REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AVENTIS CROPSCIENCE PHILIPPINES, INC.
(formerly Agrevo Production Philippines Corporation),
Petitioner,

- versus -

C.T.A. CASE NO. 6270

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 26 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P3,165,544.00 allegedly representing excess creditable withholding taxes for the taxable year ending December 31, 1998.

The antecedent facts follow.

Petitioner is a corporation duly organized and existing under Philippine laws, and is primarily engaged in the general manufacturing business, with principal office at 8/F Philamlife Building, Madrigal Business Park, 1207 Acacia Avenue, Alabang, 1770 Alabang, Muntinlupa City.

On December 13, 2000, the Securities and Exchange Commission (SEC) approved the Articles and Plan of Merger executed on September 29, 2000 by and among Aventis Cropscience Philippines, Inc. (Aventis), Agrevo Philippines Corporation (APC) and Agrevo Production Philippines Corporation (APPC), whereby the entire assets and liabilities of Agrevo Philippines Corporation and Agrevo Production Philippines Corporation will be transferred to and absorbed by Aventis Cropscience Philippines, Inc. as the surviving corporation (*Exhibit "C"*).

On April 15, 1999, petitioner (formerly APPC) filed its 1998 annual income tax return reflecting an accumulated tax credit of P10,260,939.00 (*Exhibit "A-3"*) which consisted of the prior year's excess credit of P5,745,651.00 (*Exhibit "A-2"*) and creditable taxes withheld in 1998 of P4,515,288.00 (*Exhibit "A-1"*). Although it declared a net loss of P9,575,763.00 and had no income tax due at the normal rate of 34%, nevertheless, petitioner reported a minimum corporate income tax due (MCIT) of P1,349,744.00 (*Exhibit "A-5"*). Hence, as of December 31, 1998, petitioner's excess tax credit amounted to P8,911,195.00 (*Exhibit "A-4"*) which was indicated in the said return as "To be refunded" (*Exhibit "A-6"*).

Petitioner alleged that the 1998 minimum corporate income tax due of P1,349,744.00 was offset against its 1998 creditable taxes withheld of P4,515,288.00 leaving an excess tax credit of P3,165,544.00. Thus, on April 5, 2001, petitioner, through its tax consultant, SGV & Co., filed an administrative claim for refund corresponding to the alleged 1998 excess tax credit of P3,165,544.00 (*Exhibit "D"*) pursuant to the following provisions of Sections 76 and 204(C) of the Tax Code:

> "**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 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."

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

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"(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."

On April 10, 2001, petitioner filed the instant Petition for Review in order to toll the running of the two-year period prescribed under Section 229 of the Tax Code, to wit:

"**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 therefore, 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."

In his Answer filed on May 18, 2001, respondent advanced the following Special and Affirmative Defenses:

"4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue;

5. Petitioner failed to adduce evidence that it had complied with Section 27(e) of the 1997 Tax Code as further implemented by Revenue Regulation 9-98, relative to the payment of *Minimum Corporate Income Tax (MCIT);*

6. Furthermore, it failed to prove that the tax subject of the case at bar comes within the scope of claims for refund pursuant to Section 204 of the National Internal Revenue Code. The said section of the Tax Code explicitly enumerates the grounds upon which a taxpayer is allowed to claim for refund, to wit: (a) erroneously or illegally received or collected internal revenue taxes; (b) penalties imposed without authority. The above-mentioned grounds are exclusive;

7. The amount of *Php: 3,165,544* being claimed by petitioner as its alleged excess tax credits/withheld tax payments for the year ending 31 December 1998 was not properly documented;

8. Partaking of the nature of exemptions, claims for tax refund are strictly construed against the claimant, and cannot be allowed unless granted in the most explicit and categorical language. Being in the nature of tax exemptions, these are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

9. Lastly, it is incumbent upon petitioner to prove that it has complied with the governing rules relative to tax recovery or refund as provided for under Sections 204 and 229 of the National Internal Revenue Code."

To support its claim, petitioner submitted documentary and testimonial evidence. Respondent, on the other hand, submitted the case for decision without presenting any controverting evidence (*page 200, CTA Records*).

As jointly stipulated by the parties, the issues to be resolved by this court are:

1. Whether or not the income from which the creditable withholding taxes for 1998 were made, formed part of the gross income for taxable year 1998;

2. Whether or not the unutilized/excess creditable withholding taxes for 1998 are supported by Certificates of Creditable Tax Withheld at Source; and

3. Whether or not the unutilized/excess creditable withholding taxes for 1998 was not carried over to the succeeding taxable year.

4. Whether or not the claim for refund is properly substantiated by documentary evidence.

(*Joint Stipulation of Facts & Issues, page 84, CTA records*)

After a careful examination of the evidence adduced solely by petitioner, we partially grant the claim for refund.

Time and again, this court has consistently held that the refund of excess creditable withholding taxes is dependent on petitioner's compliance with the following three basic requirements:

1.) That the claim for refund was filed within the two-year prescriptive period provided under Section 204(C) in relation to 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 [***Section 2.58, Revenue Regulations No. 2-98; Citibank N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957***].

Records reveal that petitioner complied with the first requirement. The excess creditable withholding taxes of P3,165,544.00 subject of the instant Petition for Review pertain to taxable year 1998 for which petitioner filed its annual income tax return on April 15, 1999 (*Exhibit "A"*). Counting from April 15, 1999, petitioner had until April 14, 2001 within which to file a claim for refund both in the administrative and judicial levels. Therefore, petitioner's administrative claim filed on April 5, 2001 (*Exhibit "D"*) and the Petition for Review filed on April 10, 2001 fall within the two-year period prescribed under Section 204 (C) in relation to Section 229 of the Tax Code.

To prove the fact of withholding, petitioner presented the Certificates of Creditable Taxes Withheld at Source issued by various withholding agents for the year 1998. However, the certificates showed an aggregate amount of creditable withholding taxes of only P2,468,262.74 detailed as follows:

Exhibit	Period Covered	Withholding Agent	Income Tax Withheld
E	Jan-Dec '98	Agrevo Philippines Corporation	P 567,716.09
F	Jan-Dec '98	Agrevo Philippines Corporation	1,583,843.63
G	2nd qtr-98	Zuellig Pharma Corporation	249,482.77
H	Jul 1-Sept 31 '98	Bayer Philippines, Inc.	67,100.00
I	Jan-Dec '98	St. Luke's Medical Center	120.25
			P 2,468,262.74

As to the third requirement, petitioner proved that it declared in its 1998 annual income tax return (*Exhibit "A"*) the income corresponding to the above creditable withholding taxes of P2,468,262.74 as part of its gross sales of P239,489,726.00 *(Exhibit "A-8")* and other income of P20,039,795.00 (*Exhibit "A-10"*).

Moreover, petitioner established that it did not carry-over/apply the claimed 1998 excess tax credits in its 1999 annual income tax return (*Exhibit "B"*).

Thus, out of the reported 1998 creditable taxes withheld of P4,515,288.00, petitioner was able to substantiate only the amount of P2,468,262.74.

At this point, it is important to note that in a separate claim for refund of its excess creditable taxes withheld for the taxable year 1997 filed by petitioner (***Agrevo Production Philippines Corporation (formerly Hoechst Philippines, Incorporated) vs. Commissioner of Internal Revenue, CTA Case No. 6083, November 22, 2001***), this court granted petitioner's claim but deducted the 1998 MCIT of P1,349,744.00. Below is the relevant portion of the said decision:

> As can be seen in its 1998 income tax return, Petitioner reflected the amount of P3,128,565.63 as part of the prior year's excess credits of P5,745,651.00. It is thus clear that Petitioner intended to apply the 1997 excess credits of P3,128,565.63 against its 1998 income tax liability. While Petitioner also had creditable taxes withheld in 1998 of P4,515,288.00, nonetheless, the prior year's (1997) excess credits of P3,128,565.63, shall be utilized first to pay-off its 1998 income tax liability of P1,349,744.00 under the first-in first-out principle, i.e., the oldest credits are to be applied first (*see Prodigy Distributors, Inc. (Currently HAVI Food Services Philippines, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 5344, Resolution, dated August 6, 1998*). Contrary to Petitioner's allegation, the 1998 creditable withholding taxes of P4,515,288.00 can be applied only when the prior year's (1997) excess credit of P3,128,565.63 is not enough to fully absorb its 1998 income tax liability. In the instant case, the prior year's (1997) excess credit of P3,128,565.63 far exceeds its 1998 income tax liability of P1,349,744.00. Therefore, Petitioner is entitled to a refund/issuance of a tax credit certificate

representing 1997 excess creditable withholding taxes but only in the amount of P1,778,821.63 computed as follows:

Gross Income	P 95,841,229.00
Less: Deductions	105,416,992.00
Net Loss per 1998 ITR (Exhibit C)	P (9,575,763.00)
Minimum Corporate Income Tax Due - 1998	P 1,349,744.00
Less: 1997 excess tax credits	3,128,565.63
Income Tax Refundable	P (1,778,821.63)

Therefore, since in the foregoing case, we have already removed from petitioner's claim the amount of P1,349,744.00 representing its 1998 MCIT, the same shall no longer be charged against the substantiated 1998 creditable taxes withheld of P2,468,262.74 in the present petition.

WHEREFORE, in view of the foregoing, the instant petition is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED to REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the reduced amount of P2,468,262.74 representing its excess creditable withholding taxes for the taxable year 1998.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
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