REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

HAVI FOOD SERVICES PHILIPPINES, INC.,	**C.T.A. CASE NO. 6619**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairman UY, and
-versus-	PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE,	
Respondent.	JAN 05 2006

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

Legal Principle Involved:

Pursuant to *Section 76 of the National Internal Revenue Code* (hereafter "NIRC") *of 1997, as amended*, 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.

THE CASE

This is a Petition for Review filed by HAVI FOOD SERVICES PHILIPPINES, INC. (hereafter "petitioner") praying for refund or issuance of a tax credit certificate in the amount of P9,357,681.00 representing its unutilized creditable withholding tax for calendar years ended December 31, 2000 and December 31, 2001.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties agreed on the following facts:

> "1. Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Sumulong Highway, Marikina City, Metro Manila.
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> 2. Petitioner is duly registered with the Bureau of Internal Revenue as shown by Certificate of Registration with RDO Control No. 96-045-3183.

3. Petitioner is engaged in the business of warehousing and all business necessarily or impliedly incidental thereto, and to construct, hire, purchase, operate and maintain all or any means of conveyances for the transportation to and from the warehouse by land or water of any and all food, food products, and other goods, wares, merchandise or manufactured articles.

4. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to act as such, including among others, the power to decide, approve and grant refunds and/or the issuance of tax credit certificates for excess creditable withholding taxes. He may be served with summons and other legal processes at c/o The Chief, Legal Division, Bureau of Internal Revenue, Revenue Region 7 Bldg., corner Scout Santiago and Quezon Avenue, Quezon City.

5. Petitioner filed its Annual Income Tax Returns for calendar years ended 31 December 2000 and 2001 on March 26, 2001 and April 3, 2002 respectively.

6. The petitioner duly filed an administrative claim for refund with the BIR on 17 July 2002 in the amount of Nine Million Three Hundred Fifty-Seven Thousand Six Hundred Eighty One Pesos (Php 9,357,681.00), representing its unutilized creditable tax withheld for the calendar years ended December 31, 2000 and 2001.

7. The Respondent, to date, has not acted with finality with regard to Petitioner's administrative claim for refund."

In his answer, respondent alleged by way of special and affirmative defenses:

> "5. In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 6. Claims for tax refunds are strictly construed against the taxpayer. Petitioner has no cause of action."

Petitioner presented Nora Miguel, as witness, & submitted its documentary evidence, marked as Exhibits "A" to "O", together with submarkings, which was admitted by the Court, subject to a final evaluation as regards their probative value.

On the other hand, respondent failed to present his evidence despite several resettings. Upon motion of petitioner, the Court declared the respondent to have waived the right to present his evidence.

At the hearing on June 29, 2005, petitioner was given thirty (30) days to file its memorandum, whereas the respondent was given twenty (20) days therefrom to file his memorandum. Considering that only petitioner filed its Memorandum, the case was deemed submitted for decision on September 15, 2005.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER OR NOT THE PETITIONER HAS UNUTILIZED CREDITABLE WITHHOLDING TAX FOR THE YEARS ENDED 2000 AND 2001.

II

WHETHER OR NOT THE PETITIONER CAN SUBSTANTIATE/SUPPORT BY APPROPRIATE DOCUMENTS THE SAID UNUTILIZED CREDITABLE WITHHOLDING TAXES.

III

WHETHER OR NOT THE INCOME FROM WHICH THE CREDITABLE TAXES WERE WIHTHELD WERE DULY DECLARED AS PART OF PETITIONER'S INCOME IN ITS CORPORATE ANNUAL INCOME TAX RETURN FOR THE YEARS ENDED 2000 AND 2001

IV

WHETHER OR NOT PETITIONER DID IN FACT CARRY OVER ITS UNUTILIZED CREDITABLE WITHHOLDING TAXES TO THE FOLLOWING TAXABLE YEAR.

The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P9,357,681.00, representing the excess creditable withholding taxes for the taxable years 2000 and 2001.

THE COURT'S RULING

The petition is partly meritorious.

Petitioner avers that its excess creditable withholding taxes for calendar years 2000 and 2001 are duly supported by certificates of creditable tax withheld at source issued by its various withholding agents (*Exhibits "E-1"to "E-143", "G-1" to "G-146"*). Petitioner further claims that the income from which the creditable taxes were withheld was duly declared as part of petitioner's income in its Corporate Annual Income Tax Returns for calendar years 2000 and 2001.

We will discuss the calendar years separately.

Excess Creditable Withholding Taxes For Calendar Year 2000

Petitioner, by its own admission, filed its Corporate Annual Income Tax Return for the calendar year ended December 31, 2000 showing a total overpayment of P8,815,617.00, and indicated therein that the same will be CARRIED OVER to the next year (*Petition for Review, page 2, paragraph 3*). This fact is evidenced by an "x" mark in a box corresponding to the choice "To be carried over as tax credit next year/quarter" in its 2000 Annual Income Tax Return (*Annex "C", Petition For Review*).

A cursory reading of *Section 76 of the NIRC of 1997, as amended*, reveals the effect of the choice made by petitioner in the matter of its tax refund pertaining to its 2000 excess creditable withholding tax, to wit:

> "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 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."

Pursuant to the aforequoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed two (2) options: (a) be credited or refunded (either in the form of cash or credit certificate) with the excess amount paid; or (b) carry-over the excess credit. Once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other (*Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241*).

Thus, petitioner is precluded from claiming a refund/tax credit certificate as it had already chosen, and in fact, had exercised the option of carry over. Having exercised such option, the same is irrevocable. Petitioner's only recourse is to carry over/apply the 2000 unutilized tax credit to the succeeding taxable years until the same is fully utilized. Although said excess was not fully utilized in 2001, petitioner cannot still seek its refund, instead it should just apply the same to the succeeding years until it is fully utilized. By express mandate of *Section 76*, the option to carry over is irrevocable regardless of whether or not the excess tax credit is actually or fully utilized.

Excess Creditable Withholding Taxes
For Calendar Year 2001

As heretofore discussed, petitioner cannot anymore avail of the tax refund for the excess creditable withholding tax pertaining to the taxable year 2000. But, as for taxable year 2001, petitioner has made clear its intention not to carry over the excess creditable withholding taxes. Petitioner opted to refund its excess creditable withholding taxes for year 2001, as evidenced by an "x" mark corresponding to the said choice in its 2001 Annual Income Tax Return (*Exhibit "F"*). Likewise, in its income tax return for the succeeding year 2002, petitioner did not indicate any amount of prior year's excess credits (*Exhibit "H-1"*).

Unquestionably, for 2001 petitioner has an excess creditable withholding tax of P2,344,897.00 which may be the subject of a claim for refund under *Section 76(C)* of the *NIRC of 1997*. However, petitioner must prove compliance with the following basic requirements prescribed under Section 2.58.3 of Revenue Regulations No. 2-98, otherwise known as the Withholding Tax Regulations, in order to be entitled to a refund of excess creditable withholding taxes:

1) That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997;
2) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), showing the amount paid and the amount of tax withheld therefrom; and
3) That the income upon which the taxes were withheld was included in the return of the recipient (*Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 963)*.

As regards the first requirement, records show that petitioner timely filed its administrative and judicial claims for refund. The subject withholding taxes were for the taxable year 2001, for which petitioner filed its annual income tax return on April 3, 2002. Counting from this

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date, petitioner corporation had until April 2, 2004 (2004, being a leap year) within which to file a claim for refund/tax credit certificate both in the administrative and judicial levels. Petitioner filed its administrative claim on July 17, 2002, while the instant Petition for Review before this Court was filed on March 24, 2003. Clearly, petitioner has complied with the two-year prescriptive period under *Section 204(C),* in relation to *Section 229 of the NIRC of 1997, as amended.*

As to the second requirement, petitioner presented Certificates of Creditable Tax Withheld at Source issued by its various withholding agents for the year 2001 (*Exhibits "G-1" to "G-146"*), which were summarized in *Exhibit "G".* However, this Court noted that the summary reflects slight differences from the certificates, particularly:

1) *Exhibit "G-115"* actually reflects an amount of P4,212.00, in contrast to the amount of P8,372.47, indicated in the summary;
2) As per *Exhibit "G-142-a"*, the total amount of P19,639.89 reflected as withheld is inaccurate, it should be P18,259.89. The error is attributable to the fact that the amount of P830.00 was added twice.

Hence, out of the reported creditable withholding taxes of P2,344,897.00, only the amount of P2,339,906.53 was duly substantiated by withholding tax certificates.

As to the third requirement, to establish that it declared the income related to the creditable withholding taxes of P2,339,906.53, petitioner presented before this Court the following documents:

	Exhibit
1) Annual Income Tax Return for the year ended December 31, 2000	"D"
2) Annual Income Tax Return for the year ended December 31, 2001	"F"
3) Petitioner's Summary of Withholding Taxes Withheld on Income Payments for CY 2001	"J"
4) Petitioner's Schedule of EWT Refund for the years 2000 and 2001	"K"
5) Petitioner's Audited Financial Statements for the year ended December 31, 2000	"L"
6) Petitioner's Audited Financial Statements for the year ended December 31, 2001	"M"

A perusal of petitioner's Schedule of EWT Refund for the years 2000 and 2001 *(Exhibit "K")* reveals that the total revenues as reflected in its 2001 income tax return in the amount of P217,817,815.00, was higher than the total revenues of P213,553,606.06 indicated in the

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withholding tax certificates for the same year. On direct examination, petitioner's Finance Director, Ms. Nora Miguel, testified and explained that such discrepancy in the amount of P4,264,209.00 was merely brought about by: a) the differences in classification of income payments between petitioner and its customers/withholding agents (*T.S.N., October 4, 2004, pp. 9-13*); b) timing difference between the point at which petitioner recognized/reported its revenues as against the time when the corresponding tax was actually withheld by its customers (*T.S.N., June 17, 2004, pp. 21)*; and c) income payments received by petitioner in 2001 which were not subjected to withholding tax (*T.S.N., June 17, 2004, pp. 19-20*). In other words, petitioner properly declared the gross income related to the claimed creditable withholding taxes of P2,339,906.53, as can be seen in its audited financial statements and income tax returns for the years 2000 and 2001 *(Exhibits "D", "F", "L" & "M")*.

For all the foregoing, the Court finds petitioner to have sufficiently substantiated its claimed creditable withholding taxes for taxable year 2001 in the amount of P2,339,906.53.

Considering that petitioner's minimum corporate income tax (MCIT) due for taxable year 2001 in the amount of P1,802,833.00 was offset against the prior year's (2000) excess credits of P8,815,617.00, the substantiated creditable taxes withheld for taxable year 2001 in the amount of P2,339,906.53 shall be refunded in its entirety.

WHEREFORE, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** the amount of P2,339,906.53 in favor of petitioner, representing unutilized excess creditable income taxes withheld for the taxable year 2001.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice