REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

HONDA CARS PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6354

Members:

CASTAÑEDA, J., *Chairman*,
UY, E., and
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 2 2 2004 (signature)

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review involving a claim for the issuance of tax credit certificate in the amount of P59,871,181.00 allegedly representing excess and unutilized creditable withholding taxes of petitioner for the fiscal year ended March 31, 2000.

Petitioner is a domestic corporation with principal office at Laguna Technopark, Sta. Rosa, Laguna. It is primarily engaged in the manufacture and assembly of automobiles, cars, and automobile products *(pars. 1 & 2, Joint Stipulation of Facts and Issues)*.

On July 17, 2000 petitioner filed its Annual Income Tax Return for the fiscal year ended March 31, 2000 *(Exhibit F)* reflecting the following information:

263

Sales/Revenues/Receipts/Fees		P8,797,758,415.00
Less: Cost of Sales/Services		8,175,723,944.00
Gross Income from Operation		P 622,034,471.00
Add: Non-Operating & Other Income		233,048,767.00
Total Gross Income		P 855,083,238.00
Less: Deductions		823,394,069.00
Taxable Income		P 31,689,169.00
Tax Rate		33/32%
Income Tax Due		P 30,888,494.00
Less: Tax Credits/Payments:		
Tax Payments for the First Three Quarters	P14,794,618.00	
Creditable Tax Withheld for the First Three Quarters	53,723,885.00	
Creditable Tax Withheld for the Fourth Quarter	22,241,172.00	P 90,759,675.00
Tax Payable/(Overpayment)		P (59,871,181.00)

On January 11, 2001, petitioner filed with respondent an administrative claim for tax credit / refund of excess creditable withholding taxes *(Exhibit M)* in the total amount of P59,871,181.00 allegedly representing its excess and unutilized creditable withholding tax for the taxable fiscal year ended March 31, 2000.

There was no action on the part of the respondent regarding petitioner's administrative claim for tax credit or refund *(par. 12, Joint Stipulation of Facts and Issues)*. Due to respondent's inaction and to toll the two (2) year prescriptive period provided for in the National Internal Revenue Code (NIRC) of 1997, petitioner filed the instant Petition for Review on November 16, 2001 for the issuance of a tax credit certificate pursuant to Section 76 of the same Code.

On December 18, 2001, respondent filed his answer asserting the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

264

5. The amount of P59, 871,181.00 being claimed by the petitioner as alleged excess and unutilized creditable withholding taxes for the fiscal year ended 31 March 2000 was not properly documented;

6. 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;

7. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;

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

In their Joint Stipulation of Facts and Issues filed on February 4, 2002, the parties presented the following issues for resolution:

"1. Whether or not the instant claim for refund was filed within the two year prescriptive period;

2. Whether or not the income payments to petitioner which were subjected to the creditable withholding taxes by its customers were declared by petitioner as part of gross income in its income tax returns;

3. Whether or not the withholding agents subjected the income payments to creditable expanded withholding taxes and issued to petitioner the corresponding Certificates of Creditable Tax Withheld At Source therefor; and

4. Whether or not petitioner has excess and unused creditable expanded withholding taxes at the close of the fiscal years *(sic)* ended March 31, 2000 in the amount of P59,871,181.00 which it elected to refund and did not carry over to the subsequent taxable quarters or taxable years."

Petitioner anchors its claim for the issuance of a tax credit certificate upon Section 76 of the NIRC of 1997, which provides:

"**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

265

> (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 the 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 tax a credit certificate shall be allowed therefor."

In the course of the trial, the petitioner presented its documentary evidence and witnesses, including the duly commissioned Independent Certified Public Accountant, to prove its claim. Thereafter, petitioner formally offered its evidence. When it was time for the respondent to present his evidence, counsel for respondent requested for the re-setting of the hearing on the ground that respondent's witness, a Bureau of Internal Revenue Examiner, was not yet ready with his report *(Minutes of the Hearing held on September 4, 2003, CTA Records, p. 204).* On the next hearing date, counsel for respondent manifested that respondent is waiving his right to present evidence and moved for a period of 30 days to file respondent's memorandum. However, the respondent failed to submit his memorandum despite the several extensions of time granted to file the same. Hence, this petition is deemed submitted for decision without respondent's evidence and memorandum.

The issues involved in the case before Us are not novel. In the case of ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue,*** *280 SCRA 459*, the Supreme Court laid down the requirements

266

that must be complied with by a taxpayer who is seeking a refund or issuance of a tax credit certificate of excess creditable withholding taxes, to wit:

> 1. That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 (now section 229) of the Tax Code, as amended;
>
> 2. That the income upon which the taxes were withheld were included as part of the gross income declared in the income tax return of the recipient; and
>
> 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.

Moreover, Section 76 of the NIRC of 1997 provides that an application for a cash refund or for the issuance of a tax credit certificate shall not be allowed in case the taxpayer had already chosen to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years.

As regards the first requirement that the claim for refund must be filed within the two-year prescriptive period, Section 229 of the NIRC of 1997 provides:

> **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

267

> 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)

Records show that petitioner complied with Section 229. The administrative claim for refund was filed with the Bureau of Internal Revenue on January 10, 2001 *(Exhibit M)*. Judicial relief was sought by the petitioner by filing the present Petition for Review with this Court on November 16, 2001. Clearly, both were filed within the two-year prescriptive period reckoned from July 17, 2000, the date of filing of the final adjustment return for the fiscal year ended March 31, 2000 *(Exhibit F)*.

Anent the second requirement, the commissioned Independent Certified Public Accountant (CPA) reported the following in *Exhibit N* (Report of Independent CPA dated December 27, 2002):

> "Based on the procedures we performed to trace the particular year in which the related sales (on which the 1% and 5% CWT have been withheld) were included as part of gross income in the ITR, we noted that the total amount of CWT per books of P75,942,749.89 were withheld on the following sales:

Findings	***Amount of Related Sales***	***Per Annex N-2 Column Reference***
a.) Sales reported as part of gross income subject to income tax in FY ended March 31, 1999 but collected in FY 2000	P 114,072,369.20	Column D
b.) Sales reported as part of gross income subject to income tax in FY ended March 31, 2000 which were collected also in said fiscal year.	6,878,393,081.40	Column E
Total of items (a) and (b): ***Total sales on which CWT amounting to*** **P75,942,749.89 have been withheld by Customers**	**P 6,992,465,450.60**	Column G

260

> For items (a) above relating to sales reported in FY 1999 but collections and related CWTs were recorded in FY 2000, these items were individually traced to the sales and other income ledger (e.g., ledger of sale of units, spare parts, service income, etc.) of FY 1999. We have verified that the total amount of sales and other income reflected in the ledgers correspond with the total amount of income declared in the Annual Income Tax Return for FY 1999."

From the afore-quoted portion of the commissioned Independent CPA's report, Section (a) refers to sales made in fiscal year 1999 but were collected only in the year 2000 and the corresponding tax withheld was likewise recorded only in the year 2000. On the other hand, Section (b) refers to sales made in fiscal year 2000 and the corresponding withholding tax was collected also in the same year. Since the law requires that the income upon which the taxes were withheld shall be included as part of the gross income declared in the income tax return of the recipient, petitioner's sales under Section (b) above satisfy the second requirement.

However, with respect to sales under Section (a) amounting to P114,072,369.20, the report of the independent CPA stated that the income therefrom had already been reported in petitioner's 1999 income tax return. Hence, petitioner's income from these sales was not included anymore in petitioner's gross sales for the fiscal year 2000. Although, the independent CPA report contains a statement that the corresponding sales were declared in petitioner's 1999 Income Tax Return, nevertheless, the same cannot be given much weight since the petitioner did not present any document or record relating thereto, other than the petitioner's Income Tax Return for the Fiscal Year 1999 *(Exhibit S-2),* for the Court's own evaluation and appreciation as petitioner's evidence. As held in the Citibank, N.A. vs. Court of Appeals case, *supra*, "a refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding". An ITR does not reflect a schedule of sales which are included therein as part of gross income. In view of this, the creditable withholding taxes amounting to P2,181,302.38 withheld from petitioner's sales under Section (a) above shall be deducted from petitioner's total claim. The amount was determined using the following computation:

DATA FROM EXHIBIT N-2		**COMPUTATION**	
A. Units, Spareparts, Advertising Materials and Delivery Charges	**Related Sales Reported in FY 1999 *(per column D)***	**RATE**	**Tax Withheld**
Honda Cars Makati, Inc.	P 11,892,394.00	1%	P 118,923.94
Honda Cars Quezon City, Inc.	18,131,495.00	1%	181,314.95
Honda Cars Pasig	7,982,915.00	1%	79,829.15
Honda Cars Kalookan, Inc.	10,172,054.00	1%	101,720.54
Honda Cars Alabang	6,008,723.00	1%	60,087.23
Honda Cars Manila	11,819,569.00	1%	118,195.69
Honda Cars Shaw	6,009,749.00	1%	60,097.49
Honda Cars Cebu, Inc., Negros & Cagayan	15,974,843.00	1%	159,748.43
Honda Cars Davao, Inc.	66,160.00	1%	661.60
Subtotal (A)	**P 88,057,902.00**	1%	**P 880,579.02**
B. Service, Management and Rent Income			
Avesco Marketing Corp.	P 12,568,973.80	5%	P 628,448.69
Tecno Industrial Corp.	1,102,819.20	5%	55,140.96
Spirit Electronics Systems, Inc.	2,210,040.60	5%	110,502.03
Hadsys Philippines Corporation	8,240,962.20	5%	412,048.11
Fujitsu Ten Corporation	1,891,671.40	5%	94,583.57
Subtotal (B)	**P 26,014,467.20**		**P1,300,723.36**
Total	**P 114,072,369.20**		**P2,181,302.38**

With respect to the third requirement, petitioner presented various Certificates of Creditable Tax Withheld at Source *(Exhibits C-1 to C-22, D-1 to D21, E-1 to E-20 and F-5 to F-24)*, the Monthly Remittance Returns of Income Tax Withheld by Honda Cars Makati, Inc. *(Exhibits C-14-1 to C-14-3, inclusive* *of submarkings)*, Schedule of Subsidiary Ledger for Creditable Withholding Tax *(Exhibit A-1)*, Schedule of Creditable Withholding Tax per books *(Exhibit A-2)*, and the Summary of Creditable Withholding Tax Certificates *(Exhibit B)* to prove the fact of withholding.

A review of the foregoing documents reveals that the Certificates of Creditable Tax Withheld are in order except for one which has been marked as *Exhibit E-16*. The payee's name indicated therein is Business Harmony Realty, Inc., hence, the tax withheld in the amount of P52,056.59 *(Exhibit E-16)* should be deducted from petitioner's total claim of P59,871,181.00.

Relative to the requirement laid down in Section 76 of the NIRC of 1997, petitioner's Income Tax Return for the Fiscal Year 1999 shows that it has opted for the issuance of a tax credit certificate for its excess creditable withholding taxes. The said return shows that petitioner placed an "**x**" mark in the corresponding box of the option *"To be issued a Tax Credit Certificate"*. Petitioner's prayer, in fact, is for this Court to order the respondent to issue a tax credit certificate in its favor *(Petition for Review; Petitioner's Memorandum, CTA Records, p. 6 and 232, respectively)*. Furthermore, both the original and the amended Annual Income Tax Returns of the petitioner for the fiscal year ended March 31, 2001 *(Exhibits K and L, respectively)* do not reflect any prior year's excess credits *(Exhibits K-1 and L-1)*. Similarly, petitioner's 2001 Quarterly Income Tax Returns *(Exhibits H, I and J)* do not reflect any prior year's excess credits *(Exhibits H-1, I-1 and J-1)*. These facts constitute sufficient proof that petitioner's excess creditable withholding taxes

271

for the fiscal year ended March 31, 2000 remained unutilized and were not carried over into the succeeding taxable fiscal year ended March 31, 2001.

Petitioner likewise indicated in its Annual Income Tax Return for fiscal year ended March 1999 *(Exhibit S-2-1)* that its P53,859,115.00 excess creditable withholding taxes shall be "issued as Tax Credit Certificate". Corollarily, its Quarterly Income Tax Returns for the first three quarters of the fiscal year 2000 *(Exhibits C, D and E)* do not reflect any carry over of prior year's excess tax credits.

For all the foregoing, petitioner's allowable claim is computed as follows:

Amount Claimed by Petitioner		P59,871,181.00
Less: Disallowances per Court's Verification		
a) Related Withholding Tax on Unsupported Sales allegedly declared in FY 1999	2,181,302.38	
b) Certificate of Creditable Tax Withheld NOT in the name of the Petitioner	52,056.59	2,233,358.97
Allowable Amount		**P57,637,822.03**

WHEREFORE, premises considered, the petition is hereby **GRANTED**, but in the reduced amount of **P57,637,822.03**. Accordingly, the respondent is hereby **ORDERED TO ISSUE** a Tax Credit Certificate in favor of the petitioner for the same amount of **P57,637,822.03**.

SO ORDERED.

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

272

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

I hereby certify that the above decision was reached after due consultation with the members of this Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman

273