REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE INVESTMENT-MANAGEMENT CONSULTANTS (PHINMA), INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6015

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 28 2002

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DECISION

This case involves a claim for cash refund or the issuance of a tax credit certificate in the amount of P10,764,558.39 allegedly representing excess creditable withholding taxes for the fiscal year ended October 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with office address located at the 6th Floor, PHINMA Building, 166 Salcedo Street, Legaspi Village, Makati City, Metro Manila. *(par. 1, Joint Stipulation of Facts)*. It is engaged in the business of providing professional services such as management, legal, human resources administration, community relations, management information system and corporate communications (*pages 33 & 34, TSN, August 22, 2000*).

On February 16, 1998, petitioner filed its annual income tax return for the fiscal year (FY) ended October 31,1997 (*Exhibit B*) showing an income tax due of

P1,314,955.00 which was applied against the creditable taxes withheld in FY 1997 of P16,644,955.00 leaving an excess tax credit of P15,330,000.00 as of October 31, 1997.

Petitioner carried over the excess amount of P15,330,000.00 in its FY 1998 income tax return filed on February 15, 1999 (*Exhibit C*), but failed to fully utilize the same as its reported minimum corporate income tax due amounted only to P4,565,442.00 (*Exhibit C-a*). Consequently, petitioner was still left with the balance of P10,764,558.00 in unutilized excess tax credit for FY 1997. Also, petitioner's declared tax credits/withheld/payments for the first three quarters of FY 1998 of P3,099,489.00 and creditable taxes withheld for the fourth quarter of FY 1998 of P9,427,420.00 totaling P12,526,909.00 were not utilized. Thus, as of the FY ended October 31, 1998, petitioner had accumulated excess tax credits of P23,291,467.00 representing the sum of the excess tax credits of P10,764,558.00 for FY 1997 and P12,526,909.00 for FY 1998, which petitioner marked in its return as to be carried-over to the succeeding FY 1999.

However, realizing that it can no longer apply its FY 1997 excess tax credit of P10,764,558.00 to FY 1999, petitioner, on February 10, 2000, filed with the Bureau of Internal Revenue a letter-claim for the issuance of a tax credit certificate corresponding to the said amount (*Exhibit A*). Likewise, in its FY 1999 income tax return filed on February 15, 2000 (*Exhibit G*), petitioner did not include the claimed FY 1997 excess tax credit of P10,764,558.00 as "Prior Year's Excess Credits" but only the amount of P12,526,909.00 (*Exhibit G-a*) pertaining to FY 1998.

On February 15, 2000, petitioner filed the instant Petition for Review pursuant to the following provisions of Sections 204(3) [now 204(C)] and 230 [now 229] of the Tax Code:

> ***"SEC. 204. Authority of the Commissioner to compromise, abate and refund/credit taxes.*** — The Commissioner may —
> xxx xxx xxx
> (3) Credit or refund taxes erroneously or illegally received, 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."
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> ***"SEC. 230. 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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; x x x"
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: x x x"

Respondent, in his Answer filed on March 21, 2000, denied petitioner's assertions and interposed the following Special and Affirmative Defenses:

> "4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5. The petition states no cause of action as it failed to states (sic) when the petitioner's annual or final adjustment income tax return for the year 1997 was filed;
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> 6. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

7. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

8. 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;

9. 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; and

10. Claims for refund are construed strictly against the claimant for the same partakes (sic) the nature of exemption from taxation (**Commissioner of Internal 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**)."

In their Joint Stipulation of Facts and Issues filed on July 24, 2000 and approved by this Court on July 28, 2000, the parties submitted the following issues for this court's resolution:

1. Whether or not petitioner is entitled to a tax credit certificate in the amount of P10,764,558.39 or the equivalent cash refund;

2. Whether or not petitioner has unutilized creditable withholding tax in the amount of P10,764,558.39 for calendar year ending December 31, 1997 (should be fiscal year ending October 31, 1997);

3. Whether or not the income from which the taxes were withheld were included as part of the gross income in petitioner's 1997 income tax return; and

4. Whether or not petitioner's claim for refund of alleged unutilized creditable withholding tax is substantiated by documentary evidence.

Petitioner, to support its claim, presented documentary and testimonial evidence. Respondent, on the other hand, merely submitted the case for decision based on the pleadings (*page 116, CTA Records*).

After a careful examination of all the relevant documents submitted by the petitioner with this court, coupled by the respondent's failure to refute the same, we find petitioner entitled to the claim but in a reduced amount.

Section 69 [now 76] of the Tax Code provides, thus:

> "**SEC. 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 net 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 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."

The foregoing provisions clearly allow the refund of the excess amount of income tax withheld over the actual income tax computed and shown in the adjustment or final corporate income tax return of the taxpayer in a given taxable year which was likewise not utilized in the succeeding taxable year.

Petitioner's annual income tax returns for FY 1997 and FY 1998 (*Exhibits B & C*) show that the claimed amount of P10,764,558.00 represents the excess of the reported creditable taxes withheld in FY 1997 of P16,644,955.00 over the reported income tax liabilities of P1,314,955.00 for FY 1997 and P4,565,442.00 for FY 1998. Inasmuch as petitioner did not carry-over the said FY 1997 excess tax credit of P10,764,558.00 to the succeeding FY 1999 (*Exhibit G-a*), the same appears to be refundable in accordance with the aforequoted provisions of the Tax Code.

However, as oft-cited by this court in a number of similar cases, the refund of excess creditable withholding taxes is dependent on petitioner's compliance with the following three basic requirements:

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 204(3) [now 204(C)] in relation to Section 230 [now 229] of the Tax Code;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient [***Revenue Regulations No. 6-85, as amended; Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

Records reveal that petitioner complied with the first requirement. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return ***(ACCRA Investments Corporation vs. Court of Appeals, supra***). The claimed excess creditable withholding taxes pertain to FY ending October 31, 1997 for which petitioner filed its annual income tax return on February 16, 1998 (*Exhibit B*). Counting from this latter date, the two-year period prescribed under Section 204(3) [now 204(C)] in relation to Section 230 [now 229] of the Tax Code expired on February 16, 2000. Therefore, petitioner's administrative claim for refund filed on February 10, 2000 and the Petition for Review filed before this court on February 15, 2000 fall within the two-year prescriptive period.

To establish the fact of withholding of the reported creditable taxes withheld in FY 1997 of P16,644,955.00, petitioner presented various Certificates of Creditable Tax Withheld at Source (*Exhibits E-1 to E-102)* which were summarized by the commissioned auditing firm, Diaz, Murillo & Dalupan, in its report dated March 28, 2001 (*Schedule A of Exhibit MM*). While it was noted that the originals of some of the certificates were not presented by petitioner for comparison before this court (*Commissioner's hearing, July 31, 2000*), nevertheless, the creditable taxes shown in the said certificates were verified to have been actually withheld through other documents submitted by petitioner such as the duly notarized confirmation letters from various withholding agents (*Exhibits LL to LL-16*) and the Monthly Remittance Returns with corresponding summaries filed by various withholding agents (*Exhibits L to KK, inclusive of sub-markings*) except for the following:

Exhibit	Period Covered	Withholding Agent	Income Tax Withheld	
E-27	Nov. '96-Jan. '97	Cebu Packaging Prod., Inc.		P 81,049.50
E-28	Nov. '96-Oct. '97	Cebu Packaging Prod., Inc.		15,084.25
E-53	Nov. '96-Oct. '97	Luzon Packaging Prod., Inc.	P 27,077.00	
Less:	creditable taxes verified per monthly remit return (Exhibit Y)		(22,577.02)	4,499.98
E-54	Feb '97-Apr '97	PHINMA HIMB Concrete Corp.	P 15,000.00	
E-55	May '97-Jul '97	PHINMA HIMB Concrete Corp.	7,500.00	
Less:	creditable taxes verified per monthly remit return (Exhibit Z-5)		(3,750.00)	18,750.00
E-56	Aug. '97-Oct. '97	PHINMA HIMB Concrete Corp.	P 22,500.00	
Less:	creditable taxes verified per monthly remit return (Exhibit Z-8)		(11,250.00)	11,250.00
E-79	Nov. '96-Jan. '97	TA Power Generation Corp.	P 25,000.00	
Less:	creditable taxes verified per monthly remit return (Exhs FF & FF-1)		(10,000.00)	15,000.00
E-80	Feb. '97-Apr. '97	TA Power Generation Corp.	P 15,000.00	
Less:	creditable taxes verified per monthly remit return (Exhibit FF-5)		(5,000.00)	10,000.00
E-81	May '97-Jul '97	TA Power Generation Corp.	P 15,000.00	
Less:	creditable taxes verified per monthly remit return (Exhs FF-6 & FF-7)		(10,000.00)	5,000.00
				P160,633.73

Hence, out of the reported creditable taxes withheld in FY 1997 of P16,644,955.00, petitioner was able to substantiate only the amount of P16,484,321.27 (P16,644,955.00 less P160,633.73).

Finally, as to the third requirement, a perusal of the Certificates of Creditable Tax Withheld at Source and Monthly Remittance Returns/Summaries submitted by petitioner shows that the substantiated FY 1997 creditable taxes of P16,484,321.27 were withheld from professional fees received by petitioner amounting to P329,970,832.31. In its FY 1997 income tax return (*Schedule 2, Section C of Exhibit B-1*), petitioner's declared income from sale of services amounted to P332,136,953.00. Inasmuch as the income declared by petitioner in its FY 1997 income tax return is higher than the income reflected in the certificates, it may then be concluded that petitioner declared all of the income from which the substantiated creditable taxes of P16,484,321.27 were withheld.

In sum, the court finds petitioner to have sufficiently complied with all the requirements for the refund or issuance of a tax credit certificate corresponding to its claimed excess creditable withholding taxes for FY 1997 but in the reduced amount of P10,603,924.27 computed as follows:

FY 1997 Creditable Taxes Withheld (as substantiated)		P 16,484,321.27
Less: FY 1997 Income Tax Due	P1,314,955.00	
FY 1998 Minimum Corporate Income tax due	4,565,442.00	5,880,397.00
Refundable Excess FY 1997 Creditable Taxes Withheld		P 10,603,924.27

WHEREFORE, in the light of the foregoing, the instant petition is hereby ***PARTIALLY GRANTED.*** Accordingly, respondent is hereby **ORDERED** to **REFUND** or, in the alternative, **ISSUE A TAX CREDIT CERTIFICATE,** in favor of the petitioner in the amount of P10,603,924.27 representing excess creditable withholding taxes for the fiscal year ended October 31, 1997.

SO ORDERED.

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

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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