REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILAQUA CONSULTANTS, INC.,
Petitioner,

C.T.A. CASE NO. 6675

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

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DECISION

CASANOVA, C., J.:

This is a Petition for Review filed on April 15, 2003 seeking the refund of Php1,696,731.05 allegedly representing the amount of creditable income tax withheld in 2000 that was never refunded or applied as a credit against petitioner's tax liabilities in 2000 and subsequent taxable periods.

The facts as culled from the records of the case are as follows:

Petitioner is a joint venture corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at ACCRA Building, 122 Gamboa Street, Legaspi Village, Makati City. It is duly registered with the Bureau of Internal Revenue-Revenue Region No. 8, RDO No. 47-East Makati and has been issued Taxpayer Identification No. 205-711-881-000.

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Petitioner is engaged in the business of providing engineering consultancy services for which it earns professional fees subject to creditable withholding tax in accordance with Section 2.57.2 (B) of Revenue Regulations No. 2-98, as amended.

In 2000, petitioner received from its sole client Maynilad Water Services, (Maynilad), professional fees for engineering consultancy services subject to 5% withholding tax. Petitioner filed its original Annual Income Tax Return for the year 2000 on April 17, 2001.

Based on the Quarterly Income Tax Returns (BIR Form 1702Q) filed by petitioner for the year 2000, the following amounts of creditable withholding tax were applied as payment for its income tax:

Tax Return Period	Amount of Creditable Withholding Tax Applied	Total
Second Quarter	Php 505,000.00	
	2,689,974.65	**Php 3,194,974.65**
Third Quarter	989,839.66	
	184,160.81	**1,174,000.47**
Total		**Php 4,368,975.12**

The amended Annual Income Tax Return (BIR Form No. 1702) filed by petitioner for the year 2000 on April 30, 2001 reflects the amount of Php4,368,975.00 as the amount of Creditable Tax Withheld for the First Three Quarters. On both the original and amended Annual Income Tax Returns of the petitioner for the year 2000, petitioner indicated its option to have its excess tax payments carried over by marking the box corresponding to the caption "to be carried over as tax credit next year/quarter".

The amended Annual Income Tax Return for the year 2000 reflects the following:

1. Petitioner declared total sales/revenues/receipts/fees of Php214,693,735.00, a gross income of Php22,980,940.00 and a taxable income of Php3,599,103.00.

2. The income tax of petitioner for the entire 2000, as computed at the rate of 32%, is Php1,151,713.00.

3. Petitioner deducted from said amount of income tax: (i) cash income tax payments for the first three (3) quarters in the amount of Php565,890.00; and (ii) creditable withholding tax withheld at source during the first three (3) quarters in the amount of Php4,368,975.00 as computed in table above.

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Petitioner avers that the total creditable withholding tax which Maynilad deducted from the professional fees paid to it for 2000 is Php6,065,346.17. However, only the aggregate amount of Php4,368,975.12 out of Php6,065,346.17 was claimed as tax credit and reflected in its tax return filed in 2000. The difference in the amount of Php1,696,371.05 income tax withheld was allegedly never refunded nor applied as credit against its tax liabilities from 2000 onwards.

On April 14, 2003, petitioner filed an administrative claim for refund with the Bureau of Internal Revenue in the amount of P1,696,371.05. Not wanting to be barred by prescription, petitioner filed the instant Petition for Review on April 15, 2003.

On June 9, 2003, respondent posted his Answer mainly raising the following as his Special and Affirmative Defenses:

1. Petitioner's alleged claim for refund/issuance of tax certificate is still subject to administrative routine investigation/examination by the respondent's Bureau;

2. Petitioner's claim for refund in the aggregate amount of P1,696,731.05 representing petitioner's creditable income tax withheld for the year 2000 was not fully substantiated;

3. It is incumbent upon petitioner to show compliance with Section 204 in relation to Section to 229 of the Tax Code, as amended;

4. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation and as such, they are looked upon with disfavor;

5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable; and

6. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right for refund and failure to adduce sufficient proof is fatal to the action for tax credit/refund.

On October 16, 2003 petitioner filed its Supplemental Petition for Review alleging that petitioner reported an aggregate amount of Php4,474,272.22 as creditable tax withheld during the third and fourth quarters of 2001 and that it will be seen from its amended Quarterly Income Tax Returns and Annual Income Tax Return for 2002 that petitioner credited an aggregate amount of Php19,439,525.08. Petitioner filed its Memorandum on April 19, 2005 alleging that the amount subject of the claim for refund was also not applied in 2003 and 2004 since it stopped business operations. Thereafter, in a resolution dated April 20, 2005, this case was submitted for decision sans respondent's memorandum.

The parties stipulated the following issues for the Court's determination:

"A
Whether or not petitioner is entitled to a credit or refund of an overpaid tax, when it has previously signified its intention to apply and carry over said overpaid tax by marking the box in the annual tax return indicating "to be carried over as tax credit next year/quarter".

B
Whether or not petitioner has creditable withholding income tax in 2000 in the amount of Php1,696,371.05 which has not refunded or credited against its income tax payable in 2000 and subsequent taxable periods.

C
Whether or not said claimed creditable withholding tax is substantiated by documentary evidence.

D
Whether or not petitioner is entitled to the refund of the amount of Php1,696,371.05 representing the amount of creditable withholding income tax in 2000 which it has not refunded or credited against its income tax payable in 2000 and subsequent taxable periods, pursuant to Section 229 in relation to Section 79 (C) [sic] of the National Internal Revenue Code of 1997 ('Tax Code')."

Being interrelated, the issues raised shall be discussed simultaneously.

Petitioner invokes Sections 204 and 229 of the 1997 National Internal Revenue Code as bases for its claim for refund. These sections read:

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

"(A) xxx
"(B) xxx
"(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

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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.

xxx xxx xxx"

"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."

Petitioner filed its original Annual Income Tax Return for the year 2000 on 17 April 2001 declaring the following information:

Sales/Revenues/Receipts/Fees	P 212,940,593.00
Less: Cost of Sales	192,379,036.00
Gross Income from Operation	P 20,561,557.00
Add: Non-Operating & Other Income	9,000.00
Total Gross Income	P 20,570,557.00
Less: Deductions	22,658,127.00
Taxable Income	(P 2,087,570.00)
Tax Rate	32%
Income Tax Due	-
Less: Tax Credits/Payments	
Tax Payments for the First Three Quarters	P 565,889.00
Creditable Tax Withheld for the First Three Quarters	3,863,975.00
Total Tax Credits	P 4,429,864.00
Total Amount Payable/(Overpayment)	**(P 4,429,864.00)**

Petitioner indicated its option to have its overpaid income tax carried over as tax credit to the next year/quarter by marking the box opposite the caption "to be carried over as tax credit next year/quarter".

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On April 30, 2001, petitioner amended its 2000 Annual Income Tax Return, disclosing the following:

Sales/Revenues/Receipts/Fees	P 214,693,735.00
Less: Cost of Sales	191,712,795.00
Gross Income from Operation	P 22,980,940.00
Add: Non-Operating & Other Income	9,000.00
Total Gross Income	P 22,989,940.00
Less: Deductions	19,390,837.00
Taxable Income	P 3,599,103.00
Tax Rate	32%
Income Tax Due	P 1,151,713.00
Less: Tax Credits/Payments	
Tax Payments for the First Three Quarters	P 565,890.00
Creditable Tax Withheld for the First Three Quarters	4,368,975.00
Total Tax Credits	P 4,934,865.00
Total Amount Payable/(Overpayment)	**(P3,783,152.00)**

(Exhibit J)

In this 2000 amended return, petitioner also marked the box corresponding to the option to have its overpaid income tax be carried over as tax credit. Petitioner alleges that for taxable year 2000, it received professional fees for engineering consultancy services from its lone client Maynilad Water Services, Inc. ("Maynilad") and that 5% of its income payments was withheld therefrom as follows:

EXHIBIT	WITHHOLDING AGENT	PERIOD INVOLVED	INCOME PAYMENT	TAX WITHHELD
A	MAYNILAD WATER SERVICES, INC.	1/1/2000 - 3/31/2000	P 10,100,000.00	P 505,000.00
B	MAYNILAD WATER SERVICES, INC.	7/1/2000 - 9/30/2000	23,480,009.45	1,174,000.47
C	MAYNILAD WATER SERVICES, INC.	10/1/2000 – 12/31/2000	33,927,421.00	1,696,371.05
D	MAYNILAD WATER SERVICES, INC.	4/1/2000 - 6/30/2000	53,799,493.08	2,689,974.65
	TOTAL		**P 121,306,923.53**	**P6,065,346.17**

However, when petitioner filed its annual income tax return for the year 2000, it only declared the amount of P3,863,975.00 (P1,174,000.47 + P2,689,974.65) as creditable tax withheld for the first three quarters of 2000. Petitioner later amended its 2000 annual income tax return to declare creditable tax withheld for the first three quarters in the amount of P4,368,975.00 (P505,000.00 + P1,174,000.47 + P2,689,974.65). Still the amount of P1,696,371.05 was not declared.

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Then on April 11, 2002, petitioner filed its annual income tax return for taxable year 2001 declaring the following:

Taxable Income	P 12,264,410.00
Tax Rate	32%
Income Tax Due	P 3,924,611.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	P 3,783,152.00
Creditable Tax Withheld for the First Three Quarters	332,465.00
Total Tax Credits	P 4,115,617.00
Total Amount Payable/(Overpayment)	**(P 191,006.00)**

The creditable taxes withheld for the first three quarters of 2001 consist of the following:

EXHIBIT	WITHHOLDING AGENT	PERIOD INVOLVED	INCOME PAYMENT	TAX WITHHELD
V	MAYNILAD WATER SERVICES, INC.	7/1/2001-9/30/2001	P 426,300.00	P 21,315.00
W	MAYNILAD WATER SERVICES, INC.	7/1/2001-9/30/2001	6,149,499.60	307,475.25
X	MAYNILAD WATER SERVICES, INC.	7/1/2001-9/30/2001	73,500.00	3,675.00
	TOTAL		**P6,649,299.60**	**P332,465.25**

On April 24, 2003, petitioner amended its 2001 annual income tax return reflecting the additional creditable taxes by Maynilad in the amount of P4,141,807.00 as follows:

Taxable Income	P 12,264,410.00
Tax Rate	32%
Income Tax Due	P 3,924,611.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	P 3,783,152.00
Creditable Tax Withheld for the First Three Quarters	332,465.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	4,141,807.00
Total Tax Credits	P 8,257,424.00
Total Amount Payable/(Overpayment)	**(P4,332,813.00)**

(Exhibit N)

The additional creditable taxes withheld by Maynilad in the sum of P4,141,807.00 consist of the following:

EXHIBIT	WITHHOLDING AGENT	PERIOD INVOLVED	INCOME PAYMENT	TAX WITHHELD
AA	MAYNILAD WATER SERVICES, INC.	1/1/2001-3/31/2001	P 30,905,441.55	P 1,540,272.08
BB	MAYNILAD WATER SERVICES, INC.	7/1/2001-9/30/2001	20,024,245.34	1,001,212.27
CC	MAYNILAD WATER SERVICES, INC.	10/1/2001-12/31/2001	7,397,891.34	369,894.57
DD	MAYNILAD WATER SERVICES, INC.	10/1/2001-12/31/2001	5,564,861.35	556,486.14
EEE	MAYNILAD WATER SERVICES, INC.	10/1/2001-12/31/2001	1,697,796.00	169,779.60
FFF	MAYNILAD WATER SERVICES, INC.	7/1/2001-9/30/2001	10,083,240.94	504,162.31
	TOTAL		**P75,673,476.52**	**P4,141,806.97**

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On the same date, petitioner amended its 2002 annual income tax return declaring the following:

Taxable Income	P	4,596,360.00
Tax Rate		32%
Income Tax Due	P	1,470,835.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits		-
Creditable Tax Withheld for the First Three Quarters	P	10,055,297.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter		9,384,228.00
Total Tax Credits	P	19,439,525.00
Total Amount Payable/(Overpayment)		**(P17,968,690.00)**

(Exhibit II)

For the year 2002, petitioner's creditable withholding taxes are as follows:

EXHIBIT	WITHHOLDING AGENT	PERIOD INVOLVED	INCOME PAYMENT	TAX WITHHELD
GGG	MAYNILAD WATER SERVICES, INC.	1/1/2002-3/30/2002	P 35,005,343.62	P 3,500,534.36
HHH	MAYNILAD WATER SERVICES, INC.	1/1/2002-3/31/2002	392,000.00	39,200.00
III	MAYNILAD WATER SERVICES, INC.	7/1/2002-9/30/2002	65,155,630.94	6,515,563.09
JJJ	MAYNILAD WATER SERVICES, INC.	1/1/2002-3/31/2002	73,999,728.70	7,399,972.87
KKK	MAYNILAD WATER SERVICES, INC.	10/1/2002-12/31/2002	19,842,547.60	1,984,254.76
	TOTAL		**P194,395,250.86**	**P19,439,525.08**

From the foregoing, it can be seen that the amount of Php1,696,371.05 creditable taxes withheld by Maynilad in 2000 was not included as part of petitioner's creditable taxes withheld for the years 2000 up to 2002. Neither is the amount part of the tax credits/payments applied to petitioner's income tax liabilities from 2000 up to 2002. Can the petitioner now be entitled to a credit or refund of the unapplied overpaid tax even if it has previously signified its intention to apply and carry over said overpaid tax by marking the box in the annual income tax return indicating "to be carried over as tax credit next year/quarter"?

This question was already answered by this Court in the resolution dated November 6, 2003. It was ruled that: "xxx The said section[1] clearly finds application only to the 'excess amount as shown on its final adjustment return', which may either be carried over or

[1] Referring to Section 76 of the National Internal Revenue Code 1997

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credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. It is apparent from the said section, particularly the second paragraph, that the subject of the option available to a taxpayer covers the excess amount as shown on the final adjustment return of the taxpayer during the applicable taxable year. In other words, *it does not cover that amount which the taxpayer has failed to include as part of the claimed creditable withholding tax.*"[2]

In this case, petitioner manifested its option to carry over its excess credits but it never had the opportunity to exercise such option with respect to the amount Php1,696,371.05 because it "inadvertently failed" to include the same in its final adjustment return from 2000 up to 2002.

Nevertheless, after a careful evaluation of the facts and after considering the laws and jurisprudence applicable, this Court resolves to deny petitioner's claim for refund.

The grant of refund of overpaid creditable taxes withheld at source is dependent upon compliance by the taxpayer with the following requirements, to wit:

> (1) That the claim for refund is filed within the two-year prescriptive period pursuant to Section 229 of the 1997 National Internal Revenue Code (Tax Code);
>
> (2) 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; 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 ***(Citibank N.A. vs Court of Appeals, Commissioner of Internal Revenue, 280 SCRA 459 [1997]).***

Section 229 of the Tax Code reads:

> "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

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[2] CTA Records, page 312

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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 therefor, 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 line with the case of ACCRA Investments Corporation vs. Commissioner of Internal Revenue,[3] the prescriptive period of two (2) years shall commence to run at the earliest, from the time that the refund is ascertained, which is only after a final adjustment return is accomplished. Petitioner complied with this requirement. Counting two (2) years from April 15, 2001, petitioner had until April 15, 2003 to timely file its claim for refund. Petitioner filed the administrative claim for refund filed with the Bureau of Internal Revenue on April 14, 2003 and it filed the instant petition filed on April 15, 2003. Thus, both the administrative and judicial claims for refund were timely made.

However, petitioner failed to comply with the second requisite. Contrary to its assertion that the income payment on which the subject creditable withholding income tax was imposed is part of the its declared gross income, petitioner failed to sufficiently show that indeed the income payment of Php33,927,421.00 from which subject creditable withholding tax was imposed was declared as part of its gross income for 2000.

In an effort to prove that the income payment of Php33,927,421.00 was included as part of the gross income declared in the 2000 Annual Income Tax Return, petitioner presented in evidence the following: invoices, reflecting therein the amounts billed to Maynilad for the year 2000 *(Exhibits PP to UU & DDD)*, the Inventory of Certificates of Creditable Tax Withheld at Source *(Exhibit BBB)* and the schedule of Fee Income for 2000 *(Exhibit CCC)*.

Upon verification, the Court found that petitioner did not submit the invoices pertaining to the months of November and December 2000, neither did it present the

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[3] 204 SCRA 957 [1991]

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Certificates of Creditable Tax Withheld at Source reflecting the income payments for the said months. Absent these documents, it cannot be ascertained that the accruals for the months of November and December 2000 actually amounted to only Php49,178,776.67. It should be noted that if the income payments for these months are more than Php49,178,776.67, logically, the amount of Php33,927,421.00 is not included as part of petitioner's revenue in the amount of Php214,693,734.81 for 2000.

In fine, this Court cannot determine with certainty whether the amount of Php33,927,421.00 forms part of the gross income declared in the 2000 Annual Income Tax Return filed. Petitioner's failure to prove that the income upon which the taxes were withheld was included as part of its gross income declared in the income tax return is fatal to its claim for refund. Well-entrenched is the legal precept that a claim for refund is in the nature of a claim for exemption. As such, they are regarded as a derogation of sovereign authority and is therefore to be construed *strictissimi juris* against the taxpayer.[4] In view thereof, petitioner's compliance with the third requisite is immaterial.

WHEREFORE, premises considered, the petitioner's claim for refund is hereby **DENIED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[4] *Commissioner of Internal Revenue vs. Tokyo Shipping, 244 SCRA 332 [1995]*

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above 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
Chairman, First Division
Presiding Justice

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