REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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NISSAN MOTOR PHILIPPINES, INC.,
Petitioner,

C.T.A. CASE NO. 6622

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 15 2005
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DECISION

***ACOSTA, E., P.J.*:**

This is a judicial claim for refund and/or issuance of a tax credit certificate in the total amount of P5,176,187.00 allegedly representing excess or unutilized creditable income tax for the taxable year 2000.

The following are the facts as disclosed by the records of the case:

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at Nissan Technopark, Barangay Pulong Sta. Cruz, Sta. Rosa, Laguna.

On April 16, 2001, petitioner duly filed with the Bureau of Internal Revenue its Annual Income Tax Return for the calendar year ended December 31, 2000. The said return shows that petitioner declared a net loss of P334,796,325.00 and a minimum corporate income tax (MCIT) due of P3,958,694.00 (*pars.3 & 4, Joint Stipulation of Facts and Issues*). Petitioner indicated an overpayment amounting to P5,176,187.00, consisting of its prior year's excess credits and creditable income taxes withheld during the year *(Exhibit A-2)*. Petitioner opted to be issued a tax credit certificate for the said excess creditable income tax of P5,176,187.00 *(Exhibit A-1)*.

On April 15, 2002, petitioner duly filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year ended December 31, 2001 (*par. 6, Joint Stipulation of Facts and Issues*).

On August 3, 2001, petitioner, in a letter dated August 1, 2001, requested for the issuance of a tax credit certificate for its excess creditable withholding tax for the year ended 2000, with the Large Taxpayers Service of the BIR (*par. 7, Joint Stipulation of Facts and Issues; Exhibit C*).

Alleging inaction on the part of the respondent, petitioner filed the instant Petition for Review with this Honorable Court on March 27, 2003 in order to preserve its right to claim for a refund of its excess or unutilized creditable income tax for the taxable year 2000 in the total amount of P5,176,187.00.

On April 29, 2003, respondent filed his Answer and by way of Special and Affirmative Defenses, alleged the following:

> 3. Settled is the rule that tax exemptions cannot be created by implications as they are highly disfavored in law. And considering further that a claim for tax refund partakes of the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. (BIR Ruling No. 126-86 dated July 23, 1986).

4. In an action for refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

5. Petitioner, who has the burden of proving its entitlement to the tax refund, has failed to establish compliance with the provisions of Revenue Regulations 6-85. It is required in said Revenue Regulations that claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when:

a. It is shown on the return that the income payment received has been declared as part of gross income;

b. The fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom;

c. The claim for refund is filed within the two-year prescriptive period prescribed under Section 230 (now Section 229) of the National Internal Revenue Code.

These requirements of law find support in the declaration of this Honorable Court in the cases of *Philippine American Life Insurance Co. v. Commissioner of Internal Revenue,* CTA Case No. 4018 *and PDCP v. Commissioner of Internal Revenue,* CTA Case No. 5237, among others.

6. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

7. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

On June 30, 2003, the petitioner and respondent filed the following jointly stipulated issues which was approved by the Court on July 3, 2003:

1. Whether petitioner has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for filing administrative and judicial claims for refund and or issuance of a tax credit certificate.

2. Whether petitioner established the fact of withholding with copies of the withholding tax statements duly issued by the various payors to the petitioner showing the date, the amount paid, the amount of tax withheld therefrom, and the fact of its remittance to the BIR.
3. Whether the income payments from which the taxes were withheld were included in petitioner's gross income for the calendar year ended December 31, 2000.
4. Whether the amount of excess/unutilized creditable income tax as of the end of taxable year 2000 in the amount of P5,176,187.00 was utilized or carried over to the succeeding taxable year.
5. Whether petitioner is entitled to the refund of the amount of P5,176,187.00 representing unutilized withholding tax credits for the calendar year ended December 31, 2000.

The above issues stipulated by the parties commonly relate to petitioner's entitlement to a refund of its alleged excess or unutilized withholding tax credits depending upon its compliance with both the legal and substantial requirements. Thus, they shall be discussed jointly.

Petitioner principally anchored its claim on Section 76, in relation to Sections 204 (C) and 229 of the 1997 National Internal Revenue Code, 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.

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

xxx xxx 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 writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: 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: xxx

A close scrutiny of the petitioner's Annual Income Tax Return for the year 2000 *(Exhibit A)* discloses an overpayment of P5,176,187.00, which comprised of its prior year's excess credits and creditable income taxes withheld during the year, computed as follows:

Aggregate Income Tax Due		P 3,958,694.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	478,645.00	
Tax Payments for the First Three Quarters	-	
Creditable Tax Withheld for the First Three Quarters	-	
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	8,656,236.00	
Total Tax Credits/Payments		9,134,881.00
Tax Payable/(Overpayment)		**P(5,176,187.00)**

Petitioner opted to be issued a tax credit certificate for said excess creditable income tax of P5,176,187.00 *(Exhibit A-1)*. And the same was not carried over by the petitioner to the succeeding taxable year 2001 as revealed in its Annual Income Tax Return for the said year *(Exhibit B)*, specifically in the box provided for "Prior year's excess credits", Item No. 26A *(Exhibit B-1)* which does not contain or reflect any amount.

Thus, petitioner's excess or unutilized tax credits for the year 2000 appears refundable. However, this Court held in a number of similar cases, that the claim for refund/tax credits of excess creditable withholding taxes is dependent on claimant's compliance with the following three (3) basic requirements:

1. That the claim for refund is filed with the Commissioner of Internal Revenue within the two-year prescriptive period from the date of payment of the tax (Section 229, NIRC);

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 it must be shown in the return of the recipient that the income payment received was declared as part of the gross

> income [*Citibank, N.A. vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957; Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 5623, dated April 12, 2000; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Goodyear Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6430, November 25, 2004; Honda Cars Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6354, December 22, 2004; ASB Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6445, February 9, 2005; Cosmys Philippines, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6651, April 28, 2005*].

As to the first requirement, petitioner asserts that its claim for refund or issuance of tax credit certificate for its excess and unutilized creditable withholding taxes both in the administrative as well as judicial levels were duly filed within the two-year period as provided in Sections 204(C) and 229 of the NIRC of 1997.

We agree. The two-year prescriptive period for the filing of a claim for refund commences from the date of filing of the final adjustment return (*Section 229 in relation to Sections 76 & 77 of the NIRC of 1997; ACCRA Investments Corporation vs. Court of Appeals, supra*). Petitioner filed its Annual Income Tax Return for the calendar year ended 2000 on April 16, 2001 *(Exhibit A)*. Pursuant to Section 77 of the NIRC of 1997 in relation to Sections 229 and 204(C) of the same Code, petitioner had until April 15, 2003 to file its claims. Petitioner filed the administrative claim for refund on August 3, 2001 *(Exhibit C)* and the present petition was filed on March 27, 2003. Clearly, both the administrative and judicial claims were filed well within the two-year period allowed by law.

In compliance with the second requirement, petitioner presented nineteen (19) Certificates of Creditable Tax Withheld at Source showing income payments and amounts of taxes withheld for taxable year 2000 issued by its various clients, summarized in Exhibit D as follows:

Exhibit	Date	Payor's Name	Amount of Income Payment	Amount of Tax Withheld
E	01-01 2000 to 03-31-2000	Masco Auto Sales (Nissan Central Manila)	P 6,951,388.00	P 69,513.88
F	04-01-2000 to 06-30-2000	Masco Auto Sales (Nissan Central Manila)	9,460,550.00	94,605.50
G	07-01-2000 to 12-31-200	Masco Auto Sales (Nissan Central Manila)	16,291,928.00	162,919.28
H	10-01-2000 to 12-31-2000	Masco Auto Sales (Nissan Central Manila)	123,112,040.00	1,231,120.40
I	01-01-2000 to 03-01-2000	Mantrade Development Corp.	136,129,411.00	1,361,294.11
K	04-12-2000 to 06-31-200	Mantrade Development Corp.	164,048,324.68	1,640,483.25
L	07-12-2000 to 09-30-2000	Mantrade Development Corp.	216,245,233.40	2,162,452.33
M	10-01-2000 to 12-31-2000	Mantrade Development Corp.	183,615,719.88	1,836,157.20
N	01-01-2000 to 12-31-2000	Univille Motors Corp.	3,599,351.34	35,993.51
O	01-01-2000 to 12-31-2000	Zuellig Pharma Corp	813,636.00	8,136.36
P	01-01-2000 to 12-31-2000	MGM Motor Trading, Inc./Nissan Gallery Ortigas	176,050.00	1,760.50
Q	01-01-2000 to 03-31-2000	World Cars, Inc.	398,181.82	3,981.82
R	04-01-2000 to 06-30-2000	World Cars, Inc.	591,054.55	5,910.54
S	07-01-2000	World Cars,	595,350.00	5,953.50

	to 09-30-2000	Inc.		
T	10-01-2000 to 12-31-2000	World Cars, Inc.	595,350.00	5,953.50
U	01-01-2000 to 03-31-2000	Sta. Cruz Island	150,000.00	7,500.00
V	04-01-2000 to 09-30-2000	Sta. Cruz Island	150,000.00	7,500.00
W	07-01-2000 to 09-30-2000	Sta. Cruz Island	150,000.00	7,500.00
X	10-01-2000 to 12-31-2000	Sta. Cruz Island	150,000.00	7,500.00
Total			P863,223,568.66	P8,656.235.68

Examining closely the above tabulation of the amount of income payments subjected to creditable withholding taxes in the total amount of P863,223,568.66 clearly reveals that the same formed part of the amount of gross income/revenues of P3,197,171,547.00 and other income of P15,955.489.00 as reported in petitioner's Annual Income Tax Return for the taxable year 2000.

Further, as explained by petitioner's witness, Ms. Ma. Beth S. Alejandro, the sum of the income payments in the amount of P863,223,568.66 has been declared as part of petitioner's gross income for the taxable year 2000, thus:

ATTY SANTOS
Q: And would you know if the income payment *(sic)* of the petitioner from which dealers and other customer *(sic)* or withholding agent *(sic)* creditable taxes *(sic)* were reported as part of the gross income of the petitioner for the year 2000?

MS. ALEJANDRO:
A: Yes, Ma'm, the gross receipts from which dealers and other withholding agents withheld these creditable taxes were reported in page 2 *(sic)*, of our Income Tax Return under Section A Schedule 1, Sales for which we reported P3,258,095,552.00. And on Schedule 4, taxable other income where we reported P50,955,489.00 ***(sic, should***

249

read as P15,955,489 as indicated in the AITR for the taxable year 2000).

ATTY. SANTOS:

Q: Were the income payment *(sic)* from which the customer's *(sic)* withheld taxes also reported in other portions of the Annual Income Tax Return?

MS. ALEJANDRO:

A. These two (2) schedules of the ITR, this is where we reported the gross receipts from which dealers and other withholding agents deducted creditable withholding tax.
(TSN, July 21, 2003, pp.15-17)

Petitioner's witness, Ms. Alejandro, further clarified the difference between the income payments as reflected in petitioner's books amounting to P876,069,719.78 vis-à-vis the amounts appearing in the withholding tax certificates in the sum of P863,223,568.66, *viz*:

ATTY. SANTOS:

Q. Ms. Alejandro I noticed that the total amount of gross receipt coming from your withholding agent for the year 2000 as reflected in your books is different from the total amount of gross receipts that were subjected to withholding tax based on your Schedule of Certificate of Withholding Tax, can you account for the difference in these two (2) signatures *(sic)*?

MS. ALEJANDRO:

A. Yes, first, the difference is basically because of the Ad Valorem Tax. You may note that a substantial portion of the gross receipts of Nissan Motors comes from the sales of automotive vehicle and this automotive vehicle are subject to Ad Valorem Tax with rates ranges from fifteen percent (15%) to thirty five percent (35%) of the whole sale *(sic)* price of the automotive vehicle depending on its engine displacement. So, these withholding agents or dealers include Ad Valorem Tax in the withholding tax base when they tried to compute for the withholding the amount of tax to be withheld from Nissan. On the other hand, Nissan Motor does not include Ad Valorem Tax in its sales or gross receipts simply because Ad Valorem Tax is not revenue to Nissan, it is merely a tax that is remitted to the BIR by Nissan at the time when the vehicles are removed from the place of the manufactured *(sic)* and then, the exact same amount of tax is then collected from the dealers when the vehicles are sold to them. So clearly, the Ad Valorem Tax is not revenue to Nissan and therefore, is not reported as part of the gross receipts.

210

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ATTY. SANTOS:

Q: Ms Alejandro, aside from the Ad Valorem Tax, can you please tell us what are the relation *(sic)* for the difference in the total amount of gross receipts as appearing in your book and that, as appearing in your Withholding Tax Certificate?

MS. ALEJANDRO:

A: Another source of difference would be the timing difference. There is a difference between the time at which Nissan recognizes its sales as against the time in which the Withholding Agent or the dealers recognizes *(sic)* the withholding tax. Nissan Motor records sales at the point of sale. On the other hand, the withholding agents or the dealers, some of them recognized the withholding tax at the time of purchased *(sic)* while others recognize the withholding tax at the timing of payment in order *(sic)* timing differences. So, you will note that in this reconciliation, timing differences arose in the case of Mantrade, Masco Auto Sales and Univel *(sic)* Motors Corporation.

ATTY. SANTOS:

Q: So, aside from the Ad Valorem Tax, are there any reasons for the difference in the total amount of gross receipt?

MS. ALEJANDRO:

A: Yes, for World Cars, Incorporated, the difference in withholding tax is due to the fact that we were not able to receive some of the Certificates on time. So, we were not able to include them in our Income Tax Return. In the case of Nissan Gallery Ortigas, the gross receipt which serves as the basis of the withholding tax does not include their purchases of goods from us because Nissan Gallery is not among the top 5,000 corporations as notified by the BIR and is therefore, not required to withhold one percent (1%) tax on its local purchase of goods under Revenue Regulation 2-98. Nissan Gallery withheld tax only (on) payments for services. And lastly, Zuellig Pharma Corporation withheld tax on the basis of the gross selling price before VAT of a certain assets that we sold to them which is P813,636.00. Since this is a sale of a fixed asset, our Income Tax Return reports the gain of the sale of this *(sic)* fixed assets.

ATTY. SANTOS:

Q: Ms. Alejandro, could you tell us the difference between the withholding tax on the total amount of gross receipt as appearing in your book compared to withholding tax based on the Certificates of Creditable Tax Withheld at Source?

MS. ALEJANDRO:

A. The difference in withholding tax amounts to P128,461.51. We will not *(sic)* that if we add the amount of gross receipts per book from the seven (7) dealers or withholding agents as appearing in Column A of the reconciliation plus the Ad Valorem Tax related to this gross receipt appearing in Column B of the reconciliation and then, the total amount which appear to *(sic)* Column C. It must *(sic)* higher than the amount of Income Payment reflected on the Certificates that they have issued is on Column D. Clearly, based on this, all of the Income Payments coming from withholding agents were all reported in the Income Tax Returns of Nissan Motor and therefore, subject to tax. *(TSN, August 27, 2003, pp. 14-20)*

From the above testimony and petitioner's "Breakdown of Gross Receipts per Books/Financial Statements and Related Sections of Income Tax Return for the Year 2000" *(Exhibit Y)* and "Reconciliation of Creditable Tax Withheld at Source for the Year 2000" *(Exhibit Z)*, petitioner duly established that the income from which the creditable taxes were withheld are included as part of its gross income declared in its Annual Income Tax Return for the taxable year 2000.

However, petitioner failed to substantiate its Prior Year's Excess Credits in the amount of P478,645.00 *(Line 26 A of Exhibit A)* claimed as tax credits against income tax due for the taxable year 2000. Hence, the MCIT liability in the amount of P3,958,694.00 shall be totally offset against the substantiated creditable withholding taxes of P8,656,235.68 thereby leaving a total excess tax credits of P4,697,541.68 computed as follows:

Minimum Corporate Income Tax (MCIT) Due..........	P3,958,694.00
Less: Substantiated Creditable Taxes Withheld...	P8,656,235.68
Excess Tax Credits	P4,697,541.68

Considering that petitioner's chosen option was for the issuance of a tax credit certificate for its excess 2000 tax credits *(Exhibit A-1)* reinforced by its

252

administrative claim with the respondent *(Exhibit C)*, We therefore grant the issuance of a tax credit certificate for the above substantiated amount.

WHEREFORE, premises considered, the Petition for Review is hereby **GRANTED** but in a reduced amount of P4,697,541.68. Accordingly, the respondent Commissioner of Internal Revenue is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P4,697,541.68.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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