REPUBLIC OF THE PH.. .IPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SMI- ED PHILIPPINES LANDHOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6649

Members:

CASTAÑEDA, JR., *Chairman*
.Y, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
APR 0 4 2006

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DECISION

CASTAÑEDA, JR., J.:

This is a judicial claim for the refund or issuance of a tax credit certificate in the amount of P21,792,925.00 allegedly representing un..i .zed/excess creditable withholding taxes for the taxable years 2000 and 2002.

Petitioner is a corporation duly organized and existing under Philippine laws with its principal office located at Suite 7B the Valero Tower, 122 Valero St., Salcedo Village, Makati City. It is duly registered with the Securities and Exchange Commission ("SEC") under SEC Reg. No. A199809051.[1] It is registered with the Bureau of Internal Revenue ("BIR") as a value-added tax ("VAT") registered entity under Certificate of Registration No.

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[1] Exhibit A

1RC0000020526 and with Tax Identification Number (TIN) 005-650-401-000.[2] Respondent, on the other hand, is the duly authorized official to decide, approve, and grant refunds or tax credits of overpaid internal revenue taxes, among others, holding office at the BIR National Office, BIR Building, Agham Road, Diliman, Quezon City.

Petitioner purchased from the First Philippine Industrial Park several parcels of land with a total land area of 106,388 square meters located at Barangay Sta. Anastacia, Sto. Tomas, Batangas, for the total purchase price of US$9,323,229.92[3] or equivalent to P378,709,866.00.[4]

Petitioner leased a certain parcel of the land to SMI-ED Technology Philippines, Inc. on July 09, 1998, for a monthly rental of Eighteen Thousand Four Hundred Twenty One US Dollars (US$18,421.00) which was increased to Fifty Thousand Two Hundred Eleven US Dollars (US$50,211) in 1999.[5]

On August 01, 2000, petitioner sold to Ibiden Philippines Landholdings, Inc. a parcel of land under Transfer Certificate of Title No. T-86903 with a total area of 66,681 square meters for Four Hundred Forty Million Japanese Yen (JY440,000,000.00) or equivalent to One Hundred Sixty Three Million Nine Hundred Twenty Three Thousand Nine Hundred and Fifty Nine Pesos (P163,923,959.00).[6]

In its 2000 income tax return filed on May 2, 2001, petitioner declared a net loss in the amount of P99,693,357.00 and an overpayment in the amount of P19,197,788.00 consisting of prior year's excess credits of P1,065,887.00 and creditable taxes withheld during the year 2000 in the amount of P18,131,901.00, as shown below:

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[2] Exhibit C
[3] Exhibit S
[4] TSN, January 12, 2004, pages 8-9
[5] Par. 4, Stipulation of Facts, page 89, Records; Exhibit C, and its submarkings
[6] Exhibit E, and its submarkings; par. 5, Stipulation of Facts, page 89, Records

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Gross Income		P 19,743,678.00
Less:	Deductions	119,437,035.00
Net Loss		P(99,693,357.00)
Income Tax Due		P -
Less:	Prior Year's Excess Credits	1,065,887.00
	Creditable Taxes Withheld for the First Three Quarters	18,131,901.00
Overpayment		P 19,197,788.00

The prior year's excess credits of P1,065,887.00 allegedly pertains to the 5% creditable taxes withheld by SMI-ED Technology on its rental payments to petitioner for 1998 and 1999 which the latter was unable to utilize as of December 31, 1999. On the other hand, the creditable taxes withheld for the first three quarters of 2000 in the amount of P18,131,901.00 represents the sum of the alleged creditable taxes withheld by SMI-ED Technology on its rental payments to petitioner for the period January 1, 2000 to July 8, 2000 amounting to P628,139.00 and creditable taxes of P17,503,762.00 withheld by Ibiden Philippines on its purchase of land from petitioner on August 1, 2000.

On July 18, 2002, petitioner subsequently sold to Ibiden Philippines its remaining parcel of land titled in its name and covered by Transfer Certificate of Title No. T-86902 with a total area of 39,707 square meters for a total selling price of One Hundred Eighty Seven Million Japanese Yen (JY187,000,000), or equivalent to Seventy One Million Nine Hundred Fifteen Thousand Two Hundred Thirty Nine Pesos (P71,915,239.00).[7]

On December 27, 2002, petitioner filed its income tax return for the taxable year 2001 reflecting a net loss in the amount of P12,804,683.00 and unutilized prior year's excess credits of P19,197,788.00:[8]

Gross Income		P -
Less:	Deductions	12,804,683.00
Net Loss		P(12,804,683.00)
Income Tax Due		P -
Less:	Prior Year's Excess Credits	19,197,788.00

[7] Exhibit K and its submarkings; par. 6, Stipulation of Facts, page 89, Records
[8] Exhibit J

	Creditable Taxes Withheld for the First Three Quarters	-
Overpayment		P 19,197,788.00

On the same date, petitioner amended its 2001 income tax return to reflect a higher net loss in the amount of P101,696,625.00:[9]

Gross Income		P -
Less:	Deductions	101,696,625.00
Net Loss		P(101,696,625.00)
Income Tax Due		P -
Less:	Prior Year's Excess Credits	19,197,788.00
	Creditable Taxes Withheld for the First Three Quarters	-
Overpayment		P 19,197,788.00

The Board of Directors of the petitioner decided to dissolve the corporation effective November 30, 2002. This was duly ratified by all the stockholders.[10]

On January 2, 2003, petitioner filed its income tax return for the short period of January 1, 2002 to November 30, 2002.[11] And on February 13, 2003, petitioner amended the said return reflecting a net loss in the amount of P175,575,332.00 and an overpayment in the sum of P22,858,812.00:[12]

Gross Income		P 400,000.00
Less:	Deductions	175,975,332.00
Net Loss		P(175,575,332.00)
Income Tax Due		P -
Less:	Prior year's Excess Credits	19,197,788.00
	Creditable Taxes Withheld for the Fourth Quarter	3,661,024.00
Overpayment		P 22,858,812.00

On February 24, 2003, petitioner filed an administrative claim for refund/tax credit with the BIR Revenue District Office No. 50 (Makati City)[13] relative to its unutilized creditable withholding tax credits in the amount of P22,858,812.00.[14]

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[9] Exhibit I
[10] Exhibit D
[11] Exhibit N
[12] Exhibit O
[13] Par. 10, Stipulation of Facts, page 90, Records

Claiming inaction on the part of the respondent, petitioner filed the instant Petition for Review with this Court on April 10, 2003, this time praying for the refund or issuance of a tax credit certificate in the amount of P21,792,925.00, computed as follows:

Creditable withholding taxes on rental payments received from SMI-ED Technology from January 1, 2000 to July 8, 2000	P	628,139.00
Creditable withholding taxes on sale of land to Ibiden Philippines on August 1, 2000		17,503,762.00
July 18, 2002		3,661,024.00
	P	21,792,925.00

The parties submitted the following issues for the resolution of the Court:

1. Whether petitioner's claim for creditable withholding taxes for the short period ended November 30, 2002 amounting to Twenty One Million Seven Hundred Ninety Two Thousand Nine Hundred Twenty Five Pesos (P21,792,925.00) is duly substantiated;

2. Whether or not petitioner has carried over to the succeeding taxable year(s) the alleged excess/unutilized creditable withholding tax for taxable year 2000-2001 as payment for its withholding tax obligations;

3. Whether the income from which the creditable withholding taxes withheld has been included as part of petitioner's gross income in its annual income tax returns.

4. Whether petitioner had duly filed both the administrative and judicial claims for refund within the two-year period prescribed in Sections 204 and 229 of the Tax Code, as amended.

For a taxpayer to be entitled to a claim for refund or issuance of a tax credit certificate of excess creditable withholding tax at source, it must satisfy the following requisites:

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

2. 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.

[14] Exhibit P

3. 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.[15]

Anent the first requirement, records disclose that the instant claim covers the taxable years 2000 and 2002. Counting from April 15, 2001, the prescribed date for filing of the income tax return for the taxable year 2000, both the administrative and judicial claims filed on February 24, 2003[16] and April 10, 2003 are well within the two-year prescriptive period.

As regards the second requirement, petitioner was able to establish the creditable income taxes in the amount of P21,164,786.69 were withheld by Ibiden Philippines Landholdings, Inc. on its purchase of parcels of land from petitioner on August 1, 2000 and July 18, 2002, to wit:

Exhibit	Payor/Withholding Agent	Type of Income	Tax Withheld
G-1, H-1 & T-1	Ibiden Phils Landholdings	Sale of Real Property	P 17,503,762.50
L-2	Ibiden Phils Landholdings	Sale of Real Property	3,661,024.19
TOTAL			**P21,164,786.69**

However, as to the claimed creditable taxes of P628,139.00 withheld by SMI-ED Technology Philippines, Inc. on its rental payments to petitioner for the period January 1, 2000 to July 8, 2000, petitioner failed to submit the corresponding withholding tax certificates. Therefore, out of its total claimed creditable withholding taxes of P21,792,925.00, petitioner was able to support by proper withholding tax certificates, only the amount of P21,164,786.69.

Proceeding to the last requisite that the income payments of petitioner in the amount of P21,164,786.69 (the substantiated creditable withholding taxes) formed part of its reported gross income, Section 32(A) of the National Internal Revenue Code of 1997, provides:

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15 Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Section 2.58, Revenue Regulations No. 2-98, as amended.

> "SEC. 32. *Gross Income* –
>
> (A) *General Definition.* – Except when otherwise provided in this Title, **gross income means all income derived from whatever source, including (but not limited to) the following** items:
>
> (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
> (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
> (3) **Gains derived from dealings in property**;
> xxx xxx xxx" *(Emphasis Supplied)*

Thus, gross income in relation to gains derived from dealings in property refers to any amount of gain derived therefrom, *i.e.*, the difference between the gross selling price and cost.

Based on the evidence submitted in this case, the costs of the land sold by petitioner to Ibiden Philippines on August 1, 2000 and July 18, 2002 were far greater than the related gross selling prices. Apparently, petitioner incurred net losses in the respective amounts of P74,309,555.00 and P68,561,112.00.[17] Petitioner reflected these net losses as part of its claimed deductions in its income tax returns for taxable year 2000 and for the short period ending November 30, 2002.[18]

As there was no amount of gain to report on its sale of land to Ibiden Philippines, petitioner's declaration of the net loss in the amounts of P74,309,555.00 and P68,561,112.00 in its income tax returns for taxable year 2000 and for the short period ending November 30, 2002, respectively, constitutes sufficient compliance with the third requisite.

From the foregoing, petitioner appears to be partially entitled the refund/tax credit of the amount of P21,164,786.69 representing unutilized creditable withholding taxes on its sale of land for taxable years 2000 and 2002. However, petitioner failed to comply with

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[16] Exhibit P
[17] Exhibits E-3, K-2; TSN, January 12, 2004, pages 8-12; 15-16.

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Sections 52 (C) and 235 of the National Internal Revenue Code of 1997, the pertinent portions of which are hereunder quoted for easy reference:

> "*SEC. 52. Corporation Returns.* —
>
> (A) xxx
> (B) xxx
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* — Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission, or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.
>
> **The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.**"

> "SEC. 235. *Preservation of Books of Accounts and Other Accounting Records.* — xxx All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships **contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability**. xxx" *(Emphasis Supplied)*

In other words, a corporation seeking dissolution must first notify the Commissioner of its intention and settle all its tax liabilities in order to secure a tax clearance. In ***Lotus Software (Philippines), Inc. vs. Commissioner of Internal Revenue***[19], this Court

[18] Exhibits R & O-6
[19] CTA Case No. 6673, May 18, 2005

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explained the reason behind Sections 52 (c) and 235 of the National Internal Revenue Code of 1997, thus:

> "The rationale behind these Sections is to insure that no corporation may escape payment of taxes and other liabilities to the government simply by opting to dissolve the corporation and retire from business or reorganize its business.
>
> In this case, petitioner failed to prove that it was cleared from any tax liability as required by Sec. 235. Petitioner merely presented its Application for Tax Clearance dated February 16, 2004. <u>Needless to state, an application differs from an approval thereof. Thus, this application is not the tax clearance referred to by the law. Absent this clearance from the Bureau of Internal Revenue this Court cannot ascertain if indeed petitioner has already paid all its tax liabilities to entitle it to the refund claimed in this case</u>. In fact, petitioner failed to present the certificate from the Securities and Exchange Commission approving its dissolution.
>
> To grant the refund claimed by petitioner without indubitable proof that it has been cleared of any and all tax liabilities would put the government in a most disadvantageous position considering that it can no longer run after a non-existing corporation." *(Emphasis supplied).*

In the present case, petitioner failed to prove that it was cleared of any tax liability as required by Sec. 235. No Certificate of Tax Clearance issued by the Bureau of Internal Revenue was ever presented by it.

Thus, although it offered in evidence a request for tax clearance/formal letter for cancellation of tax identification number (*Exhibit Q*), the same was denied admission by the Court for not having been properly identified during trial. Besides, as held in the above cited case of Lotus Software, an application for tax clearance differs from a certificate of tax clearance approving said application and proving that petitioner has no pending internal revenue tax liabilities. Absent this tax clearance from the Bureau of Internal Revenue, this Court cannot ascertain if indeed petitioner has already paid all its tax liabilities. Moreover, it is noteworthy that petitioner likewise failed to present the Certificate of Dissolution issued by the Securities and Exchange Commission.

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For petitioner's failure to comply with the mandate of the above-quoted National Internal Revenue Code provisions, the Court cannot grant petitioner's claim for refund/tax credit. To do otherwise would run counter to the time-honored principle that tax refunds are construed strictly against the person claiming it.[20]

IN VIEW OF THE FOREGOING, the Petition for Review is **DENIED**.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[20] Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd. 244 SCRA 332

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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