REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

FESTIVAL SUPERMALL, INC., *Petitioner,*	**C.T.A. CASE NO. 7205**
	Members:
- versus -	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** OCT 1 3 2009 2:55 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

Section 76 of the National Internal Revenue Code of 1997, as amended, provides that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options, namely: (1) to carry-over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. 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 tax credit certificate shall be allowed.

THE CASE

This is a Petition For Review filed by Festival Supermall, Inc. praying for the refund or issuance of a tax credit certificate in the amount of P40,517,868.00, allegedly representing unutilized creditable income taxes withheld for taxable year ending December 31, 2003.

THE PARTIES

Festival Supermall, Inc. (hereafter "petitioner") is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with main office located at the Ground Floor, Administration Building B Office, Festival Supermall, Filinvest Corporate City. It is duly registered with the Securities and Exchange Commission (SEC) and Bureau of Internal Revenue (BIR).

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with the authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of erroneously paid or illegally collected internal revenue taxes. He holds office at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

THE FACTS

Petitioner filed its Quarterly and Annual Corporate Income Tax Returns (BIR Form Nos. 1702Q and 1702, respectively) for taxable year 2003 on the following dates:

First Quarter	BIR Stamp dated May 29, 2003
Second Quarter	BIR Stamp dated August 28, 2003
Third Quarter	BIR Stamp dated November 27, 2003
Annual	BIR Stamp dated April 15, 2004

On April 14, 2005, petitioner filed a claim for refund or issuance of a tax credit certificate for unutilized creditable income taxes withheld at source for taxable year 2003. On the same date, petitioner filed the instant Petition for Review before this Court.

In his Answer filed on July 11, 2005, respondent, by way of special and affirmative defenses, averred the following:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
>
> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.
>
> 6. Petitioner's claim for refund/issuance of tax credit in the amount of **P40,517,868.00**, as alleged unutilized

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creditable income taxes withheld for taxable year ending December 31, 2003 were not fully substantiated by proper documentary evidence.

7. Petitioner failed to prove that the amount of **P40,517,868.00**, as alleged unutilized creditable income taxes withheld for taxable year ending December 31, 2003 were included as part of its gross income for taxable year 2003, and that it did not carry-over to the succeeding taxable quarter/year the subject of its claim, and the same were not utilized in payment of its income tax liability for the succeeding taxable quarter/year.

8. The filing of the instant petition for review with this Honorable Court was premature since respondent was not given an ample opportunity to examine its claim for refund.

9. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under ***Section 204 in relation to Section 230 (now 229) of the Tax Code.*** Otherwise, its failure to prove the same is fatal to its claim for refund.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation ***(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)***."

Petitioner presented Elisa M. Oregano, its Accounting Officer, and Atty. Perfecto E. Mirador, Jr., the Court-Commissioned Independent CPA, as witnesses, and documentary evidence marked as *Exhibits "A" to "D", "F" to "FF", "J" to "LL", "OO" to "RR"*, inclusive of their submarkings, which were all admitted by the Court in the Resolutions dated February 4, 2008, June 2, 2008 and September 5, 2008, after petitioner filed a supplemental Formal Offer of Evidence.

On the other hand, counsel for respondent manifested that he is submitting the case for decision based on the pleadings considering that petitioner's administrative claim for refund is still pending investigation.

Thereafter, both parties were granted thirty (30) days from receipt of the Resolution dated September 5, 2008 within which to file their simultaneous memoranda.

After petitioner filed its Memorandum on November 17, 2008 and considering the report dated November 26, 2008 of the Judicial Records Division that no memorandum for respondent has been filed, the case was deemed submitted for decision.

THE ISSUES

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

I

WHETHER OR NOT THE INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN PETITIONER'S GROSS INCOME FOR THE TAXABLE YEAR 2003.

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II

WHETHER OR NOT PETITIONER HAS UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR THE TAXABLE YEAR 2003.

III

WHETHER OR NOT PETITIONER HAS CARRIED OVER TO THE SUCCEEDING TAXABLE QUARTERS OR YEARS THE CLAIMED UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR THE TAXABLE YEAR 2003 AND APPLIED THE SAME AS PAYMENT OF ITS INCOME TAX LIABILITIES FOR THE SUCCEEDING TAXABLE QUARTERS OR YEARS.

IV

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OF THE ALLEGED UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR TAXABLE YEAR 2003, IN THE AMOUNT OF FORTY MILLION FIVE HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED SIXTY EIGHT PESOS (P40,517,868.00) WAS DULY SUBSTANTIATED BY PROPER DOCUMENTARY EVIDENCE.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE CLAIMED REFUND IN THE AMOUNT OF FORTY MILLION FIVE HUNDRED SEVENTEEN THOUSAND EIGHT HUNDRED SIXTY EIGHT PESOS (P40,517,868.00) REPRESENTING UNUTILIZED CREDITABLE INCOME TAXES WITHHELD FOR THE TAXABLE YEAR 2003.

Principal Issue

Considering that the foregoing issues relate to the principal issue of whether or not petitioner is entitled to a refund of its alleged excess or unutilized withholding tax credit, the issues shall be discussed jointly.

THE COURT'S RULING

The Petition has no merit.

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides, as follows:

> "**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 the 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**

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and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor." *(Emphasis supplied)*

Under the afore-quoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options, namely: (1) to carry-over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. 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 tax credit certificate shall be allowed therefor.

A perusal of petitioner's Annual Income Tax Return for taxable year 2003 *(Exhibit "A")* shows that the excess tax credits of P40,517,869.00 *(Exhibit "A-6")* as of December 31, 2003, consisted of the balance of the prior year's excess credits in the amount of P15,616,133.00 and creditable taxes withheld during the year 2003 in the amount of P24,901,736.00, as shown below:

Income Tax Due	P 6,514,167.00
Less: Prior Year's Excess Credits	22,130,300.00
Balance of Prior Year's Excess Credits	15,616,133.00
Add: Creditable Taxes Withheld During the Year	24,901,736.00
Excess Tax Credits as of December 31, 2003	**P 40,517,869.00**

While it appears that petitioner was unable to utilize its prior year's excess tax credits in the year 2003, its claim for refund should be denied pursuant to *Section 76 of the NIRC of 1997, as amended. Section 76* offers two (2) options: (1) filing for the refund; and (2) availing of tax credit. The two (2) options are alternative and the choice of one precludes the other (*Commissioner of Internal Revenue vs. PERF Realty Corporation, 557 SCRA 172*). Since petitioner exercised the option of carry-over with regard to the prior year's excess credits of P15,616,133.00, the same is irrevocable and petitioner cannot claim a refund or issuance of tax credit certificate therefor. Having chosen the option to carry over, petitioner's only recourse is to carry-over the unutilized tax credits of P15,616,133.00 to the succeeding taxable years until the same is fully utilized.

Furthermore, petitioner failed to substantiate the existence of the prior year's excess credits of P22,130,300.00. Petitioner failed to formally offer withholding tax certificates corresponding to the creditable taxes withheld of P23,607,635.*00 (Formally offered as Exhibit "OO-4", but marked as "NN-4", Line 26D)*. It is vital for petitioner to prove that it had enough prior year's excess credits to cover its reported income tax due for taxable year 2003 in the amount of P6,514,167.00. Otherwise, the income tax liability of P6,514,167.00 shall be deducted from petitioner's claimed creditable withholding taxes for taxable year 2003 in the amount of P24,901,736.00, if found to be properly substantiated.

As regards the remaining claim of P24,901,736.00, which pertains to the creditable taxes withheld during taxable year 2003, the following requisites must be satisfied in order to be entitled to the claimed refund:

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

2) the fact of withholding must be 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) the income upon which the taxes were withheld must be included in the return of the recipient (*Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investment Corporation vs. Court of Appeals, 204 SCRA 957; Section 2.58 of Revenue Regulations No. 2-98*).

As regards the first requisite, *Sections 204(C) and 229 of the NIRC of 1997, as amended*, provide:

> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** – The Commissioner may -
>
> 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,

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redeem or change unused stamped 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."

"**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: *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."

As regards the first requisite, the Court finds that petitioner has complied with the same. The reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld 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 2003, for which petitioner filed its 2003 Annual Income Tax Return *(Exhibit "A-3")* on April 15, 2004. Counting from this date, petitioner had until April 17, 2006 *(April 15, 2006 fell on a Saturday)*, within which to file its claim for refund or issuance of a tax credit certificate both in the administrative and judicial levels. Clearly, petitioner's administrative and judicial claims, both filed on April 14, 2005, were within the two-year prescriptive period.

As regards the second requisite as to the fact of withholding of the subject claim, petitioner presented various Certificates of Creditable Tax Withheld at Source [BIR Form No. 2307], marked as *Exhibits "F" to M, "O" to "Z", "AA" to "EE", and "HH-1" to "HH-3780".* However, petitioner failed to formally offer in evidence the Certificates marked as *Exhibits "HH-1" to "HH-3780".* Petitioner having failed to formally offer *Exhibits "HH-1" to "HH-3780"*, the same cannot be considered in the resolution of this case. Well-settled is the rule that documentary evidence not formally offered cannot be considered by the Court, pursuant to *Section 34, Rule 132 of the Revised Rules of Court.* Likewise, the mere fact that a particular document is marked as an exhibit does not mean that it has been offered as part of the evidence of the party. This was emphasized by the Supreme Court in the case of *Dizon vs. Court of Tax Appeals (553 SCRA 111)*.

Record shows that the Certificates of Creditable Tax Withheld at source which petitioner formally offered in evidence show creditable withholding taxes in the amount of P243,755.60 only, detailed as follows:

Exh.	Period Covered			Payor's Name	Income Payment	Income Tax Withheld
F	01/01/03	to	03/31/03	Time Station Holdings	P 183,366.72	P 9,168.33
G	04/01/03	to	06/30/03	Time Station Holdings	183,366.72	9,168.33
H	07/01/03	to	09/30/03	Time Station Holdings	183,366.72	9,168.33
I	10/01/03	to	12/31/03	Time Concepts Sales, Inc.	108,000.00	5,400.00
J	01/01/03	to	03/31/03	Elvie Pineda Beauty On Line Corp	54,558.00	2,727.90
K	04/01/03	to	06/30/03	Elvie Pineda Beauty On Line Corp	154,581.00	7,729.05
L	07/01/03	to	09/30/03	Elvie Pineda Beauty On Line Corp	169,584.45	8,479.22
M	10/01/03	to	12/31/03	Elvie Pineda Beauty On Line Corp	18,041.40	9,002.07
O	10/01/03	to	12/31/03	Antonio Honoratia Beltran	124,013.00	6,200.64
P	10/01/03	to	12/31/03	Mondi Glorietta, Inc.	431,771.60	21,588.58
Q	10/01/03	to	12/31/03	Lhuiller Michel Jones	128,496.54	6,424.83
R	10/01/03	to	12/31/03	Fine Element Enterprise	60,678.00	3,033.90
S	10/01/03	to	12/31/03	Shoemax Marketing Corp.	158,195.80	7,909.79
T	10/01/03	to	12/31/03	Circuit City Techtronics Center Co.	145,590.00	7,279.50
U	10/01/03	to	12/31/03	Chicco Artsana Specialty Shop	113,726.90	5,686.34
V	10/31/03	to	12/31/03	Diversion Foods, Inc.	15,217.40	760.87
W	10/01/03	to	12/31/03	Eleksis Marketing Corporation/Bose	190,740.00	9,537.00
X	10/01/03	to	12/31/03	Elevensix, Inc.	115,974.58	5,299.65
Y	10/01/03	to	12/31/03	Little Angels, Inc.	66,000.00	3,300.00
Z	10/01/03	to	12/31/03	Alabang Numbers and	1,503,800.00	75,190.00

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				Gaming Corp		
AA	10/01/03	to	12/31/03	Kinetics Sports, Inc.	256,275.10	12,813.75
BB	10/01/03	to	12/31/03	Accent Micro Products, Inc.	164,476.80	8,223.84
CC	10/01/03	to	12/31/03	Abesamis Edgardo Quieta	55,650.00	2,782.50
DD	10/31/03	To	12/31/03	Rommel Quijano Herrera	60,000.00	3,000.00
EE	10/01/03	To	12/31/03	Joseph Theodore Baluyot Pascual	77,623.67	3,881.18
	Total				**P4,723,094.40**	**P 243,755.60**

Petitioner, therefore, was able to substantiate the amount of P243,755.60 only, out of the P24,901,736.00 claimed creditable taxes withheld in 2003.

As regards the third requisite that the income upon which the taxes were withheld was included and reported by petitioner in its Income Tax Return, a perusal of the withholding tax certificates reveals that the creditable income taxes of P243,755.60 were withheld from petitioner's rental income of P4,723,094.40. Petitioner, however, failed to present proofs, such as detailed general ledger, sales register, or any other document in order for this Court to ascertain that the rental income of P4,723,094.40, related to the creditable withholding taxes of P243,755.60, actually formed part of the P188,078,709.00 income from lease of properties reflected in its 2003 Annual Income Tax Return *(Exhibit "A-4")*.

For failure, therefore, of petitioner to comply with the prescribed requisites for refund of excess creditable withholding taxes, the Court is left with no recourse, but to deny petitioner's claim for refund of creditable taxes withheld in 2003 in the amount of P24,901,736.00.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED.**

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 case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice