REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FLUOR DANIEL, INC. – PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 6315

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 16 2003

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DECISION

This case involves a claim for issuance of a tax credit certificate of the amount of P16,513,519.00, representing petitioner's alleged overpaid income tax as of taxable fiscal year ended October 31, 2000.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, and is primarily engaged in the construction and design engineering business, with principal office at 3/F Asian Star Building, ASEAN Drive, Filinvest Corporate City, Muntinlupa City (*Par. 1, Joint Stipulation of Facts and Issues*).

On February 15, 2000, petitioner filed its Annual Income Tax Return (ITR) (*Exhibit F*) for the fiscal year ended October 31,1999, declaring the following data:

Revenues	P	891,772,566.00
Less: Cost of Sales		618,112,451.00
Gross Income from Operation	P	273,660,115.00
Add: Non-Operating & Other Income		30,695,857.00
Total Gross Income	P	304,355,972.00
Less: Deductions		287,144,277.00
Taxable Income	P	17,211,695.00
Minimum Corporate Income Tax	P	6,087,119.00
Prior Year's Excess Credit	P	795,410.00
Tax Payments for the First Three Quarters		20,761,139.00
Creditable Tax Withheld for the First Three Quarters		1,133,901.00
Creditable Tax Withheld for the Fourth Quarter		1,291,324.00
Total Tax Credits/Payments	P	23,981,774.00
Tax Payable/(Overpayment)	P	(17,894,655.00)

Petitioner decided to carry-over as tax credit for next year its supposed excess overpayment in the amount of P17,894,655.00 (*Exhibit "F-8"*).

On February 15, 2001, petitioner filed its ITR for the fiscal year ended October 31, 2000, reflecting an overpayment of income tax in the amount of P 16,776,328.00, which it chose "To be issued a Tax Credit Certificate" as shown by the "x" mark in the box provided in the same income tax return (*Exhibit "B"; Par. 4, Joint Stipulation of Facts and Issues*). The overpayment was computed as follows:

Revenues	P	185,245,536.00
Less: Cost of Sales		136,237,749.00
Gross Income from Operation	P	49,007,787.00
Add: Non-Operating & Other Income		36,160,578.00
Total Gross Income	P	85,168,365.00
Less: Deductions		211,086,290.00
Taxable Income	P	(125,917,925.00)
Minimum Corporate Income Tax	P	1,703,367.00
Prior Year's Excess Credit	P	17,894,655.00
Creditable Tax Withheld for the First Three Quarters		232,060.00
Creditable Tax Withheld for the Fourth Quarter		352,980.00
Total Tax Credits/Payments	P	18,479,695.00
Tax Payable/(Overpayment)	P	(16,776,328.00)

However, on April 18, 2001, petitioner filed an Amended Annual ITR for the fiscal year ended October 31, 2000, showing instead an income tax overpayment in the amount of P16,513,519, after increasing its Minimum Corporate Income Tax (MCIT) from P1,703,367.00 to P1,966,176.00 (*Exhibit A; Par. 5, Joint Stipulation of Facts and Issues)*. Petitioner again elected the option "To be issued a Tax Credit Certificate (*Exhibit "A-7")*.

On May 25, 2001, petitioner filed with the respondent a request for the issuance of tax credit certificate for the subject amount of P16,513,519.00, representing the income tax overpayment and unutilized creditable withholding tax shown in the amended ITR for the taxable fiscal year ended October 31, 2000, pursuant to Sections 76 and 204(C) of the 1997 Tax Code (*Par. 11, Joint Stipulation of Facts and Issues; Annex D, Petition for Review*).

On July 16, 2001, in order to suspend the running of the two-year prescriptive period under the law and to preserve its right to judicially claim for a refund or issuance of tax credit certificate, petitioner filed the instant Petition for Review.

In his Answer, respondent countered by raising the following Special and Affirmative Defenses:

> "3. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau;
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> 4. Petitioner failed miserably to show that the total amount of Php 16,513,519.00, claimed as overpaid income tax and unutilized creditable withholding tax for taxable year 2000 was erroneously or illegally collected, or that the same was properly documented;

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

6. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

7. It is incumbent upon petitioner to show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code;

8. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax.

The parties stipulated the issues to be resolved by this court, namely:

1. Whether or not the petitioner has overpaid income taxes for taxable year 2000;
2. Whether or not petitioner is entitled to refund/issuance of tax credit certificate for the amount of P16,513,519, representing the overpaid income tax and unutilized CWT for taxable year ended December 31, 2000;
3. Whether or not the income from which the Creditable Withholding Taxes withheld were made formed part of the gross income;
4. Whether or not the unutilized/excess Creditable Withholding Taxes for 2000, 1999 and 1998 are supported by Certificates of Tax Withheld at Source;
5. Whether or not the unutilized/excess Creditable Withholding Taxes for 2000 was carried over to the succeeding taxable year; and
6. Whether or not the claim for refund is properly substantiated by documentary evidence.

In claiming for the issuance of a tax credit certificate, petitioner cited Sections 76 and 204 of the Tax Code of 1997, which we quote for easy reference, to wit:

> "**Section 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."** (*Emphasis supplied*)

> "**Sec. 204** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may – x x x
>
> (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:** *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)

In the case at bar, the records indicate that petitioner elected its 1999 excess income tax payment to be carried-over as tax credit to the succeeding year (*Exhibit "F-8"*). The aforecited Section 76 of the 1997 Tax Code, however, states that if a corporation

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exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

It is a well-settled principle in statutory construction that "when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says" (***Handbook on Statutory Construction by Ruperto G. Martin**, 1972 edition, page 62*). Section 76 is clear and unambiguous leaving no room for any other interpretation than what it literally conveys, that is, when the option to carry-over has been exercised, the same shall be irrevocable for that taxable period. ***[CTA Resolution, The Philippine Banking Corporation, (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6280, August 16, 2001].***

In fact, this court has already ruled in a number of cases that once the option to carry-over the excess credit has been made, that option shall be considered irrevocable for that period. ***(United International Pictures AB vs. Commissioner of Internal Revenue**, CTA Case No. 6240, September 12, 2002; **Cebu Holdings, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 6062, September 10, 2002; **Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 6074, April 19, 2002 and **Pilipinas Transport Industries, Inc. vs. Commissioner of Internal Revenue**, CTA Case No.6073, March 1, 2002).* Hence, petitioner is only allowed to carry-over its 1999 excess income tax payment as an automatic tax credit until the same is fully utilized.

With respect, however, to petitioner's 2000 excess income tax payment, petitioner manifested in its ITR that the overpayment for the said fiscal year was "To be issued a

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Tax Credit Certificate". Thus, it can validly claim for the issuance thereof upon compliance with the following requirements:

> (1) That the claim for refund is filed within the two-year reglementary period pursuant to Section 229 of the Tax Code;
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> (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. [***Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85)***; ***Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991, affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and The Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; Citytrust Finance Corporation (formerly Investors Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993, affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

Records show that petitioner was able to comply with the first requirement. Its letter-claim for refund filed with the Bureau of Internal Revenue (BIR) on May 25, 2001 and the petition for review filed with this court on July 16, 2001 are both within the two-year period reckoned from the date of filing of the final adjustment return for fiscal year 2000, which is on February 15, 2001 (*Exhibit "B"*).

As to the second requisite, petitioner alleged in its memorandum that the income corresponding to the 2000 creditable taxes withheld were included in the gross income declared in its 2000 ITR. An examination of the documents discloses that petitioner derived its income from two sources namely: (1) Contractor's fee and (2) Rental income. As reflected in the certificates of creditable tax withheld at source, petitioner has a total income from contractor's fee in the amount of P78,153,676.90 which upon verification was indeed included as part of the gross revenue declared in its income tax return in the amount of P231,556,920.00. Likewise, the rental income in the amount of P132,949.29, as reflected in the certificates were also declared in the 2000 ITR under other income.

Regarding the third requirement, petitioner presented the various certificates of creditable taxes withheld at source to prove the fact of withholding, to wit:

WITHHOLDING AGENT	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
(A) Rental income			
Texaco Phils., Inc.	P	P 40,693.12	P 2,034.66
Texaco Phils., Inc.	T	92,256.17	4,612.81
Subtotal		P 132,949.29	P 6,647.47
(B) Contractor's fee			
Procter & Gamble Phils.	M	P 39,896,194.90	P 195,817.56
Fluor Daniel Pacific, Inc.	N	1,369,477.00	13,694.77
Fluor Daniel Pacific, Inc.	O	1,088,048.00	10,880.48
Fluor Daniel Pacific, Inc.	Q	963,269.00	9,632.69
Procter & Gamble Phils.	R	10,826,023.00	108,260.23
Procter & Gamble Phils.	S	13,830,558.00	138,305.58
Analog Devices	U	10,180,107.00	101,801.07
Subtotal		P 78,153,676.90	P 578,392.38
Total		P 78,286,626.19	P 585,039.85

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Finally, the creditable taxes withheld were not carried-over to the succeeding year 2001, as evidenced by petitioner's 2001 ITR, wherein petitioner declared a "nil" prior year's excess credit *(page 242, CTA Records)*.

WHEREFORE, petitioner's 1999 claim for issuance of a tax credit certificate representing its alleged overpaid income tax in the amount of P15,935,126.62 is **DENIED** but its year 2000 claim for issuance of a tax credit certificate is hereby **GRANTED** in the amount of P585,039.85.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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

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