415.00			
	V-2			785.00	
	V-2		393,220.20		
	V-2			240,000.00	
	V-2	155,527,560.00			
	V-3			786.06	
	V-3		366,925.80		
	V-3			240,000.00	
	V-3	77,318,579.00			
RADIX SYSTEMS	W		256,405.11		
	W-1		282,045.63		
	W-2		282,045.63		
	W-3		282,045.63		
SAN MIGUEL CORP	X	3,118.00			
TOTAL		**1,130,718,043.55**	**5,327,229.38**	**26,052,002.08**	**10,693,800.00**

The discrepancies in the specific amounts of income reflected in the income tax return with that of the certificates have proportionately diminished petitioner's entitlement to the refund sought.

The third requirement provides that the income upon which the taxes were withheld must be included in the return of the petitioner. Thus, the creditable taxes withheld corresponding to petitioner's gross sales and sale of real property should be considered since the income declared in the 1997 return is greater than the gross amounts reflected in the certificates.

On the other hand, the rental and other income should be computed proportionately because the amounts of income included in the 1997 return are lesser than the amounts of income shown in the certificates.

Moreover, it is noted that the income from sale of real property was already declared in the taxable year 1996 and was deducted from miscellaneous receivables in the year 1997 as disclosed in note number 5 of the 1997 Notes to Financial Statements (Exhibit A-15).

In sum, petitioner is entitled to its claim for refund of creditable withholding tax for the taxable year 1997, but in a reduced amount of P1,845,167.96, computed as follows:

1997 Creditable Taxes Withheld (Exh. "A")		P12,763,535.00
Less: Deductions		
a. 1997 Income Tax Due	P8,031,453.00	
b. 1998 Income Tax Due	2,778,957.00	
c. Taxes Proportionately Disallowed because the corresponding income were not declared in the return		
1. Rental Income		
[(5,327,229.38-4,940,686.00) x 5%]	19,327.17	
2. Other Income		
6,300,404.08 / 26,052,002.08 x 309,419.52	74,829.87	
d. Certificate With No Date (Exhibit H)	13,800.00	10,918,367.04
Allowable Income Tax Refund – 1997		P 1,845,167.96

The claim relating to petitioner's 1998 excess creditable withholding taxes cannot be granted. Petitioner has indicated in his 1998 income tax return his option to carry over the excess creditable withholding taxes for the taxable year 1998 to the succeeding taxable year (Exhibit B). Thus, it can no longer claim the refund thereof pursuant to Section 76 of the 1997 NIRC.

The provisions of Section 76 of the 1997 NIRC is clear and leaves no room for doubt that an option once exercised shall be considered irrevocable. Since petitioner has already signified its intention to carry-over to the succeeding year its unutilized creditable

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taxes withheld for 1998, then it is no longer allowed to pursue the instant claim for refund **[The Philippine Banking Corporation (now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6820, August 16, 2001]**

Petitioner has signified its option to carry over its 1998 excess income taxes to the succeeding taxable year, 1999. Thus, the exercise of this option is irrevocable and petitioner can no longer claim for the refund of the same. Hence, petitioner's claim for refund should be denied. However, petitioner may still claim the excess income tax payment as tax credit to future income tax liabilities.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED.** Respondent is hereby **ORDERED** to **REFUND** in favor of petitioner the amount of P1,845,167.96 representing excess creditable withholding taxes for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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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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