REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

GOLDEN ARCHES DEVELOPMENT CORPORATION
Petitioner,

- versus -

C.T.A. CASE NO. 5766

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 25 2001

x - x

DECISION

Case at bar is a judicial claim for refund filed by the Petitioner on April 7, 1999 involving the amount of P38,565,623.76 representing alleged excess unutilized creditable withholding tax covering the years 1996 and 1997.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in the business of leasing real property.

Records show that Petitioner filed its Corporation Annual Income Tax Return on April 15, 1997 for calendar year ending December 31, 1996 which it subsequently amended on October 9, 1998. In its amended return, Petitioner reported a gross income of P464,459,676.00 out of which amount P418,210,534.00 allegedly represented rental income derived from its leasing business which was subjected to creditable withholding tax of P24,043,380.00.

Petitioner, allegedly, was not able to fully utilize the aforesaid withholding tax payments because its total income tax due for the same taxable year amounted to P14,485,334.00, thus resulting to an excess withholding tax credit of P9,558,046.00 computed as follows:

Gross Income	P 464,459,676.00
Less: Deductions	423,073,007.00
Taxable Income	P 41,386,669.00
Tax Due	P 14,485,334.00
Less: Creditable Withholding Taxes	24,043,380.00
Excess Tax Credit	P 9,558,046.00

In 1997, Petitioner was not able to fully apply its alleged excess creditable withholding tax for the calendar year ending December 31, 1997 because it only has an income tax due amounting to P5,051,045.00. In the same year, Petitioner also withheld from its rental income the amount of P34,058,622.76. For calendar year 1997, Petitioner reported, as reflected in its Amended Annual Income Tax Return, a total excess withheld tax credits in the amount of P38,565,623.76 computed as follows:

Gross Income		P 709,854,807.00
Less: Deductions		695,423,250.00
Taxable Income		P 14,431,557.00
Tax Due		P 5,051,045.00
Less: Creditable Withholding Taxes		
(a) 1996 Excess credit	P 9,558,046.00	
(b) 1997 Creditable tax withheld	34,058,622.76	43,616,668.76
Amount Refundable		P 38,565,623.76

On February 17, 1999, Petitioner filed with the Bureau of Internal Revenue an administrative claim for refund in the amount of P38,565,623.76.

Unable to obtain an immediate relief from the Respondent and to toll the running of the two-year prescriptive period within which to file a claim for refund, Petitioner filed the instant Petition for Review on April 7, 1999.

On May 26, 1999, Respondent filed his Answer and therein contradicted Petitioner's assertions and interposed the following Special and Affirmative Defenses:

5. The petition states no cause of action as it does not alleged (sic) the dates when the taxes sought to be refunded were actually paid;

6. Claims for refund are construed strictly against claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35);

7. One who claims to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);

8. In an action for tax refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for tax refund;

9. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;

10. Taxes paid and collected are presume (sic) to have been made in accordance with law and regulations, hence, not refundable.

The issues in this case as stipulated by the parties are as follows:

1. Whether or not Petitioner has excess or unutilized creditable withholding taxes as of December 31, 1997 arising from its rental income for CY 1996 and 1997 which is a proper object of a claim for refund pursuant to Section 69 (now Section 76) of the National Internal Revenue Code, as amended;

2. Whether or not said creditable withholding taxes of Petitioner for CY 1996 and 1997 are duly substantiated by documentary evidence;

3. Whether or not said excess/unutilized creditable withholding taxes as of December 31, 1996 and December 31, 1997 were not applied as tax credit against Petitioner's tax liability for the respective succeeding year/s;

4. Whether or not the rental income of Petitioner upon which the taxes were withheld were declared in its 1996 and 1997 income tax returns; and

5. Whether or not the Petitioner is entitled to the refund of P38,565,623.76 representing excess and unutilized creditable withholding taxes for CY 1996 and 1997 as of December 31, 1997.

Central to Petitioner's bone of contention in claiming a refund of excess unutilized creditable withholding taxes is Section 69 of the National Internal Revenue Code and We quote, thus:

Section 69. ***Final Adjustment Return.*** - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net 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 refu d 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.

After a careful consideration of the evidence presented and the applicable laws on the matter, this Court is convinced that Petitioner is entitled to a refund of excess unutilized creditable withholding tax.

In its 1996 annual income tax return, Petitioner declared a total gross income of P464,459,676.00. In the same year, it incurred a total of P423,073,007.00 as expenses which, when deducted from Petitioner's gross income will yield to a taxable income of P41,386,669.00 and a corresponding tax due of P14,386,669.00. Out of the aforesaid gross income, P418,210,534.00 pertains to its rental income. Since Petitioner accumulated a total of P61,371,247.00 as credits/payments consisting of the prior years excess credit of P37,327,867.00 and a creditable tax withheld of P24,043,380.00 for the year 1996, it applied the same against its tax liability of P14,485,334.00 in 1996, thus leaving an excess creditable withholding taxes of P46,885,913.00 as of December 31, 1996.

On July 8, 1998, recognizing some mistakes in its return for the year 1996, Petitioner amended its annual income tax return and reflected the following:

Gross Income	P 464,459,676.00
Less: Deductions	423,073,007.00
Taxable Income	P 41,386,669.00
Tax Due	P 14,485,334.00
Less: Creditable Withholding Taxes	24,043,380.00
Excess Tax Credit	P 9,558,046.00

On April 15, 1998, Petitioner filed its annual income tax return for the year 1997 and declared the following:

Gross Income		P 709,854,807.00
Less: Deductions		695,423,250.00
Taxable Income		P 14,431,557.00
Tax Due		P 5,051,045.00
Less: Creditable Withholding Taxes		
(a) 1996 Excess credit	P 9,558,046.00	
(b) 1997 Creditable tax withheld	34,058,622.76	43,616,668.76
Amount Refundable		P 38,565,623.76

Prescinding from the above, it is undisputable that Petitioner has excess creditable withholding tax in the amount of P38,565,623.76.

We now proceed to the issue of whether or not Petitioner was able to substantiate its claim for refund by relevant documentary evidence.

In the course of the proceedings, Petitioner was able to present various Certificates of Income Tax Withheld at Source for the calendar years 1996 and 1997 to prove its rental income and the corresponding taxes withheld therefrom (Exhs. E-1 to E-35 and F-1 to F-88). However, this Court after a thorough scrutiny of Petitioner's evidence disallows a portion of the claim for refund since it failed to present the certificates corresponding to the income declared in its annual income tax returns. In the same breath, Petitioner failed to prove that all of the income reflected in the Certificates of Income Tax Withheld at Source were declared as part of its gross income in its annual income tax return for the years 1996 and 1997. We arrived at this conclusion when this Court compared the income declared in Petitioner's certificates with its income reflected in the Schedule of Income Producing Properties and Income therefrom (CTA Records, pages 118 to 121 and 146 to 147). Conversely, some of the income reflected in the said schedules have lesser amounts than those stated in the certificates and some of the income reflected in the certificates are not included in Petitioner's schedule. Accordingly, it is proper that an adjustment should be made allowing only the portion of income taxes withheld that corresponds to the rental income declared in Petitioner's Annual Income Tax Return (Annexes A and B).

Bearing in mind the above-stated discrepancy, this Court is inclined to grant only the amount of P34,907,956.86, the amount substantiated by Petitioner computed as follows:

1996		
Taxable Income (Exhs. A & B)		P 41,386,669.00
Tax Due		P 14,485,334.00
Less: Allowable Creditable Tax Withheld (Annex A)		20,444,421.58
Excess Credit		P 5,959,087.58
1997		
Taxable Income (Exh. C)		P 14,431,557.00
Tax Due		P 5,0[illegible],045.00
Less: Creditable Withholding Taxes		
(a) 1996 Excess credit	P 5,959,087.58	
(b) 1997 Allowable Creditable Tax Withheld (Annex B)	33,999,714.28	39,958,801.86
Refundable Amount		**P 34,907,756.86**

WHEREFORE, in view of all the foregoing, Respondent is hereby **ORDERED** to **REFUND** or in the alternative to **ISSUE** a Tax Credit Certificate in the amount of P34,907,756.86, in favor of the Petitioner, representing excess unutilized creditable withholding tax for the years 1996 and 1997.

SO ORDERED.

AMANCIO Q. SABA
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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

541

GOLDEN ARCHES DEVELOPMENT CORPORATION
SUMMARY OF ALLOWABLE CREDITABLE TAXES WITHHELD
FOR THE YEAR ENDED DECEMBER 31, 1996

ANNEX A

LESSEE	PER SCHEDULE ATTACHED TO FS	PER CERTIFICATE OF CREDITABLE TAX W/HELD	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
A.B.C & G Co.	P 4,322,375.00	P 4,334,041.88	E-5	P 4,322,375.00	P 216,702.10
Alfonso Ng	3,429,794.00	3,388,516.22	E-3	3,388,516.22	169,425.77
Arlene Recto	5,688,149.00	5,312,342.13	E-11, E-27	5,312,342.13	265,617.11
Blue Dairy	2,000,000.00	2,000,000.00	E-28	2,000,000.00	100,000.00
Cebu Golden Food Industries	2,129,511.00	3,134,621.50	E-25	2,129,511.00	125,384.86
Cebu Golden Ventures	2,428,022.00	3,058,166.75	E-23	2,428,022.00	97,120.88
Davao City Food Industries	3,162,509.00	3,890,335.54	E-20	3,162,509.00	194,516.81
EDSA Food Industries	3,149,209.00	3,146,382.40	E-15	3,146,382.40	157,319.13
Fun Leis[illegible]	1,041,414.00	1,560,386.00	E-29	1,041,414.00	78,019.30
Geneva Foods, Inc.	2,338,148.00	2,354,700.10	E-21	2,338,148.00	116,111.95
Giant Arches Food Corp	6,486,652.00	6,486,651.83	E-12	6,486,651.83	324,332.59
GMC Foods	2,702,999.00	2,657,579.40	E-10	2,657,579.40	132,878.97
Golden City Food Industries	3,846,982.00	-	NO CERTIFICATE	-	-
Havi Food Services	14,272,564.00	14,291,851.80	E-30 TO E-33	14,272,564.00	725,917.17
Information Tech. & Edu. Ctr	408,135.00	-	NO CERTIFICATE	-	-
Mariels Food Industry	1,575,377.00	1,612,524.63	E-26	1,575,377.00	80,626.23
McBros Food Corporation	3,747,958.00	3,633,439.03	E-18	3,633,439.03	169,236.68
McColby's Food	2,895,205.00	2,309,373.60	E-22	2,309,373.60	115,468.69
McDaniels Food Corp	2,293,588.00	2,271,681.90	E-17	2,271,681.90	113,584.10
McDLC Foods, inc.	1,893,015.00	1,959,564.13	E-19	1,893,015.00	97,978.21
McDonald's Clark	2,027,721.00	-	NO CERTIFICATE	-	-
McFerry Food Services	17,779.00	-	NO CERTIFICATE	-	-
McGeorge Food Industries	321,476,732.00	321,476,731.20	E-34	321,476,731.20	16,073,836.56
McGill Food Industries	1,921,590.00	2,110,318.31	E-24	1,921,590.00	105,515.91
McJola Food Industries	4,284,497.00	2,668,266.63	E-13	2,668,266.63	133363.33
McMary's Food Center	4,530,719.00	3,484,249.60	E-6 TO E-9	3,484,249.60	174,212.48
McMighty Foods Corp.	1,610,654.00	884,208.00	E-16	884,208.00	44,210.40
McPhilips Food Industries	10,200,821.00	10,332,431.45	E-1, E-2	10,200,821.00	516,621.59
McRev Food Industries	2,328,415.00	2,328,415.40	E-14	2,328,415.00	116,420.76
TOTAL	P **418,210,534.00**	P **410,686,779.43**		P **407,333,182.94**	P **20,444,421.58**

GOLDEN ARCHES DEVELOPMENT CORPORATION ANNEX B

SUMMARY OF ALLOWABLE CREDITABLE TAXES WITHHELD

FOR THE YEAR ENDED DECEMBER 31, 1997

LESSEE	PER SCHEDULE ATTACHED TO FS	PER CERTIFICATE OF CREDITABLE TAX W/HELD	EXHIBIT	INCOME PAYMENT	TAX WITHHELD
ABC & G Corp.	P 5,238,124.08	P 5,029,310.60	F-19 to F-22	P 5,029,310.60	P 251,465.53
Alfonso Ng	3,931,201.45	4,032,241.80	F-23 to F-26	3,931,201.45	201,612.09
Ansel-A	8,084,920.71	7,484,003.00	F-27 to F-28	7,484,003.00	374,200.15
Arlene Recto	1,049,234.18	-	NO CERTIFICATE	-	-
Blue Dairy	2,000,000.04	2,000,000.00	F-10 to F-13	2,000,000.00	100,000.00
Cebu Golden Food Industries	3,523,238.56	3,006,062.40	F-62	3,006,062.40	150,303.12
Cebu Golden Food Ventures	3,624,841.71	3,160,074.00	F-63	3,160,074.00	158,003.70
Clark Mac	2,469,261.49	-	NO CERTIFICATE	-	-
Davao City Food Industries	3,813,190.63	3,836,494.00	F-67 to F-70	3,813,190.63	191,824.70
EDSA Food Industries	4,537,732.07	4,500,465.00	F-29 to F-32	4,500,465.00	225,023.25
Fun Leisure	1,079,580.13	1,439,440.80	F-14	1,079,580.13	71,972.04
Geneva Foods, Inc.	2,811,591.41	2,794,478.66	F-33	2,794,478.66	139,723.93
Giant Arches Food Corp.	8,199,664.12	8,199,707.60	F-71 to F-74	8,199,664.12	409,985.38
Glenn Lim	2,095,851.81	1,803,552.00	F-75	1,803,552.00	90,177.60
GMC Foods, Inc.	3,152,194.85	3,116,944.00	F-34	3,116,944.00	155,847.20
Golden City Food Industries	4,036,120.93	4,573,453.31	F-35 to F-36	4,036,120.93	228,672.66
HAVI Food Services	21,388,183.27	20,744,881.40	F-6 to F-9	20,744,881.40	1,037,244.07
Information Technology	507,253.50	-	NO CERTIFICATE	-	-
Jessica Gollayan Lim	2,466,841.77	2,147,152.60	F-37 to F-38	2,147,152.60	107,357.63
Mariel Food Industries	1,975,343.20	1,189,464.08	F-59	1,189,464.08	59,473.20
McBros Food Corp	1,052,627.84	929,306.40	F-39	929,306.40	46,465.32
McColby's Food, Inc.	3,278,242.89	2,636,995.40	F-40 to F-44	2,636,995.40	131,849.77
McDaniels Food Corp.	2,472,625.66	2,485,899.67	F-45	2,472,625.66	124,294.96
McDLC Foods, Inc	3,998,997.56	3,939,944.00	F-46 to F-50	3,939,944.00	196,997.20
McGeorge Food Industries	557,832,780.21	557,832,780.26	F-1	557,832,780.21	27,891,639.08
McGill Food Industries	2,958,386.23	2,782,474.47	F-51	2,782,474.47	139,123.72
McJola Food Industries	7,983,159.08	5,764,492.00	F-53 to F-54	5,764,492.00	288,224.60
McMary's Food Center	1,908,307.02	3,625,062.80	F-76 to F-83	1,908,307.02	181,253.14
McMighty Food Corp.	1,694,702.45	1,658,018.26	F-55	1,658,018.26	82,900.89
McPhilips Food Industries	12,230,986.72	12,042,191.88	F-56 to F-58	12,042,191.88	602,109.59
McRey Food Industries	2,664,004.04	2,664,004.00	F-15 to F-18	2,664,004.00	133,200.20
Nee Mee Food Corp.	2,607,860.99	2,602,759.60	F-64 to F-66	2,602,759.60	130,137.98
Nestor de la Merced	2,368,555.94	1,972,631.60	F-84 to F-86	1,972,631.60	98,631.58
Noemi Cabuay	1,914,856.09	-	NO CERTIFICATE	-	-
Vicky Marbella	1,198,454.26	-	NO CERTIFICATE	-	-
TOTAL	P 692,148,916.89	P 679,994,285.59		P 677,242,675.50	P 33,999,714.28

542