**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**AGREVO PRODUCTION PHILIPPINES CORPORATION (formerly HOECHST PHILIPPINES, INCORPORATED),**
Petitioner,

- versus -

C.T.A. CASE NO. 6083

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:
NOV 22 2001

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# DECISION

Before Us is a Petition for Review seeking the refund or issuance of a tax credit certificate in the amount of P3,215,050.00 allegedly representing excess creditable withholding taxes for the taxable year 1997.

Petitioner is a domestic corporation duly organized and existing under Philippine laws with principal office at Pioneer St. corner Reliance Streets, Mandaluyong City, Metro Manila. It is primarily engaged in the business of general manufacturing.

On April 15, 1998, Petitioner filed its Annual Income Tax Return for the taxable year ended December 31, 1997, reflecting an overpaid or refundable income tax of P5,745,651.00 (Exhibit A) computed as follows:

| | | |
|---|---|---|
| Gross Income | | P 34,635,162.00 |
| Less: Deductions | | 47,783,851.00 |
| Net Loss (Exhibit A-1) | | P (13,148,689.00) |
| | | |
| Income Tax Due | | |
| Less: Tax Credits/Payments | | P - |
| 1.) Prior year's (1996) excess credit | P 2,124,654.00 | |

| | | |
|---|---|---|
| 2.) Creditable taxes withheld in 1997(Exh. A-3) | 3,620,997.00 | 5,745,651.00 |
| Income Tax Refundable | | P ( 5,745,651.00) |

On March 5, 1999, Petitioner filed an amended 1997 annual income tax return (Exhibit B) reflecting a lower refundable amount of P5,339,704.00 due to a reduction in the 1997 creditable withholding taxes from P3,620,997.00 to P3,215,050.00 (Exhibit B-5) shown below:

| | | |
|---|---|---|
| Gross Income | | P 34,635,162.00 |
| Less: Deductions | | 47,783,851.00 |
| Net Loss (Exhibit B-2) | | P (13,148,689.00) |
| | | |
| Income Tax Due | | |
| Less: Tax Credits/Payments | | P - |
| 1.) Prior year's (1996) excess credit | P 2,124,654.00 | |
| 2.) Creditable taxes withheld in 1997(Exh. B-5) | 3,215,050.00 | 5,339,704.00 |
| Income Tax Refundable (Exhibit B-1) | | P (5,339,704.00) |

The excess tax credit of P5,745,651.00 indicated in the original 1997 return (Exhibit "A") was carried over by the Petitioner in its 1998 Annual Income Tax Return (Exhibit "C"). In the same 1998 Annual Income Tax Return, the creditable taxes withheld for that year (1998) in the amount of P4,515,238.00 were also indicated therein which when added to the prior year's excess credit of P5,745,651.00 totalled P10,260,939.00 (Exhbit "C-4"). Although, Petitioner declared a net loss in 1998 in the amount of P9,575,763.00 (line item 25C of Exhibit C), Petitioner had a minimum corporate income tax due (MCIT) of P1,349,744.00. This MCIT of P1,349,744.00 was offset against the excess taxes of P10,260,939.00 resulting to an income tax overpayment of P8,911,195.00 which Petitioner opted to refund (Exhibit "C-8"). Shown below is the computation of the excess amount of P8,911,195.00:

| | |
|---|---|
| Gross Income | P 95,841,229.00 |

| | | |
|---|---|---|
| Less: Deductions | | 105,416,992.00 |
| Taxable Income/(Loss) | | P( 9,575,763.00) |
| | | |
| Minimum Corporate Income Tax Due (Exh. C-1) | | P 1,349,744.00 |
| Less: Tax Credits/Payments | | |
| 1.) Prior years' excess credits (Exh. C-2) | P 5,745,651.00 | |
| 2.) Creditable taxes withheld in 1998 (Exh. C-3) | 4,515,288.00 | 10,260,939.00 |
| Income Tax Overpayment | | P( 8,911,195.00) |

According to Petitioner, the tax overpayment of P8,911,195.00 consists of the prior year's excess credits of P5,745,651.00 (Exhibit "C-2") and P3,165,544.00 which latter amount represents the balance after deducting the MCIT of P1,349,744.00 from the 1998 creditable withholding tax of P4,515,288.00.

The prior years' excess tax credits in the amount of P5,745,651.00 is composed of the 1996 excess credits of P2,124,654.00 and the original 1997 excess credits of P3,620,997.00 which latter amount was later reduced to P3,215,050.00, now the subject of the present claim.

On April 13, 2000, Petitioner filed an administrative claim for refund or issuance of a tax credit certificate corresponding to the alleged unutilized 1997 creditable withholding taxes of P3,215,050.00 (Exhibit "G"). A day after or on April 14, 2000, Petitioner filed an appeal with this Court claiming the same amount.

As jointly stipulated by the parties, the sole issue to be resolved by this Court is whether or not Petitioner is entitled to the refund/issuance of a tax credit certificate in the amount of P3,215,050.00 representing the unutilized creditable withholding tax for the taxable year 1997.

Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85) as affirmed by jurisprudence laid down the following three basic requirements for the refund of the excess creditable withholding taxes, thus:

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

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 [*Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85); Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No. 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. CIR, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. CIR, CTA Case No. 5796, dated May 3, 2000; Union Bank of the Philippines, CTA Case No. 5623, dated April 12, 2000; Citibank, NA vs. Court of Appeals and CIR, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957*].

The records reveal that Petitioner satisfactorily complied with the aforementioned requirements.

Petitioner filed both claims for refund, administrative and judicial, within the two-year prescriptive period discussed in requirement no. 1. Counting from April 15, 1998 (Exhibit "A-4"), the date when Petitioner filed its 1997 original income tax return, both administrative and judicial claims filed by Petitioner on April 13, 2000 (Exhibit G-1) and April 14, 2000, respectively, fall within the two-year prescriptive period provided under Section 204(3) [now 204(C)] in relation to Section 230 [now 229] of the Tax Code as amended.

To establish the fact of withholding, Petitioner presented the Certificates of Creditable Taxes Withheld at Source issued by various withholding agents for the year 1997 which were admitted by the Respondent as authentic and duly executed (par. 6, Joint Stipulation of Facts). However, the certificates showed an aggregate amount of creditable withholding taxes of only P3,128,565.63 detailed as follows:

| Exh. | Period Covered | Withholding Agent | Income Tax Withheld |
|---|---|---|---|
| H | Jan 1-Mar. 31 '97 | HOECHST FAR EAST MKTG CORP | P 538,306.25 |
| I | 1997 | SMITHKLINE BEECHAM RESEARCH LTD. | 126,660.51 |
| J | Apr. - Jun '97 | UNITED LABORATORIES, INC. | 11,850.52 |
| K | July - Sept '97 | UNITED LABORATORIES, INC. | 137,211.28 |
| L | Jan 1-Dec 31 '97 | AVC CHEMICAL CORPORATION | 1,582.58 |
| M | Oct - Dec '97 | PLANTERS PRODUCTS, INC. | 153.00 |
| M | Oct - Dec '97 | PLANTERS PRODUCTS, INC. | 3,636.70 |
| N | July - Sept '97 | PLANTERS PRODUCTS, INC. | 4,588.15 |
| O | Apr. - Jun '97 | PLANTERS PRODUCTS, INC. | 2,448.59 |
| P | Oct - Dec '97 | ELI LILLY (PHILIPPINES), INC. | 307.95 |
| Q | July - Sept '97 | ELI LILLY (PHILIPPINES), INC. | 442.80 |
| R | Apr. - Jun '97 | ELI LILLY (PHILIPPINES), INC. | 3,032.29 |
| S | Jan 1-Mar 31 '97 | ELI LILLY (PHILIPPINES), INC. | 1,437.32 |
| T | 4th Qtr 1997 | ZUELLIG PHARMA CORPORATION | 392,417.40 |
| U | 3rd Qtr 1997 | ZUELLIG PHARMA CORPORATION | 267,629.18 |
| V | 2nd Qtr 1997 | ZUELLIG PHARMA CORPORATION | 183,496.93 |
| W | Oct - Dec '97 | HOECHST FAR EAST MKTG CORP | 74,512.55 |
| X | 1st QTR 1997 | ZUELLIG PHARMA CORPORATION | 359,367.80 |
| Y | Jan 1-Jun 30 '97 | HOECHST FAR EAST MKTG CORP | 714,885.57 |
| Z | Jul 1-Sept 30 '97 | HOECHST FAR EAST MKTG CORP | P 304,598.26 |
| | | Total: | P 3,128,565.63 |

Petitioner proved that it declared in its 1997 amended income tax return (Exhibit B) as part of its gross sales of P333,364,634.00 (Exhibit B-6) and miscellaneous income of P6,924,491.00 (Schedule 2, Section C of Exhibit B) the income payments from which the creditable income taxes of P3,128,565.63 were withheld.

Notwithstanding Petitioner's compliance with the above basic requirements insofar as the claimed 1997 creditable withholding taxes of P3,128,565.63, still it cannot be granted the full amount of P3,128,565.63. 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) |

**WHEREFORE**, in view of the foregoing premises, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or

**ISSUE A TAX CREDIT CERTIFICATE** in the amount of P1,778,821.63 in favor of Petitioner representing the 1997 excess creditable withholding taxes.

**SO ORDERED.**

**ERNESTO D. ACOSTA**
Presiding Judge

**WE CONCUR:**

**AMANCIO Q. SAGA**
Associate Judge

Juanito C. Castañeda, Jr.
**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