REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AYALA LIFE ASSURANCE INCORPORATED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6067

Promulgated:
OCT 02 2001

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DECISION

This case involves a judicial action for the refund of the amount of P6,503,014.00, representing overpaid income tax arising from creditable tax withheld at source for the calendar year ended December 31, 1997.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines. It is authorized to engage in the life insurance business with principal office located at the 9th Floor, Ayala Life Building, Ayala Avenue, Makati City.

On April 15, 1998, Petitioner filed its 1997 Corporation Annual Income Tax Return reflecting a net operating loss but with a refundable income tax payment in the amount of P31,118,917.00 resulting from creditable income taxes withheld at source on gain on sale of assets and rental income, detailed as follows: (Exhibit A)

Income:		
Sale of Services (Schedule 2)		P 787,051,140.00
Other Income (Schedule 3)		
Gain on sale of real estate, land, building and equipment	*P186,968,762.00*	
Interest on mortgage and collateral loans	114,085,083.00	
Rental income	*31,219,006.00*	
Interest on policy loans	16,193,946.00	
Sundry interest received	13,917,166.00	
Miscellaneous income	17,866,250.00	380,250,213.00
Total		P1,167,301,353.00
Less Deductions (Section D)		1,169,036,560.00
Net Loss		P 1,735,207.00

Tax Due		NIL
Less: Tax Credits/Payments (Section E)		
a) Prior year's excess credits	P24,615,903.00	
b) Quaterly excess credits	-	
c) Creditable tax withheld	6,503,014.00	P 31,118,917.00
Total Amount Refundable		P 31,118,917.00

Petitioner indicated in its 1997 income tax return its intention to refund the total amount refundable of P31,118,917.00 (Exhibit A-1).

On April 15, 1998, Petitioner filed its 1998 Corporation Annual Income Tax Return reflecting a net loss in the amount of P67,006,816.00 but with an income tax refundable of P9,099,215.00 (Exhibits C and C-2). In the aforesaid return, Petitioner carried over the 1997 creditable taxes withheld of P6,503,014.00 (despite Petitioner's option to refund) but was not able to utilize the same due to its net loss position (Exhibit C-1).

On April 12, 2000, Petitioner filed with the BIR's Large Taxpayers Service, a request for a tax refund of excess creditable withholding tax for the year 1997 in the sum of P6,503,014.00 in accordance with Section 204 of the Tax Code, as amended (Exhibit D).

Without waiting for an action from the Respondent, Petitioner, on April 14, 2000, filed the instant Petition for Review in order to toll the running of the two-year prescriptive period provided for under Section 230 of the Tax Code, as amended.

In his amended Answer, Respondent advanced the following Special and Affirmative Defenses:

> "4. The alleged claim for refund is subject to administrative investigation/examination by the Respondent;
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> 5. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected;
>
> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
>
> 7. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;
>
> 8. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(c) and 229 of the National Internal Revenue Code, as amended; and
>
> 9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma. G.R. No. L-13509, January 1970l 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

To prove its entitlement to the claim for refund, Petitioner presented the following evidence:

1. The Corporation Annual Income Tax Returns for the calendar years 1997 and 1998 (Exhibits A, A-1 to A-4, C, and C-1 to C-2);

2. Corporation Quarterly Income Tax Return for the first quarter of 1998 (Exhibits B andB-1);

3. Letter-claim for refund (Exhibit D);

4. Various Certificates of Creditable Tax Withheld at Source (Exhibits E, F, G, H, I, J, K, L, M, M-1, N, and O);

5. Monthly Remittance Returns of Income Taxes Withheld for the months of March and August 1997 (Exhibits P and Q);

6. Letter request for certification of remittance to the Bureau of Internal Revenue with respect to taxes withheld of P1,138,500.00 and P3,922,500.00 covered by Exhibits P and Q (Exhibit R); and

7. Certification of remittance issued by the Chief, Revenue Accounting Division, Carmelita SJ. Pascual in line with the letter request of Petitioner in Exhibit R (Exhibit S).

Except for Exhibit F, all of the above exhibits were admitted by the Court in its Resolutions dated January 26, 2001 and April 23, 2001. This case was submitted for decision sans the evidence and memorandum of the Respondent.

The issues jointly stipulated by the Parties are as follows:

1. Whether or not the Petitioner is entitled to a tax refund in the amount of P6,503,014.00 allegedly representing creditable withholding taxes for the calendar year ended December 31, 1997; and

2. Whether or not Petitioner's claim for refund is substantiated by documentary evidence.

Quoted below is Section 69 (now Sec. 76) of the Tax Code, as amended, which is the legal basis of Petitioner in claiming for the refund of its overpaid income tax:

> **SEC. 69.** ***Final Adjustment Return.*** – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total 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 excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year (Underlining supplied).

Based on the afore-quoted proviso, the refundable income tax payment of a given year can only be credited against estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

It is apparent that in the taxable year 1997, the Petitioner had an accumulated creditable withholding taxes in the total amount of P6,503,014.00 which were not utilized as tax credit in the years 1997 or 1998 (Exhibits A and C). Hence, it is a proper subject of a claim for refund based on the afore-quoted law, however, before the present appeal could prosper, Petitioner should prove its entitlement to the refund by means of substantial evidence.

Section 230 of the Tax Code provides, thus:

> **SEC. 230.** ***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 excessive 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 begun after the expiration of two 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.

Furthermore, in claiming for the refund of excess creditable withholding tax, Petitioner must show compliance with the following basic requirements as enunciated in the case of **Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**:

> 1. That it filed a claim for refund within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;
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> 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 (BIR For 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom (**cited in Columbian Motors South Super, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5503, dated October 5, 1999, with Entry of Judgment dated October 27, 1999).**

A perusal of the evidence on record reveals that the Petitioner's claim for refund was timely filed within two years from the date of payment of the tax. The administrative claim for refund was filed with the Respondent on April 12, 2000 and the Petition for Review was filed with this Court on April 14, 2000. The two-year prescriptive period commenced on April 15, 1998, (the date when Petitioner filed its 1997 final adjustment return) both the administrative and judicial claims for refund fall within the two-year prescriptive period.

The gain on sale of real property and the rental income upon which the alleged creditable withholding taxes in question were withheld were included as part of the gross income reflected in Petitioner's 1997 income tax return under the heading "Other Income" (Exhibits A-2 and A-3), however only the following creditable withholding taxes for which Petitioner was able to present sufficient evidence to prove the fact of withholding can be given proper credit, to wit:

RENTAL:

Payor	Exhibit	Income Payment	Tax Withheld
Del Monte Fresh Produce	E	259,995.20	12,999.76
Globe Telecom (GMCR, Inc.)	F	48,000.00	2,400.00
Del Monte Fresh Produce	H	129,997.60	6,499.88
Borden International Phils., Inc.	J	245,025.00	12,251.25
DHL Phils. Corp.	K	52,575.00	2,643.75
Borden International Phils., Inc.	L	255,447.20	12,772.36
Edinet Phils., Inc.	M-1	2,392,664.09	119,633.20
LBC Express	N	728,850.60	36,442.53
Management Asso. Of the Phils.	O	217,181.40	10,859.07
Sub-Total		4,329,736.09	294,385.12

SALE OF REAL PROPERTIES:

Payor	Exhibit	Income Payment	Tax Withheld
Ayala Life Assurance Inc. (Tsn, November 9, 2000)	P & S	15,180,000.00	1,138,500.00
Ayala Life Assurance Inc. for PCIBank	Q & S	52,300,000.00	3,922,500.00
Sub-Total		67,480,000.00	5,061,000.00
TOTAL		71,809,736.09	5,355,385.12

WHEREFORE, in view of the foregoing, the instant petition for review is hereby ***PARTIALLY GRANTED.*** Respondent is **ORDERED to REFUND** in favor of Petitioner the amount of P5,355,385.12, representing overpaid income taxes for the year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

AMANCIO Q. SAGA
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