REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE AIRLINES, INC. (PAL),
Petitioner,

- versus - C.T.A. CASE NO. 6327

COMMISSIONER OF INTERNAL REVENUE MR. RENE BAÑEZ,
Respondent.

Promulgated:

AUG 2 8 2003

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DECISION

This is a judicial claim for the refund of the sum of P872,819.85 [*originally for the amount of P903,600.00*], representing unutilized creditable withholding taxes at source for the fiscal year ended March 31, 1999.

The facts of the case are simple.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at PAL Building II, Legaspi Village, Makati City (*par. 1, Stipulation of Facts*).

On September 3, 1999, petitioner filed its *amended* Annual Income Tax Return for the fiscal year ended March 31, 1999, reflecting net loss from operations in the amount of P9,685,862,278.00, nil income tax liability but with a refundable amount of P1,649,613.00, arising from various creditable withholding taxes at source in the sum of P621,365.00 and prior year's excess credit of P1,028,248.00 *(Exhibit A, inclusive of*

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submarkings). In the said *amended* return, petitioner indicated its intention to refund the unutilized excess tax credit for the year.

Believing that it is entitled to refund of its unapplied creditable withholding taxes, petitioner, on April 11, 2000, filed with the Commissioner's Office of the Bureau of Internal Revenue an administrative claim for refund in the amount of P903,600.00 consisting of unutilized tax credits of P588,347.00 allegedly reported in its 1999 Annual Income tax Return and an additional creditable withholding tax at source in the amount of P315,253.00 which petitioner professed was not included in the return because the corresponding certificates were recovered much later *(Exhibit B)*.

The inaction of the respondent on the aforesaid application for refund compelled the petitioner to file the instant petition for review on August 31, 2001 in order to toll the running of the two-year prescriptive period under Section 229 of the Tax Code.

In his Answer filed on September 25, 2001, respondent raised the following Special and Affirmative Defenses:

> 3. Petitioner's alleged claim for refund is subject to administrative routine investigation/examination by respondent's Bureau;
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> 4. Taxes paid and collected are presumed to have been paid in accordance with law, hence, not refundable;
>
> 5. Petitioner must prove the following:
>
>   a. That the total amount of NINE HUNDRED THREE THOUSAND SIX HUNDRED (PHP 903,600.00) allegedly claimed as creditable Income tax withheld for the fiscal year ended March 1999 has not been applied against any Income Tax liability for the succeeding taxable period;
>   b. That it has incurred tax loss for the aforesaid taxable period;
>   c. That the alleged income tax payments from which the taxes were withheld were included in its gross income for fiscal year 1999.

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d. That the amounts allegedly withheld were actually remitted to the BIR.

6. Assuming but without admitting the fact that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions in SECTION 204(C) in relation to SECTION 229 of the Tax Code (RA 8224).

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Otherwise its failure to prove the same is fatal to its claim for refund.

7. 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).* They are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person claiming the exemption. *(Asiatic Petroleum Co. vs. Llanes, 49 PHIL. REP. 466).*

The jointly stipulated issues to be resolved by this court are as follows:

a. Whether or not petitioner PAL is entitled to the refund of the amount of PHP903,600.00 representing its unapplied creditable income tax withheld for the fiscal year ended March 31, 1999;

b. Whether or not the aforementioned amount has been applied against any income tax liability of the petitioner for the succeeding taxable period;

c. Whether or not petitioner has incurred a tax loss for the aforesaid taxable period ended March 31, 1999;

d. Whether or not the income tax payments form which the taxes were withheld were included in its gross income for 1999; and

e. Whether the amounts withheld were actually remitted to the BIR.

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To bolster its judicial claim for refund, petitioner presented the following documentary exhibits:

1. Amended Annual Income Tax Returns of petitioner for the fiscal years ended March 31, 1999, 2000 and 2001 *(Exhibits A, C, and D, inclusive of submarkings);*

2. The letter-claim for refund with the Bureau of Internal Revenue and the Summaries of Certificates of Creditable Tax Withheld for fiscal year ended March 31, 1999 *(Exhibits B, B-1 and B-2);*

3. The initial and final reports of the commissioned independent CPA discussing the results of the audit and verification of petitioner's claim for refund, together with the pre-marked certificates of creditable withholding taxes *(Exhibits E and G, inclusive of submarkings);* and

4. Affidavit of PAL's AVP-Financial Planning and Analysis Ma. Stella Diaz explaining the concept of timing difference with respect to reporting of creditable withholding tax at source *(Exhibit F)*.

Petitioner claims that it is entitled to the refund sought for since it was able to comply with the three basic requirements laid down in the case of *Citytrust Finance Corporation vs. Court of Tax Appeals and The Commissioner of Internal Revenue*, CA G.R. SP No. 28239 dated Match 14, 1994. According to petitioner, it filed the claim for refund within the two-year period prescribed under Section 230 (now 229) of the National Internal Revenue Code, the income upon which the taxes were withheld were included in the return of the recipient and the fact of withholding was duly established.

Petitioner further asserts that the amount of P903,600.00 has not been applied against any income tax liability for the succeeding taxable period.

Respondent, on the other hand, contends that the claim should be denied on the following grounds:

a. Petitioner cannot claim as tax credit the amount of P288,072.85 for the fiscal year 1999 because the amount pertains to CVAT which cannot be credited against income tax.

b. The claim for refund of P286,271.25 has already prescribed inasmuch as this pertains to income taxes withheld on income earned prior to April 1, 1998.

c. The amount of P315,253.00 should likewise be denied because it was not reflected in the ITR that the income payment has been declared as part of the gross income.

d. The alleged net loss incurred by petitioner for taxable year 1999 was not fully substantiated.

After a careful evaluation of the evidence and arguments of the parties along with the applicable laws and jurisprudence, we find against the petitioner.

In its *amended* 1999 income tax return, it was clearly shown that petitioner opted to refund its 1999 unapplied creditable taxes withheld *(Exhibit A)*. Therefore, pursuant to the above-quoted law, petitioner appears to be legally entitled to the refund sought. However, based on existing jurisprudence, petitioner must support its legal entitlement with clear and convincing evidence.

Time and again, this court has held that there are three (3) basic requirements in claims for refund or issuance of tax credit certificate arising from the excess or unutilized creditable withholding tax at source. They are as follows:

1. That the claim for refund is filed within the two-year reglementary period pursuant to Section 230 of the Tax Code, as amended;

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. *[Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Tax 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, CA 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, CTA Case No. 5623, dated April 12, 2000; Citibank, NA vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].*

With reference to the first requirement, petitioner alleged that its administrative and judicial claims for refund were filed within the two-year reglementary period.

Petitioner reckoned the counting of the two-year period from September 3, 1999, the date when it filed its ***amended*** 1999 annual income tax return. Thus, it concluded that the filing of its administrative claim for refund with the respondent on April 11, 2000 and the petition for review with this court on August 31, 2001 were well within the two-year prescriptive period.

We do not agree.

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It is true that the reckoning of the two-year prescriptive period is at the time of filing of the final adjustment return. However, the counting should be made from the date of the filing of the ***original*** final adjustment return and not from the date of the filing of the ***amended*** return. This was emphasized by this court in the case of ***Benguet Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5492, January 27, 1999,*** wherein in disposing of the said issue, the court ruled in this wise:

> "An analysis of the evidence submitted by petitioner reveals that it failed to show that the claim for refund was timely filed within two years from the date of payment of the tax. Petitioner failed to present the original Corporation Annual Income Tax Returns for the calendar years 1994 and 1995 to enable Us to verify if the claim for refund was made within the two-year reglementary period. Both documents are needed for the purpose of determining whether petitioner filed the claim for refund with the respondent and the petition for review with this Court within the two-year prescriptive period, reckoned from the actual date of filing of the original final adjustment returns (Commissioner of Internal Revenue v. Philippine American Life Insurance Co., 244 SCRA 446). The mere allegations by the Counsel of petitioner that the 1994 and 1995 income tax returns were filed in April, 1995 and April, 1996, respectively, and that the claim for refund was filed within the two-year period have to be verified. We could not see the reason why such important documents were not presented by the petitioner during the trial of the case. In the absence of these material documents, the Court is constrained to deny petitioner's prayer."

Our pronouncement in the above case was significantly affirmed by the Court of Appeals in the case entitled ***Benguet Management Corporation vs. Commissioner of Internal Revenue, CA-GR SP No. 52737, promulgated on October 29, 1999, with Entry of Judgment dated November 27, 1999,*** the pertinent portion of which reads as follows:

> "Clearly, the time or date of actual filing by the Petitioner of its 1994 and 1995 Annual Income Tax Returns with the BIR, can well be verified from its duplicate copies since all income tax returns filed with the BIR are stamped "Received" on the date they are filed which also shows the date of its actual filing. Thus, there is no gainsaying why the Public Respondent deemed it necessary for the Petitioner to present copies of its

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> original 1994 and 1995 Annual Income Tax Returns for them to verify if, indeed, the claim for refund with the BIR and the "Petition for Review" with them, were made within the two-year reglementary period. We are in full accord with the findings and disquisitions of the Public Respondent, xxx "

Records reveal that petitioner presented as evidence only its 1999 *amended* Annual Income Tax Return which was filed on September 3, 1999 but failed to offer as evidence its 1999 original Annual Income Tax Return. The original return is important in order for the court to ascertain whether the filing of the administrative and judicial claims were made within the two-year reglementary period. Absent such document, this court has no way of determining whether the claim was timely filed.

And even assuming that the 1999 original return was filed on July 15, 1999 which is the last day for filing of the final adjustment return for fiscal year ending March 31, 1999 pursuant to Section 77(B) of the Tax Code, still the present judicial action is barred by prescription. It should be noted that the last day to file the judicial action as required by Section 229 of the Tax Code is on July 16, 2001 (*July 14, 2001 being a Saturday and year 2000 is a leap year*). Unfortunately, the petition for review was filed only on August 31, 2001.

Moreover, the said return is necessary for the court to verify if indeed the original option of petitioner was to refund the excess income tax payment. This is because under Section 76 of the Tax Code, 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. Thus, if petitioner has originally chosen the option 'to be carried over as tax credit next year', it will be precluded from claiming for the refund of the same excess payment. We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year (***Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, dated April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, dated April 3, 2003 and Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, dated May 16, 2003***).

In sum, the failure of petitioner to present its 1999 original income tax return is fatal to its claim for refund. Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it (***Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822***).

In view of the foregoing, the court finds it unnecessary to dwell on the other issues raised.

WHEREFORE, the petition for review is hereby ***DENIED*** for lack of merit.

SO ORDERED.

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

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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

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