REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CEBU HOLDINGS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6062

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 10 2002

x - x

DECISION

This case involves a claim for the issuance of a tax credit certificate in the amount of P33,593,494.00 representing excess creditable taxes withheld for the years ended December 31, 1997 and December 31, 1998.

The antecedent facts follow.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Republic of the Philippines, authorized to engage in business as a realty holding and development company, with principal place of business located at 7th Cebu Holdings Center, Cebu Business Park, Cebu City (*par. 1, Joint Stipulation of Facts*).

On April 15, 1998, petitioner filed its Corporation Annual Income Tax Return for calendar year ended December 31, 1997 (*Exhibit "A"*), reflecting an overpayment of P24,679,020.00, detailed as follows:

Tax Due	P 3,261,849.00
Tax Credits/Payments	27,940,869.00
Overpayment	P24,679,020.00

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On April 15, 1999, petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1998 (*Exhibit "C"*), showing an overpayment of P33,593,494.00. This was amended on April 10, 2000 (Exhibit "D"), likewise reflecting the same amount of overpayment, arrived at as follows:

Minimum Corporate Income Tax		P 2,701,924.00
Prior Year's Excess Credits	P24,679,020.00	
Creditable Tax Withheld for the first three quarters	8,360,132.00	
Creditable Tax Withheld for the fourth quarter	3,256,266.00	36,295,418.00
Overpayment		P33,593,494.00

Through letters addressed to respondent dated January 28, 2000 (*Exhibit "G"*) and March 9, 2000 (*Exhibit "H"*), petitioner requested for the refund or issuance of tax credit certificate in the amount of P43,326,897.95. On April 10, 2000, however, petitioner filed another letter with the Bureau of Internal Revenue (*Exhibit "I"*), amending its request for the refund or issuance of a tax credit certificate from P43,326,897.95 to P33,593,494.00 as unutilized creditable withholding tax.

To date, respondent has not yet resolved the subject claim for refund (*par.6, Joint Stipulation of Facts*).

On April 12, 2000, in order to toll the running of the two (2) year prescriptive period for filing a claim for refund, petitioner filed with this court the instant Petition for Review.

In his Answer filed on May 18, 2000, respondent raised the following Special and Affirmative Defenses:

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1. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the respondent's Bureau;

2. Petitioner failed miserably to show that the amount of P33,593,494.00 claimed as overpaid income tax or excess creditable withholding tax for taxable year ending December 31, 1998 was erroneously or illegally collected, or that the same was properly documented;

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

4. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;

5. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the Tax Code; and

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

In their Joint Stipulation of Facts and Issues, the parties submitted the following issues for this court's resolution:

> The legal issue is whether or not petitioner is entitled to a refund in the amount of Thirty Three Million Five Hundred Ninety Three Thousand Four Hundred Ninety Four Pesos (P33,593,494.00).
>
> The factual issue is whether or not petitioner has complied with the legal requirements for the grant of a tax refund, namely:
>
> 1) That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax as required under Section 204 of the Tax Code;
>
> 2) That the income tax return of the recipient shows that the income payment received was declared as part of the gross income;
>
> 3) That the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom; and

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4) Whether or not petitioner overpaid its income taxes for taxable year ending December 31, 1998.

After considering the attending facts, evidence, laws and jurisprudence applicable to this case, we find the petitioner entitled to a partial refund.

Since the present case involves refund claims for taxable years 1997 and 1998, the same is covered by two applicable laws, namely: (1) Section 69 of the old Tax Code for petitioner's 1997 claim; and (2) Section 76 of the 1997 Tax Code for the 1998 claim. In the case entitled ***Philippine Transport Industries, Inc. vs. Commissioner of Internal Revenue***, CTA Case No. 6073, March 1, 2002, we ruled in the same manner, thus:

> "A cursory review of the factual milieu of this case unearthed the fact that petitioner's claims are covered by two applicable laws. First, petitioner's alleged excess unutilized creditable withholding tax for taxable year 1997 in the amount of P3,226,509.00 is covered by Section 69 of the Old Tax Code which allows the refund of excess tax credits or overpaid income tax of a given taxable year not otherwise utilized/applied against the taxpayer's tax liability in the succeeding year while the 1998 claim for refund is covered by Section 76 of the Tax Reform Act of 1997 which became effective on January 1, 1998."

For clarity, we quote Section 69 of the old Tax Code and Section 76 of the Tax Code of 1997:

> **"Section 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 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

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adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

"**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*)

On the face of the 1998 return initially filed by petitioner on April 15, 1999, petitioner opted to carry over the excess creditable taxes to the succeeding taxable years by placing an (x) mark in the box "To be carried as tax credit next year." On April 10, 2000, petitioner filed an amended 1998 Corporate Annual Income Tax Return for the purpose of changing its option from "To be carried as tax credit next year" to the option "To be issued a tax credit certificate." Notwithstanding said amendment, this court cannot grant the amount claimed insofar as the 1998 excess/unutilized withholding tax is concerned. Section 76 of the Tax Reform Act of 1997 is clear: once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

As a matter of fact, based on the said provision, petitioner's 1998 claim should be denied outright because petitioner chose the option "To be carried as tax credit next year". While petitioner did not in fact carry-over and apply the 1998 excess tax credits as shown in its 1999 income tax return, the option to carry-over/apply the same had been made. Accordingly, it is irrevocable. Petitioner is left with no other recourse but to apply the 1998 excess tax credits to the succeeding years until the same are fully utilized.

On the other hand, petitioner may validly claim for the issuance of a tax credit certificate pertaining to its 1997 excess tax credits. Section 69 of the old Tax Code which, as earlier explained, is the applicable law, allows the refund of the excess tax credits or overpaid income tax of a given taxable year not otherwise utilized/applied in the succeeding year. Unlike in Section 76 of the 1997 Tax Code, there is no specific provision in Section 69 of the old Tax Code that declares that once the option to carry-over has been made, it becomes irrevocable for that taxable period (***Philippine Transport Industries, Inc. vs. Commissioner of Internal Revenue***, supra).

Thus, we now determine whether or not petitioner has complied with the legal requirements for the grant of a tax refund, namely:

1. That the claim for refund/tax credit was filed within the two-year prescriptive period provided under Section 204 (3) [now Section 204 (C)] in relation to Section 230 [now 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. 12-94 and 2-98*** (amending **Revenue Regulations No. 6-85**); ***Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue***, 280 SCRA 459 & ***ACCRA Investments***

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> ***Corporation vs. The Honorable Court of Appeals, Commissioner of Internal Revenue and The Court of Tax Appeals***, 204 SCRA 957; ***Renaissance Properties and Management Corporation vs. The Hon. Commissioner of Internal Revenue***, CTA Case No. 5602, August 5, 1999].

With reference to the first requirement, records show that both the administrative and judicial claims for refund/tax credit certificate of excess creditable taxes for calendar years ended December 31, 1997 and December 31, 1998 were filed within the two-year prescriptive period, as provided in Section 229 of the Tax Reform Act of 1997, we quote thus:

> "**Section 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:** *Provided, however*, That the Commissioner may, even, without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis ours*)

It is to be noted that the two-year prescriptive period for filing a claim for refund commences to run from the filing of the final adjustment return and not from the dates the quarterly payments were actually made (***Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals***, 205 SCRA 184). Thus, the two-year prescriptive period for the filing of a claim for refund of excess creditable withholding

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tax for the calendar year ended December 31, 1997 commenced on April 15, 1998, the date when petitioner filed its Corporate Annual Income Tax Return (*Exhibit "A"*). On the other hand, the two-year prescriptive period for the filing of a claim for refund of excess creditable withholding tax for the calendar year ended December 31, 1998 commenced on April 15, 1999, the date when petitioner filed its Corporate Annual Income Tax Return (*Exhibit "C"*).

Petitioner filed its administrative claim for refund with the Bureau of Internal Revenue on February 1, 2000 (*Exhibit "G"*), which it subsequently amended through a letter dated April 10, 2000 (*Exhibit "I"; par. 5, Joint Stipulation of Facts and Issues*). The instant Petition for Review was filed with this court on April 12, 2000. Clearly, both claims were filed well within the two-year prescriptive period.

We now proceed to the second requirement. Upon careful scrutiny of the documents presented as evidence by petitioner supporting the taxes withheld in 1997, such as the Certificates of Creditable Withholding Tax at Source on lease of commercial spaces issued by its various withholding agents (*Exhibits W-1 to W-504*) and Withholding Tax Remittance Returns prepared by the petitioner in behalf of its buyer on sale of real estate/condominium units (*Exhibits Y-1 to Y-71*) together with various certifications on remittances made by the petitioner of the withheld taxes on sale of real estate/condominium units for 1997 (*Exhibits K, M, N-1, O-1, P-1 & BB*), we find the following certificates and remittance returns which were taken from the findings and recommendation of the commissioned independent CPA as proper disallowances, to wit:

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Creditable Withholding Taxes on lease of commercial spaces for 1997

Creditable Withholding Taxes Supported by Fax copies or photocopied certificates	P 92,897.39
Certificates of Taxes Withheld – Cebu Holdings, Inc. (petitioner) indicated as the withholding agent	21,114.78
No payee is indicated in the Withholding Tax Certificates	3,148.64
Creditable Withholding Taxes Claimed Twice	33,983.47
Certificates of Taxes Withheld Without the Signature of the Withholding Agent	5,679.29
Total deduction for 1997 Creditable Withholding Taxes on lease of commercial spaces	P156,823.57
Less: Creditable Withholding Taxes in Schedule different from the amount shown in the certificates	119.06
Total disallowed Creditable Withholding Taxes on income for lease of commercial spaces for taxable year 1997	P156,704.51

Creditable Withholding Taxes on sale of real estate/condominium units for 1997

Creditable Withholding Taxes supported by photocopied Withholding Tax Returns filed by the company & stamped "Certified True Copy" & signed by Revenue District Officer containing the name of the petitioner as the withholding agent	P 4,114,025.74
Creditable Withholding Taxes for prior year's sales claimed in current year	7,813,233.75
Creditable Withholding Taxes on cancelled sales	150,669.06
Total amount of Creditable Withholding Taxes on sale of real estate/condominium units to be disallowed	P12,077,928.55

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Finally, as to the third requirement, it is to be noted that petitioner had two sources of income which were subjected to expanded withholding taxes; namely, sale of real estate/condominium units and lease of commercial spaces. Based on the report of the independent CPA (*Exhibits Q & Q-1*), petitioner's income from lease of commercial spaces for taxable year 1997 were properly reported and declared in petitioner's 1997 return. This court agrees with the said conclusion.

With respect to the income from sale of real estate/condominium units, the CPA observed that petitioner uses the deferred sales method of revenue recognition in reporting sales of condominium units, *viz*, the total revenue is recognized based on the contract price of the units sold during the year of sale plus or minus adjustment for cancelled sales. This explains why the income reflected in 1997 income tax return differ from the income payments reflected in the certificates of withholding and monthly remittance returns, to wit:

Amount per 1997 ITR	P 315,662,203.00
Less: Amount grossed-up withholding taxes	475,609,803.00
Difference	(P159,947,600.00)

The independent CPA reported that the sales per ITR reflect only the contract price of the condominium units sold in 1997 (year of sale) while the grossed-up Expanded Withholding Taxes (EWT) per schedule includes the contract price of the condominium units sold in December 1996 amounting to P156,264,675.00 for which expanded withholding tax remittances were made and claimed only in January 1997. The remaining difference is substantially due to sales made in 1997 but were subsequently cancelled during the year but since the related EWT of the cancelled sales had already been remitted, the same were included in the total EWT claimed by the petitioner per schedule.

The explanation about the discrepancy of the amount of sales per income tax return and the amount of grossed-up expanded withholding tax per schedule cannot merit the full refund of the 1997 claim. The alleged sales of condominium units in December 1996 from which taxes amounting to P7,813,233.75 were withheld and remitted only in 1997 and that of 1997 cancelled sales in the amount of P150,669.06 cannot be verified from the evidence presented. The mere presentation of the 1996 ITR without an explanation or schedule detailing the revenues declared therein is not conclusive proof that the amount of P156,264,675.00 formed part of that income. Petitioner should have presented vital documents such as the sales documents for 1996 together with the schedule for reconciliation purposes (including but not limited to Deeds of Absolute Sale and Certificates of Registration), documents supporting cancellation of sales in 1997 and any other similar documents to support the findings of the commissioned independent CPA.

A claim for refund is in the nature of a claim for exemption and should be construed in *strictissimi juris* against the taxpayer (***Commissioner of Internal Revenue vs. Tokyo Shipping Co, Ltd.***, *244 SCRA 332*). Anyone claiming for refund or issuance of tax credit certificates has the burden of proof of its entitlement. Failure to do so is fatal to one's claim. Since not all of the income from sale of real estate/condominium units were proven by petitioner to have been declared as part of the 1997 (or 1996) revenue, it

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follows that petitioner is only entitled to the refund of those creditable withholding taxes on sale of condominium units which income were declared in the 1997 ITR.

WHEREFORE, in view of the foregoing, the instant petition is hereby **PARTIALLY GRANTED.** Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P9,742,462.94, computed as follows:

Total Amount Claimed		P33,593,494.00
Less: 1998 Creditable Taxes Withheld (outright deduction)		11,616,398.00
Balance (1997 Excess Creditable Withholding Taxes after 1998 MCIT)		P21,977,096.00
Less: Disallowances:		
a) 1997 Creditable Withholding Taxes on Lease of commercial spaces	P 156,704.51	
b) 1997 Creditable Withholding Taxes on Sale of Real Estate/Condo Units	12,077,928.55	12,234,633.06
Amount to be refunded		**P 9,742,462.94**

SO ORDERED.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, 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

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