REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANCO FILIPINO
Savings & Mortgage Bank,
Petitioner,

- versus -

C.T.A. CASE NO. 6374

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 03 2003

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DECISION

This case involves a claim for the issuance of a tax credit certificate in the amount of P52,255,583.00 allegedly representing unutilized creditable withholding taxes for the calendar year ended December 31, 2000.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 101 Paseo de Roxas, Makati City. It is engaged in business as a savings and mortgage bank. As such, its principal income is derived from interest on loans, investments and deposits on banks (*pars. 1 & 3, Summary of Admitted Facts*).

On April 16, 2001, petitioner filed its annual income tax return for the calendar year ended December 31, 2000 wherein it declared a net loss of P981,889,449.00 and a minimum corporate income tax (MCIT) due of P4,147,058.00. Likewise, petitioner reported the amount of P6,914,350.00 as prior year's excess credit and the amount of P52,526,912.00 as creditable taxes withheld in the year 2000 totaling P59,441,262.00.

These creditable withholding taxes were applied against the MCIT due of P4,147,058.00 leaving an overpayment of P55,294,204.00 as of December 31, 2000, which petitioner marked as "To be refunded" (*Exhibit B*).

On November 28, 2001, petitioner filed a letter with the Bureau of Internal Revenue (BIR) requesting for the issuance of a tax credit certificate in the amount of P29,246,512.00 representing unutilized creditable withholding taxes for the year 2000 (*Exhibits D & D-1*). However, on December 18, 2001, petitioner filed another letter-request with the BIR increasing its initial claim of P29,246,512.00 to P52,526,911.83 (*Exhibits D-2 & D-3*).

Since respondent did not act on its administrative claim, petitioner filed the instant Petition for Review on January 9, 2002 but this time praying for the reduced amount of P52,255,583.00. Petitioner anchored its claim on Section 76, in relation to Sections 204(C) and 229 of the Tax Code, thus:

> "**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."

"SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or 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: x x x"

"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 cause that may arise after payment: x x x"

Respondent, in his Answer filed on January 24, 2002, interposed the following Special and Affirmative Defenses:

"3. The petitioner's claim for refund is subject to routinary investigation and examination by the Bureau of Internal Revenue;

4. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

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

6. 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;

7. 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

8. Claims for refund are construed strictly against the claimant for the same partakes 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)**."

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted the case for decision without presenting any controverting evidence (*page 187, CTA records*).

In their Joint Stipulation of Facts filed on March 14, 2002 and approved by this court on April 2, 2002, the parties submitted the following issues for resolution:

"1. Whether or not the petitioner has an unutilized creditable withholding tax in the amount of P52,255,583.00 for calendar year ending December 31, 2000;

2. Whether or not the income from which the taxes were withheld were included as part of the gross income in the petitioner's 2000 Annual Income Tax Return; and

3. Whether or not the petitioner's claim for refund of alleged 2000 unutilized creditable withholding tax is substantiated by documentary evidence."

Anent the first issue, petitioner's annual income tax return for the taxable year 2000 (*Exhibit B*) shows that the reported total tax credits of P59,441,262.00 exceeded its MCIT due of P4,147,058.00.00 resulting to an overpayment of P55,294,204.00.00 as of

December 31, 2000. The excess amount of P55,294,204.00 is composed of the prior year's excess credit of P2,767,292.00 and creditable taxes withheld in 2000 of P52,526,912.00, computed as follows:

MCIT due for taxable year 2000	P	4,147,058.00
Less: Prior year's excess credits		6,914,350.00
Balance of prior year's excess credits	P	2,767,292.00
Add: Creditable taxes withheld in 2000		52,526,912.00
Total excess tax credits as of Dec. 31, 2000	P	55,294,204.00

However, records reveal that petitioner failed to substantiate its prior year's excess credits of P6,914,350.00. Hence, petitioner's reported creditable taxes withheld in the year 2000 of P52,526,912.00 shall be applied against its MCIT due of P4,147,058.00. Consequently, only the remaining amount of P48,379,854.00 appears to have been excessively paid, thus:

MCIT due for taxable year 2000	P	4,147,058.00
Less: Creditable taxes withheld in 2000		52,526,912.00
Excess tax credits as of December 31,2000	P	48,379,854.00

Under the provisions of Section 76 of the Tax Code, hereinbefore quoted, the taxpayer's excess tax credits or overpaid income tax in a given taxable year may be refunded or applied against its income tax liabilities of the succeeding years. However, once the option to carry-over has been made, the same becomes *irrevocable* for that taxable period. In this case, while petitioner marked with an "x" the box corresponding to the phrase "To be refunded" in its 2000 income tax return (*Exhibit B-10*), it nonetheless indicated the amount of P20,507,174.00 as "Prior Year's Excess Credits" in its 2001 income tax return to pay off its MCIT due of P14,924,597.00 (*Exhibit K*). Therefore, based on Section 76 of the Tax Code, petitioner is precluded from claiming a refund or issuance of a tax credit certificate corresponding to the 2000 excess tax credits of P20,507,174.00 which were carried-over and applied against its 2001 income tax liability of P14,924,597.00. Although petitioner amended its 2001 income tax return reflecting no amount of prior year's excess credits (*Exhibit L*), the same was a mere afterthought in an attempt to prove that it did not utilize any amount of its 2000 excess tax credits. Considering that petitioner actually exercised the option of carry-over insofar as the 2000 excess tax credits of P20,507,174.00 in its original 2001 income tax return is concerned, it is already barred from claiming a refund or a tax credit certificate corresponding thereto. Accordingly, only the amount of P27,872,680.00, arrived at by deducting the amount of P20,507,174.00 from the reported 2000 excess tax credits of P48,379,854.00, may be the proper subject of a claim for refund/issuance of a tax credit certificate under Section 76 of the Tax Code.

We shall now proceed to the issue of whether or not petitioner was able to substantiate the amount of P27,872,680.00

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(C) in relation to Section 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. 2-98; Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

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 taxable year ended December 31, 2000 for which petitioner filed its annual income tax return on April 16, 2001 (*Exhibit B*). Counting from this latter date, petitioner has until April 16, 2003 within which to file a claim for refund corresponding to its 2000 excess creditable withholding taxes. Hence, petitioner's administrative claims for refund filed on November 28, 2001 and December 18, 2001 and the Petition for Review filed before this court on January 9, 2002 fall within the two-year prescriptive period.

Likewise, petitioner was able to establish the fact of withholding through the presentation of the various Certificates of Creditable Tax Withheld at Source (*Exhibits A-1 to A-14*). However, the creditable taxes shown in the certificates as summarized in Exhibit A amounted only to P52,255,583.00 and not P52,526,912.00 as reported in its 2000 income tax return.

Also, petitioner proved the remittance to the BIR of the creditable withholding taxes of P52,255,583.00 through the submission of the Certifications from the BIR Chief, Revenue Accounting Division (*Exhibits F to J*).

Finally, as to the third requirement, the certificates show that the creditable taxes of P52,255,583.00 were withheld on petitioner's sale of real properties, the gross selling prices of which in the aggregate sum of P770,127,613.24 formed part of petitioner's reported income from assets acquired of P802,594,832.00 (*Schedule 4, Section A of Exhibit B*)

In sum, this court finds petitioner to have sufficiently proven its entitlement to the issuance of a tax credit certificate representing excess creditable taxes withheld for taxable year 2000 in the reduced amount of P27,601,351.00, computed as follows:

MCIT due for taxable year 2000	P 4,147,058.00
Less: Substantiated creditable taxes withheld in 2000	52,255,583.00
Excess tax credits as of December 31, 2000	P 48,108,525.00
Less: Creditable withholding taxes carried-over/ applied in the succeeding year 2001	20,507,174.00
Refundable excess tax credits	P 27,601,351.00

WHEREFORE, in view of the foregoing, the instant petition is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P27,601,351.00 representing excess creditable taxes withheld for the taxable year 2000.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate 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