REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

GOLDEN ARCHES REALTY CORPORATION,
Petitioner,

C.T.A. CASE NO. 6930

Members:

- versus -

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 0 1 2006

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DECISION

UY, J.:

Before Us is a Petition for Review filed on April 13, 2004 by petitioner, Golden Arches Realty Corporation, against respondent Commissioner of Internal Revenue, seeking a refund or issuance of a tax credit certificate in the total amount of P334,136.00 allegedly representing excess unutilized creditable withholding tax for the calendar year 2001 arising from petitioner's rental income derived from its leasing business.

THE FACTS

As culled from the records of the case and the admissions contained in the parties' Joint Stipulation of Facts and Issues filed on February 4, 2005,[1] these are the established facts of this case.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal address at the 17th floor, Citibank Building, Paseo de Roxas, Makati City, primarily engaged in the business of buying, selling and leasing real property. It is a registered taxpayer with the Revenue District Office (RDO) No. 50 of Revenue Region No. 8 of the Bureau of Internal Revenue (BIR) as of July 2, 2001, with Tax Identification Number (TIN) 211-876-489-000.[2]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act and decide upon applications for refund or tax credits of excess internal revenue tax payments, and in general, enforce the provisions of the National Internal Revenue Code of 1997 (NIRC) and other laws, with office address at BIR National Office Building, BIR Road, Diliman, Quezon City, where he may be served with summons and other legal processes.[3]

Petitioner filed its Annual Corporate Income Tax Returns (Form 1702) for calendar years (CY) 2001 and 2002 within the periods prescribed by law.[4] The Annual Income Tax Return of petitioner for the calendar year ending

[1] Joint Stipulation of Facts and Issues (JSFI), Rollo, pp. 72-75, duly approved by this Court in the Resolution dated February 11, 2005, Rollo, p. 87.
[2] Paragraphs 1 and 3, JSFI, Ibid.
[3] Paragraph 2, JSFI, Ibid.
[4] Paragraph 4, JSFI, Ibid.

December 31, 2001 reported a gross revenue of P6,682,728.00, representing its rental income subject to creditable withholding tax at the rate of 5%. However, petitioner alleges that it was not able to utilize these withholding tax payments as it has suffered a loss resulting in an excess withholding tax credit of P334,136.00. Said Annual Income Tax Return showed the following details:

Sales/Revenues/Receipts/Fees	P6,682,728.00
Less: Cost of Sales/Services	-
Gross Income from Operation	P6,682,728.00
Add: Non-Operating & Other Income	-
Total Gross Income	P6,682,728.00
Less: Deductions	9,189,362.00
Taxable Income	(P2,506,634.00)
Income Tax Due	P -
Less: Tax Credits	
Creditable Tax Withheld for the First Three Quarters	P 133,062.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	201,074.00
Total Tax Credits Payments	P 334,136.00
Overpayment	(P 334,136.00)[5]

Consequently, on September 18, 2002, petitioner filed a letter dated September 12, 2002 with the BIR, Revenue Region No. 8, RDO No. 50, requesting for the refund of its total excess creditable withholding taxes for CY 2001 in the amount of P334,136.00. Then, on April 2, 2004, petitioner, through its tax consultant, filed a supplemental letter reiterating its earlier administrative claim for refund in the amount of P334,136.00. However, to date, respondent has neither denied nor approved petitioner's administrative claim for refund or issuance of tax credit certificate. Petitioner filed its administrative and judicial claims for refund or issuance of tax credit certificate

[5] Exhibit "A".

for its unutilized excess creditable withholding tax for CY 2001 in accordance with, and with the period prescribed under, Sections 204 (C) and 229 of the NIRC.[6]

Respondent, in his Answer filed on June 9, 2004, averred the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund/tax credit is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;
>
> 6. Petitioner failed to prove the following:
>
> > a. That the total amount of P334,136.00, allegedly claimed by it as excess and unutilized creditable withholding tax for calendar year 2001 were fully substantiated.
> >
> > b. That the subject of the instant claim for refund has not been carried-over or applied against any income tax liability for the succeeding taxable quarter/year.
> >
> > c. That it has incurred tax loss for the period covered of the claim.
> >
> > d. That the alleged income tax payments from which the taxes were withheld were included in its gross income for taxable year 2001."[7]

During trial, petitioner presented testimonial and documentary evidence in support of its claim while respondent submitted the case for decision sans any evidence. The Court directed the parties to simultaneously file their respective memorandum within thirty (30) days from January 30, 2006. Only petitioner filed its Memorandum within the extension period on April 12, 2006. Hence, this Decision.

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[6] Paragraphs 5, 6, 7, and 8, JSFI, Ibid.
[7] Answer, Rollo, pp. 39-40

THE ISSUES

The parties stipulated on the following issues for this Court's resolution, to wit:

1. Whether or not petitioner has unutilized creditable withholding tax in the amount of P334,136.00 as of December 31, 2001, arising from its rental income for the said year, which is a proper subject of a claim for refund/issuance of a tax credit certificate pursuant to Section 76 of the NIRC;

2. Whether or not petitioner's unutilized creditable withholding taxes for CY 2001 in the amount of P334,136.00 are duly substantiated by documentary evidence;

3. Whether or not the rental income upon which the subject creditable withholding taxes were withheld were declared as part of petitioner's gross revenue in its Annual Income Tax Return for CY 2001; and

4. Whether or not petitioner's unutilized creditable withholding taxes for CY 2001 were carried over and claimed as "prior year's excess tax credits" during the succeeding taxable year.

In sum, this case revolves around the issue as to whether or not petitioner is entitled to its claim for refund or tax credit of its alleged unutilized creditable withholding taxes for the calendar year 2001 on the basis of the evidence presented.

THE COURT'S RULING

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.

3. That the income upon which the taxes were withheld was included as part of the gross income declared in the income tax return of the recipient."[8]

As admitted by the parties in paragraph 8 of the Joint Stipulation of Facts and Issues, the claim for refund of the petitioner was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC. Undoubtedly, the first requirement has been complied with.

As to the second requirement, petitioner presented Certificates of Creditable Tax Withheld at Source, summarized as follows:

Exhibit	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
B	07/01/01-09/30/01	Golden Arches Development Corporation	P2,661,236.72	P133,061.82
C	10/01/01-12/31/01	Golden Arches Development Corporation	4,021,490.80	201,074.54
			P6,682,727.52	P334,136.36

The total amount of Income Tax Withheld appearing on the Certificates presented corresponds to the amount of Total Tax Credits/Payments appearing on the Annual Corporate Income Tax Return of the petitioner, representing its unutilized creditable withholding taxes for the calendar year

[8] 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.

ending December 31, 2001.[9] And to prove that the taxes withheld from petitioner's income payments were actually remitted to the BIR for the calendar year 2001, petitioner presented its Withholding Tax Remittance Returns[10] and Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Golden Arches Development Corporation.[11] From the said documents, the Court finds that the withheld amounts equivalent to five percent (5%) of the gross rental were duly remitted to the BIR, and the same are considered creditable withholding taxes under Section 57(B) of the NIRC,[12] thus, satisfying the second requisite.

Finally, in compliance with the third requirement, showing that it declared in its return the income related to the creditable withholding taxes of P334,136.00, petitioner presented before this Court the following documents:

1. Annual Income Tax Return for the year ended December 31, 2001 with attached audited financial statements and Account Information Form marked as Exhibit "A";

2. Certificates of Creditable Tax Withheld at Source issued to petitioner for the 3rd quarter of calendar year 2001 marked as Exhibit "B"; and

3. Certificates of Creditable Tax Withheld at Source issued to petitioner for the 4th quarter of calendar year 2001 marked as Exhibit "C".

An examination of the above documents showed that the amounts of income made subject to creditable withholding taxes per Certificates of Creditable Tax Withheld at Source when added, appeared to be the same as the amount of gross revenue reported in the petitioner's Annual Income Tax

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[9] Annual Income Tax Return of petitioner for CY 2001, Exhibits "A", "A-4", "A-5", and "A-6", Rollo, pp. 124-126.
[10] Exhibits "I" to "I-14", Rollo, pp. 161-208.
[11] Exhibits "B" and "C", Rollo, pp. 142-143.
[12] Withholding of Creditable Tax at Source.

Return for the calendar year ending 2001. Furthermore, a reading of petitioner's Audited Financial Statements, particularly, its Statement of Income Expenses for the period June 25, 2001 to December 31, 2001, shows that the amount of P6,682,728, denominated as "Rent Income" was the same amount reported as Gross Revenue of petitioner in its Annual Income Tax Return. This proves that the income of the petitioner upon which the taxes were withheld was included in its return; hence, meeting the third requirement.

We now proceed to determine whether or not petitioner has unutilized creditable withholding tax in the total amount of P334,136.00 as of December 31, 2001, arising from its rental income for the said year, which is a proper subject of a claim for refund/issuance of a tax credit certificate pursuant to Section 76 of the NIRC.

A closer look at the Annual Income Tax Return of petitioner for the calendar year 2001 shows that petitioner incurred a net loss of P2,506,634.00 and a Total Creditable Tax Withheld of P334,136.00. As petitioner posted a net loss for calendar year 2001, it was not liable for any income taxes. Consequently, the taxes withheld during the course of the taxable year, while collected legally under the Expanded Withholding Tax Regulation, took on the nature of erroneously collected taxes at the end of the taxable year.

Clearly therefore, petitioner has unutilized creditable withholding tax of P334,136.00 which may be the subject of a claim for refund under Section 76, in relation to Sections 204 (C) and 229 of the NIRC, and Revenue Regulations No. 2-98, particularly Section 2.58.3 thereof. Petitioner's proof of compliance with the legal requisites set forth under the aforesaid sections of the NIRC and said revenue regulation, have already been thoroughly discussed, with the exception of Section 76.

Thus, We look into the provisions of Section 76 of the NIRC, to wit:

> "**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."

Based on the afore-quoted provision, petitioner, being entitled to a tax credit or refund, is allowed two (2) options, namely: (a) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid (either in the form of cash or credit certificate).

In its Annual Corporate Income Tax Return for the calendar year ending December 31, 2001, petitioner indicated therein its intention to be refunded of its unutilized creditable withholding tax. This fact is evidenced by an **"x"** mark in a box corresponding to the choice "To be refunded" in its 2001 Annual Corporate Income Tax Return.[13] Furthermore, in its Income Tax Return for the succeeding year 2002, petitioner did not indicate any amount of

[13] Exhibit "A-8".

prior year's excess credit.[14] Evidently, the petitioner did not carry-over the amount of P334,136.00, as a tax credit to the succeeding taxable year 2002 and it chose only one option, that is, "To be refunded."

In the light of the foregoing considerations, petitioner appears to be entitled to the refund/tax credit prayed for representing unutilized creditable withholding taxes on its rental income derived from its leasing business.

WHEREFORE, the instant Petition for Review is **GRANTED.** Respondent is hereby **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of P334,136.00, representing unutilized creditable income taxes withheld for the calendar year ending December 31, 2001, in favor of petitioner.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[14] Exhibit "G-1".

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

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice