REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PRYCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6432

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JAN 28 2004

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DECISION

This case involves a claim for the issuance of a tax credit certificate in the amount of P13,695,043.20 (originally in the amount of P19,461,828.00) allegedly representing unutilized creditable withholding tax on income payments for the calendar year 2000 (originally for the calendar years 1998 to 2000).

The facts as culled from the records are as follows:

Petitioner is a duly organized domestic corporation with office address at the 17th floor, Pryce Center, 1179 Chino Roces Avenue, Makati City. *(par. no. 1, Joint Stipulation of Facts).* It is engaged in the business of real estate development.

For the calendar year 1998, petitioner filed its amended Annual Income Tax Return on May 3, 1999 (Exhibit D) declaring a net loss of P9,869,248.00 and a total income tax due of P1,702,051.00 representing petitioner's minimum corporate income

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tax. Petitioner's total tax credit/withheld payments for the first three quarters of 1998 amounted to P7,400,037.00 and the tax overpayment amounted to P5,697,986.00.

Details are shown below:

Total Gross Income	P156,732,437.00
Less: Deductions	166,601,685.00
Taxable Income/(Loss)	**(P9,869,248.00)**
Income Tax Due	P3,355,544.00
MCIT	1,702,051.00
Prior Year's Excess Credits	----
Add: Tax Credits for the first three quarters	7,400,037.00
Total	P7,400,037.00
Less: Tax Due (MCIT)	1,702,051.00
Tax Overpayment	**P5,697,986.00**

On May 2, 2000, petitioner filed its Amended Annual Income Tax Return for the year 1999 (Exh. E) showing a net loss of P34,493,512.00 and a minimum corporate income tax in the amount of P1,671,607.00. Petitioner's return likewise showed Prior Year's Excess Credits in the amount of P5,697,986.00 and Income Tax Overpayment in the amount of P7,778,142.00. Details are shown below:

Total Gross Income	P125,883,959.00
Less: Deductions	160,377,471.00
Taxable Income/(Loss)	**(P34,493,512.00)**
Income Tax Due	---
MCIT	P1,671,607.00
Prior Year's Excess Credits	5,697,986.00
Add: Tax Credits for the first three quarters	3,751,763.00
Total	P9,449,749.00

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Less: Tax Due (MCIT)	1,671,607.00
Tax Overpayment	**P7,778,142.00**

On May 2, 2001, petitioner filed its amended Annual Income Tax Return for the calendar year 2000 (Exh. F) showing a net loss of P15,185,168.00 and MCIT of P2,707,648.00. The same return declared Prior Year's Excess Credits in the amount of P7,778,142.00 and Tax Overpayment of P19,524,779.00, detailed as follows:

Total Gross Income	P135,382,389.00
Less: Deductions	150,567,557.00
Taxable Income/(Loss)	**(P15,185,168.00)**
Income Tax Due	---
MCIT	P2,707,648.00
Prior Year's Excess Credits	7,778,142.00
Add: Tax Credits for the first three quarters	14,454,285.00
Total	P22,232,427.00
Less: Tax Due (MCIT)	2,707,648.00
Tax Overpayment	**P19,524,779.00**

Petitioner's excess tax credits for the year 2000 in the amount of P19,524,779.00 was allegedly not carried over to the succeeding taxable quarter and year 2001 *(Exh. G)* because petitioner opted for the issuance of a tax credit certificate.

On April 13, 2001, petitioner filed a letter with respondent requesting for the issuance of a tax credit certificate covering its excess or unused creditable withholding taxes for the calendar years 1998, 1999 and 2000 in the aggregate amount of P19,461,828.00 *(Exh. H).*

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Due to respondent's failure to act on petitioner's administrative claim, and in order toll the running of the two-year prescriptive period, petitioner filed its judicial claim on April 10, 2002.

In his Answer filed through registered mail on May 30, 2002, respondent raised the following Special and Affirmative Defenses, to wit:

"4. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary examination/investigation by the respondent's Bureau.

5. Petitioner's claim for refund of alleged 1998 excess or unutilized creditable withholding tax has already been (sic) prescribed.

6. Petitioner can no longer claim for the refund of its alleged 1998 and 1999 excess or unutilized creditable withholding taxes for the reason that petitioner had already exercised the option to carry over its excess tax credit to the next succeeding year(s) in contravention to the provision of Section 76 of the 1997 Tax Code that "once the option to carry-over has been made, such option is irrevocable for that taxable period and no application for cash refund or the issuance of tax credit certificate shall be allowed therefor."

7. The instant petition should be dismissed for lack of cause of action, considering that the alleged administrative written claim for refund filed with the BIR was filed on April 13, 2001, three (3) days ahead of the filing of the Tentative Annual Income Tax Return for the year 2000 which was filed on April 16, 2001.

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8. The petition has no legal basis as it does not even cite explicitly or by implication the pertinent statute and jurisprudence applicable to its cause of action. It should be noted that in the case of China Banking Corporation vs. Commissioner of Internal Revenue (CTA Case No. 5683, July 1, 2000) involving a claim for refund of China Bank's alleged overpayment of the gross receipts tax, this Honorable Court, in denying the petition for review filed by China Bank, has ruled that: "In going over the records of the case, this Court cannot initially fathom the nature of petitioner's claim for refund. Petitioner's sweeping statement that there was an erroneous computation in the gross receipts tax due has no legal anchor on which to stand on. Petitioner failed to alleged (sic) in its pleading the legal basis of his petition other than the assertion that the gross receipts taxes were erroneously paid to the government."
9. Petitioner failed miserably to show that the total amount of Php:19,461,828.00, allegedly representing excess/unutilized creditable withholding tax for taxable years 1998, 1999 and 2000 was erroneously or illegally collected, or that the same was properly documented.
10. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable.

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11. In an action for tax refund/credit, the taxpayer has the burden to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

12. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204(c) in relation to Section 229 of the Tax Code.

13. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of exemption from tax."

On October 30, 2002, the parties submitted their Joint Stipulation of Facts and Issues and stipulated on the following issues for this court's resolution:

1. Whether or not petitioner has unutilized creditable withholding taxes in the amount of P19,461,828.00 for the taxable years 1998 to 2000.

2. Whether or not the income taxes for the years 1998, 1999 and 2000 from which the taxes were withheld were included as part of the gross income in petitioner's respective income tax returns.

3. Whether or not petitioner's claim for refund of alleged 2000 unutilized creditable withholding taxes are substantiated by documentary evidence.

4. Whether or not the 2000 accumulated creditable withholding taxes were carried forward and applied against its income tax liabilities for the succeeding years.

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On April 15, 2003, petitioner filed through registered mail a "Motion for Partial Withdrawal of Petition for Review" insofar as taxable years 1998, 1999, and part of 2000 are concerned. This court granted the motion in a resolution promulgated on July 31, 2003. Consequently, petitioner's claim for the issuance of a tax credit certificate was limited to the amount of P13,695,043.20 representing withholding taxes on real estate transactions of petitioner with the Social Security System for the taxable year 2000.

We find against the petitioner.

Time and again, this court has ruled that in a claim for refund of creditable withholding tax, petitioner must comply with the following requirements:

1. That the claim for refund/tax credit was filed within the two-year prescriptive period provided under Section 204 (3) [now Section 204 (c)] in relation to Section 230 [now Section 229] of the Tax Code, as amended;

2. That the income upon which the taxes were withheld were included in the return of the recipient; and

3. 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 the tax withheld therefrom. ***[Revenue Regulations No. 6-85 as amended by Revenue Regulations No. 12-94; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals, 204 SCRA 957.]***

Considering that petitioner has withdrawn its claim pertaining to the taxable years 1998 and 1999 (*page 408, CTA Records*), the court will thus, rule on the remaining claim amounting to P13,695,043.20 representing petitioner's real estate transaction with the Social Security System as evidenced by its withholding tax remittances for the taxable year 2000. *(Exhibits C-15, C-26 and C-27).*

The first requirement was found to have been complied with by the petitioner. Records show that both the administrative and judicial claims for the issuance of tax credit certificate, filed on April 13, 2001 *(Exh. H)* and April 10, 2002 *(page 1, CTA records)*, respectively, were filed well within the two-year prescriptive period reckoned from the date the original 2000 Annual Income Tax Return of petitioner was filed on April 16, 2001 *(par. 8, Petition for Review and par. 3(c), Joint Stipulation of Facts)*.

On the second issue, this court finds that the income payments on the three SSS transactions amounting to P249,000,785.40 were included as part of the revenues declared in petitioner's 2000 Annual Income Tax Return. Records disclose that petitioner declared the amount of P129,348,202.00 as its Sales/Revenues/Receipts/Fees in its Annual Income Tax Return *(Exhibit F-a)*. The said amount was accounted in the Schedule of Sales/Revenue/Receipts/Fees *(Exhibit F-1-a)* as follows:

Sale of Goods/Properties	P 94,840,112
Sale of Services	34,508,090
Total	P129,348,202
Less: Sales Returns/Discounts	-0-
Net Sales/Revenues/Receipts/Fees	P129,348,202

The sale of real properties in the amount of P94,840,112.00 was further accounted by petitioner as follows *(Exh. R)*:

Revenue on Real estate sales reported in 2000 Income statement	P 319,106,182
Less: Cost of real estate (also reported in 2000 IS)	221,961,180
Gross Profit on real estate sales	P 97,145,002
Less: Gross profit on socialized housing – St. Joseph Homes (reported in the Recon. of Net Income per Books Against Taxable Income)	2,304,890

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Gross profit on real estate sales or Sale of Properties reported in 2000 ITR (under sch. 1 item # 36)	P 94,840,112

Furthermore, the sum of P319,106,182.00 *(Exh. O)* was verified to have included the amount of P249,000,785.40 representing income payments from petitioner's three SSS transactions, to wit:

Payor/Buyer	**Particular**	**Exhibit**	**Amount**
a) Social Security System	Sale of Pryce Tower Unit	P	P170,537,890.35
b) Social Security System	Lot Sale to SSS	P-1	20,565,333.36
c) Social Security System	Josefina Towncenter Sale	P-2	57,897,561.69
Total			P249,000,785.40

With regard to the third requirement, petitioner has proven the fact of withholding of the three SSS transactions in the amount of P13,695,043.20 by presenting the corresponding withholding tax remittance returns *(Exhs. C-15, C-26 and C-27)* which were summarized in Exhibit N as follows:

Exhibit No.	Reference Document	Payor (Buyer)	Payee (Seller)	Date CWT Paid	CWT Paid	Selling Price/ Consideration	Breakdown of Selling Price	
							Revenue	VAT
C-15	Withholding Tax Remittance Return (BIR form # 1606)	Social Security System	Pryce Corp.: P. Tower	12/22/00	9,055,696.42	187,591,679.38	170,537,890.35	17,053,789.03
C-26	Withholding Tax Remittance Return (BIR form # 1606)	Social Security System	Pryce Corp.: PBP	12/19/00	1,454,980.89	22,621,866.70	20,565,333.36	2,056,533.34
C-27	Withholding Tax Remittance Return (BIR form # 1606)	Social Security System	Pryce Corp.: VJRV-JTC	11/27/00	3,184,365.89	63,687,317.86	57,897,561.69	5,789,756.17
	Total				13,695,043.20	273,900,863.94	249,000,785.40	24,900,078.54

The withholding tax remittances were certified by the BIR *(Exh. S)* to have been collected and that these were not included in the list of dishonored checks on file with the Revenue Accounting Division of the BIR.

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However, even if petitioner was able to comply with the three requirements for claiming a tax credit or refund, this court cannot, grant the subject claim for failure on the part of petitioner to present in evidence its original 2001 Annual Income Tax Return. Records show that petitioner merely filed its 2001 amended Annual Income Tax Return.

In the case of ***Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6370, promulgated on November 03, 2003***, this court emphasized the importance of presenting the succeeding year's return, thus:

> "Petitioner's ITR filed on April 14, 2000 sufficiently proved that it realized a net income of P80,042 for the calendar year 1999. However, as stated earlier, an examination of its ITR would disclose that petitioner failed to indicate its intention on whether the tax credit is "to be refunded", "to be issued a tax credit certificate", or "to be carried over as tax credit next year/quarter". Considering this omission of petitioner, **in addition to the fact that it also failed to produce and present to this court as evidence its year 2000 original ITR, this court would be in no position to determine with absolute certainty** the option chosen as well as **whether or not the claimed tax credits were not applied to its year 2000 income tax liabilities. If the petitioner applied the excess creditable taxes to its 2000 tax liabilities, then the instant claim for refund should no longer be granted because this would be tantamount to granting twice the refund being sought, to the prejudice of the Government** *(Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue, C.A., G.R. SP No. 33589, October 14, 1994).*" **(Emphasis supplied)**

Even if the parties stipulated on the fact that in petitioner's tentative/original 2000 Annual Income Tax Return it indicated its intention to claim for the refund or tax credit of its 2000 overpayment/excess creditable withholding tax, the presentation of petitioner's original 2001 Annual Income Tax Return is still necessary in order for the court to ascertain whether petitioner's 2000 excess creditable withholding taxes were indeed not applied to the succeeding year 2001.

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In the instant case, while petitioner presented its Quarterly Income Tax Return for the first quarter of 2001, which was filed on May 25, 2001 (*Exh. G*), this, however, is not sufficient to prove that it did not apply its 2000 excess creditable withholding tax to its 2001 income tax liabilities. The quarterly income tax returns are still subject to consolidation at the end of the year in the annual income tax return.

As held by the Supreme Court in the case of ***Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184,192 (1992)*** thus:

> "xxx [T]he filing of a quarterly income tax return required in Section 85 [now Section 68] and implemented per BIR Form 1702-Q and payment of quarterly income tax should only be considered mere installments of the annual tax due. These quarterly tax payments which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. xxx"

Moreover, petitioner's original 2001 Annual Income Tax Return was already available at the time petitioner made its Formal Offer of Evidence on May 8, 2003 *(CTA Records, pages 71 to 81)*. Thus, this court wonders why petitioner failed to present the same.

Failure on the part of petitioner to present its original 2001 Annual Income Tax Return is fatal to its claim for refund/issuance of a tax credit certificate. 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 the exemption ***(Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue vs. Tokyo***

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Shipping Co., Ltd., 244 SCRA 332; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822).

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate 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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