REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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F. F. CRUZ AND COMPANY, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7216

Members:

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

Promulgated:

JUL 23 2007; 9:20 AM

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DECISION

BAUTISTA, *J.*:

This case involves a claim for the issuance of a tax credit certificate in the amount of P33,065,762.00 allegedly representing unutilized excess creditable withholding tax credits as of December 31, 2002.

Petitioner is a corporation organized and existing under the laws of the Philippines and engaged in the construction business with business address at 800 E. de los Santos Avenue, Quezon City. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, empowered to perform the duties of his office including, among others, the duty to act upon and approve claims for refund or tax credit as provided for by law, with office address at 5th Floor, BIR National Office Building, Diliman, Quezon City.[1]

[1] Paragraphs 1 and 2, Joint Stipulation of Facts, Records, page 128

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On April 16, 2003, petitioner filed with the Bureau of Internal Revenue (BIR) its income tax return for taxable year 2002[2], but subsequently amended the same on May 9, 2003[3]. In its amended 2002 income tax return, petitioner declared an income tax due of P3,022,521.00 on taxable income of P13,572,486.00. However, petitioner had accumulated tax credits in the total amount of P46,638,248.00, representing the sum of the prior year's excess credits of P21,880,195.00 and creditable taxes withheld during the year in the amount of P24,758,053.00. After offsetting the income tax liability of P3,022,521.00 against the total tax credits of P46,638,248.00, petitioner reflected an income tax overpayment of P33,065,762.00, computed as follows:

Sales/Revenue/Receipts/Fees	P1,355,667,766.00
Less: Cost of Sales/Services	1,221,608,038.00
Gross Income from Operation	P 134,059,728.00
Add: Non-Operating & Other Income	17,066,337.00
Total Gross Income	P 151,126,065.00
Less: Deductions	108,712,046.00
Taxable Income	P 42,414,019.00
Income Tax Due	P 13,572,486.00
Less: Tax Credits	
Prior Year's Excess Credits	P 21,880,195.00
Creditable Taxes Withheld for the First Three Quarters	13,171,573.00
Creditable Taxes Withheld for the Fourth Quarter	11,586,480.00
Total Tax Credits	P 46,638,248.00
Tax Overpayment	P 33,065,762.00

Petitioner, as indicated in the return, opted to be issued a tax credit certificate for the income tax overpayment of P33,065,762.00.

Through a letter dated May 2, 2003 and filed with the BIR on May 12, 2003, petitioner formalized its request for the issuance of a tax credit certificate corresponding to its reported excess tax credits as of December 31, 2002 in the amount of P33,065,762.00.[4]

On June 10, 2003, respondent issued a Letter of Authority No. 00002545, authorizing the Revenue Officers named therein to examine the books of accounts and accounting

[2] Exhibit "A"
[3] Exhibit "B"
[4] Exhibit "C"

records relative to petitioner's internal revenue taxes for the period from January 1, 2002 to December 31, 2002.[5]

As there was no report on the instant claim by respondent's examiners, petitioner filed a follow-up letter with the BIR on March 29, 2005, reiterating its request for the issuance of a tax credit certificate in the amount of P33,065,762.00.[6]

Inasmuch as the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, was about to lapse without action on the part of respondent, petitioner elevated its case before this Court on April 15, 2005.

Respondent, in his Answer filed on June 8, 2005, raised the following Special and Affirmative Defenses:

> "4. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
>
> 5. Petitioner's claim for refund is undergoing administrative investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 6. In a letter of authority issued to its Revenue Officers, the BIR authorized the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes (taxable for the period from January 1, 2002 to December 31, 2002). The period covers the same year petitioner claims to have made an excess income tax payment in the amount of Thirty Three Million Sixty Five Thousand Seven Hundred Sixty Two Pesos (*Php 33,065,762.00*);
>
> 7. Be that as it may, petitioner's alleged excess income tax payment for the year 2002 is not properly documented;
>
> 8. Furthermore, petitioner must clearly show that its alleged claim was timely made and does not violate the provisions of Section 204 (c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit;
>
> 9. Claims for refunds are construed strictly against the claimant as they partake the nature of a tax exemption. It is incumbent upon petitioner to clearly prove that it is entitled thereto under the law.

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[5] Exhibit "D"
[6] Exhibit" E"

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> Failure to prove the same is fatal to its claim for tax refund. Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications (**Asia Petroleum Co., vs. Llamas**, 49 Phil 466).

During trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, was considered to have waived his right to present evidence because of the absence of his counsel during the hearing on February 27, 2007, despite the final warning issued by the Court on January 16, 2007.[7]

After the parties have filed their respective memoranda, the case was considered submitted for decision on May 11, 2007.

The parties submitted the following issues[8] for this Court's resolution:

"1. Whether or not petitioner is entitled to the refund in the amount of P33,065,762.00 representing its alleged excess income tax payments?

2. Whether or not the claim for refund was filed within the period allowed under the law?

3. Whether or not the alleged excess income tax payments for the year 2002 is properly documented."

Petitioner anchors its claim on Section 76 of the National Internal Revenue Code (NIRC) of 1997, which states:

> "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 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**

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[7] Records, page 372

[8] Records, page 129

> **excess quarterly income tax against income 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*)

Based on the aforequoted provisions, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year maybe refunded (either in the form of cash or tax credit certificate) or applied against its income tax liabilities of the succeeding taxable years. However, once the option to carry-over has been made, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

A perusal of petitioner's amended income tax return for taxable year 2002[9] shows that the excess tax credits of P33,065,762.00 as of December 31, 2002 consisted of the balance of the prior year's (1998, 2000, and 2001) excess credits in the amount of P8,307,709.00 and creditable taxes withheld during the year 2002 in the amount of P24,758,053.00, as shown below:

Income Tax Due	P 13,572,486.00
Less: Prior Year's Excess Credits (1998, 2000 & 2001)	21,880,195.00
Balance of Prior Year's Excess Credits	P 8,307,709.00
Add: Creditable Taxes Withheld During the Year	24,758,053.00
Excess Tax Credits as of December 31, 2002	P 33,065,762.00

While it appears that petitioner was unable to utilize its prior years' excess tax credits from 1998, 2000, and 2001 in the amount of P8,307,709.00 in 2002, the same should be denied outright pursuant to Section 76 of the NIRC of 1997, as quoted earlier. Since petitioner exercised the option of carry-over with regard to the prior year's excess credits of P8,307,709.00, the same is irrevocable and petitioner cannot claim a refund/tax credit certificate therefor. Petitioner's only recourse is to carry-over the unutilized tax credits of P8,307,709.00 to the succeeding taxable years until the same is fully utilized (***Subic Bay***

[9] Exhibit "B"

Distribution, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6640, November 3, 2004).

Furthermore, other than the income tax returns for 1998, 1999, 2000 and 2001, petitioner did not present withholding tax certificates to prove the existence of the prior year's excess credits of P21,880,195.00. Consequently, the income tax due of P13,572,486.00 shall be deducted from the 2002 creditable withholding taxes that may be found to be properly substantiated.

The Court will now discuss the remaining claim of P24,758,053.00, which pertains to the creditable taxes withheld during the taxable year 2002. In its income tax return for the said year, petitioner marked the option "To be issued a Tax Credit Certificate".[10] In which case, petitioner's creditable taxes withheld for taxable year 2002 of P24,758,053.00 maybe the proper subject of a claim for the issuance of a tax credit certificate under Section 76 of the NIRC of 1997, as amended.

However, as oft-cited by this Court in a number of similar cases, the following requisites must be complied with in order that the subject claim may be granted:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

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 [***Section 2.58, Revenue Regulations No. 2-98, as amended; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investment Corporation vs. CA, 204 SCRA 957***].

Here, petitioner complied with the first requirement. The reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit certificate of excess creditable withholding tax/quarterly income tax payment starts from the date of filing of the annual

[10] Exhibit "B"

income tax return.[11] Petitioner originally filed its income tax return for taxable year ended December 31, 2002 on April 16, 2003.[12] Counting from this date, petitioner had until April 15, 2005, year 2004 being a leap year, within which to file its claim for refund/tax credit certificate, both administratively and judicially. Therefore, petitioner's administrative claims filed on May 12, 2003 and March 29, 2005[13] and the Petition for Review filed on April 15, 2005 were timely filed.

In compliance with the second requirement, petitioner presented Certificates of Creditable Tax Withheld at Source duly issued to it by its withholding agents/clients for the year 2002 showing creditable withholding taxes in the amount of P24,757,949.62, broken down as follows:

Exhibit	**Period Covered**	**Withholding Agent**	**Income Payment**	**Income Tax Withheld**
On Construction Services				
F	Jan 1 - Mar 31, 2002	Asian Terminals, Incorporated	P 66,246,100.00	P 1,324,921.85
F-1	Jan 1 - Mar 31, 2002	Asian Terminals, Incorporated	585,214.00	11,704.28
F-2	Apr. 1- June 30, 2002	Asian Terminals, Incorporated	121,127,220.00	2,446,004.31
F-3	July 1- Sept 30, 2002	Asian Terminals, Incorporated	133,584,300.00	2,671,687.95
F-4	July 1- Sept 30, 2002	Asian Terminals, Incorporated	104,616.00	2,092.32
F-5	Oct. 1-Dec. 31, 2002	Asian Terminals, Incorporated	239,683,060.00	4,793,663.26
F-6	July 1- Sept 30, 2002	Bases Conversion Development Authority	45,847.00	916.94
F-7	July 1- Sept 30, 2002	Bases Conversion Development Authority	532,882.50	10,657.65
F-12	Feb. 1-Feb 28, 2002	Dept. of Public Works & Highways	5,168,669.50	103,373.39
F-13	Mar. 1-31, 2002	Dept. of Public Works & Highways	11,973,330.50	239,466.61
F-14	Apr. 1-30, 2002	Dept. of Public Works & Highways	8,768,878.00	175,377.56
F-15	May 1-31, 2002	Dept. of Public Works & Highways	16,545,190.50	330,903.81
F-16	June 1-30, 2002	Dept. of Public Works & Highways	19,591,579.00	391,831.58
F-17	July 1- 31, 2002	Dept. of Public Works & Highways	24,582,311.50	491,646.23
F-18	Oct. 1-31, 2002	Dept. of Public Works & Highways	21,156,625.50	423,132.51
F-19	Oct. 1-31, 2002	Dept. of Public Works & Highways	3,331,565.00	66,631.30
F-20	Oct. 1-31, 2002	Dept. of Public Works & Highways	14,542,618.00	290,852.36
F-21	Dec. 1-27, 2002	Dept. of Public Works &	20,219,357.00	404,387.14

[11] ACCRA Investments Corporation vs. Court Appeals, 204 SCRA 957; Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184
[12] Exhibit "A"
[13] Exhibits "C" and "E"

		Highways		
F-22	Jan. 2-June 27, 2002	DPWH Region III San Fdo Pamp	24,082,736.00	481,654.72
F-25	Jan 1-Mar 31, 2002	Freyssinet Philippines, Inc.	478,239.53	9,564.77
F-26	Apr. 1-June 30, 2002	Freyssinet Philippines, Inc.	506,292.28	10,125.84
F-28	Jan. 1-Mar. 31, 2002	Go Alan Co	183,189.60	9,159.48
F-29	Apr. 1-June 30, 2002	Go Alan Co	177,840.97	8,892.05
F-30	July - Sept. 2002	Mandaue Realty & Resources Corp.	3,063,978.35	55,708.70
F-31	May 1-31, 2002	Metropolitan Waterworks & Sewerage Sys	11,001,820.65	200,033.10
F-32	Dec. 1-31, 2002	Metropolitan Waterworks & Sewerage Sys	4,548,854.50	82,706.45
F-33	May 1-31, 2002	Philippine Ports Authority	8,940,272.06	89,402.72
F-34	Apr 1-30, 2002	Philippine Ports Authority	3,025,849.75	30,258.50
F-35	Mar 31. 2002	Philippine Ports Authority	14,880,549.40	148,805.49
F-36	Jan. 1-31, 2002	Philippine Ports Authority	2,635,761.09	26,357.61
F-37	no indicated period	Philippine Ports Authority	182,895,212.97	1,828,952.13
F-41	Aug. 1-Sept 30, 2002	Shimizu/F.F. Joint Venture	295,157,521.06	5,903,150.42
F-42	Oct. 1-31, 2002	Shimizu/F.F. Joint Venture	7,830,822.32	156,616.44
F-43	Feb. 1-Mar 31, 2002	Shimizu Corporaton-Manila Branch	4,810,477.50	96,209.55
F-44	May 1-31, 2002	Shimizu Corporaton-Manila Branch	2,582,120.25	51,642.41
F-45	Jul 1-Sept 30, 2002	Shimizu Corporaton-Manila Branch	19,551,047.54	391,020.95
F-46	Oct. 1-Dec. 31, 2002	Shimizu Corporaton-Manila Branch	35,483,538.06	709,670.75
F-47	July 1-Sept. 30, 2002	Subic Bay Metropolitan Authority	941,647.27	94,164.98
		Sub-total:	**P1,330,567,135.15**	**P24,563,348.11**

On Rental Income

F-8	Jan 1 - Mar 31, 2002	Central Visayas Trucking Services, Inc.	P 386,221.82	P 19,311.10
F-9	Apr. 1- June 30, 2002	Central Visayas Trucking Services, Inc.	375,826.18	18,791.30
F-10	July 1- Sept 30, 2002	Central Visayas Trucking Services, Inc.	136,080.00	6,804.00
F-11	Oct. 1-Dec. 31, 2002	Central Visayas Trucking Services, Inc.	204,120.00	10,206.00
F-23	Apr. 1-June 30, 2002	F.F. International Mfg. Corp.	1,090,909.08	54,545.46
F-24	Jan. 31-Mar. 31, 2002	F.F. International Mfg. Corp.	1,090,909.08	54,545.45
F-27	July 1-Sept. 30, 2002	Geotechnics Phiilippines, Inc.	136,363.63	6,818.19
F-38	Jan 1-June 30, 2002	Salinas (IM) Corporation	420,640.00	19,120.00
F-39	July 1-31, 2002	Salinas (IM) Corporation	54,560.00	2,480.00
F-40	Feb. 3, 2002	Salinas (IM) Corporation	43,560.00	1,980.00
		Sub-total:	**P 3,939,189.79**	**P 194,601.51**
		Grand Total:	**P1,334,506,324.94**	**P24,757,949.62**

Likewise, petitioner proved that the income payments of P1,330,567,135.15 from construction services and the income payments of P3,939,189.79 from its rental or lease of real properties related to the substantiated creditable withholding taxes of P24,757,949.62, formed part of the gross income of P1,355,667,766.00 from sale of construction services and rental income of P13,930,592.00 reported by petitioner in its 2002 amended income tax return.[14]

In sum, petitioner have complied with the requisites for the refund of excess creditable withholding taxes for taxable year 2002 in the amount of P11,185,463.62, computed as follows:

Income Tax Due	P13,572,486.00
Less: Substantiated Creditable Taxes Withheld (2002)	24,757,949.62
Refundable Excess Tax Credits	**P11,185,463.62**

WHEREFORE, the Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED** to **ISSUE TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **ELEVEN MILLION ONE HUDRED EIGHTY FIVE THOUSAND FOUR HUNDRED SIXTY THREE PESOS 62/100 (P11,185,463.62)**, representing unutilized excess tax credits for taxable year 2002.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

(Inhibited)
CAESAR A.CASANOVA
Associate Justice

[14] Exhibits "B-1" and "B-7"

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
Presiding Justice
Chairperson, First Division