REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

MONARCH INSURANCE COMPANY INCORPORATED,
Petitioner,

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6271

Promulgated:
JUL 23 2003

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DECISION

This Petition for Review involves a claim for refund or issuance of tax credit certificate in the aggregate amount of P891,005.00 allegedly representing petitioner's overpaid creditable withholding taxes for the taxable years 1998 and 1999.

The antecedent facts of the case are as follows:

Petitioner is a domestic corporation duly registered and organized under Philippine laws with principal office located at Ferigate Building, 448 EDSA, Guadalupe, Makati City. It is a corporation primarily engaged in insurance business *(par. 1, Joint Stipulation of Facts and Issues)*.

On April 15, 1999, petitioner filed with Revenue District 50, Revenue Region No. 8 of the Bureau of Internal Revenue, its Annual Income Tax Return for the calendar year ended December 31, 1998, reflecting net loss in the amount of P11,027,867.00 *(Exhibit A)*.

Petitioner amended its Annual Income Tax Return for the taxable year 1998, first, on July 15, 1999 and then, on November 15, 1999 *(Exhibits B and C)*. The final amended return was filed on April 6, 2001 *(Exhibit D)* with the following details:

Gross income	(P 1,733,859.00)
Less: Deductions	(9,480,867.00)
Taxable Income / Loss	(P11,214,726.00)
Total Income Tax Due	-
Aggregate Income Tax Due	
Less: Tax Credits/payments	
Prior year's excess credits	P 611,488.00
Creditable Tax Withheld	461,499.00
Total Tax Credits/Payments	P 1,072,987.00
Tax Payable/((Overpayment)	(P 1,072,987.00)

On April 17, 2000, petitioner filed its Annual Income Tax Return for the calendar year ended December 31, 1999 *(Exhibit E)*. Again, petitioner filed an amended return for the same taxable year on August 24, 2000 (*Exhibit F*). It made its final amendment on April 6, 2001 *(Exhibit G)*, disclosing the following:

Gross income	(P 6,199,888.00)
Less: Deductions	(6,695,955.00)
Taxable Income / Loss	(P 496,067.00)
Total Income Tax Due	-
Aggregate Income Tax Due	
Less: Tax Credits/payments	
Prior year's excess credits	P 1,072,987.00
Creditable Tax Withheld	429,506.00
Total Tax Credits/Payments	P 1,502,493.00
Tax Payable/((Overpayment)	P 1,502,493.00)

On April 10, 2001, petitioner filed with the respondent its administrative claim for refund of the overpaid income tax for the taxable years ended December 31, 1998 and December 31,1999 in the amount of P891,005.00 *(Annex H, Petition for Review)*, arrived at as follows:

Creditable taxes withheld for 1998	P461,499.00	(*Exhibit D*)
Creditable taxes withheld for 1999	429,506.00	(*Exhibit G*)
Total claim	P891,005.00	

On even date, petitioner elevated the case through a Petition for Review with this court. Respondent filed his Answer through registered mail on May 18, 2001 and alleged the following as Special and Affirmative Defenses, thus:

4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue.

5. The petition states no cause of action because petitioner's alleged unused/ excess creditable taxes withheld in 1998 and 1999 were carried over in the succeeding years in contravention to Section 76 of the Tax Code of 1997.

6. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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

8. In an action for tax refund/credit, 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.

9. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code, as amended.

10. 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 30, 1970, 31 SCRA 95)*** and as such, they are looked upon with disfavor ***(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA121).***

During the hearing of this case on October 30, 2002, counsel for the respondent manifested that he will submit this case for decision based on the pleadings and the evidence of petitioner.

On March 26, 2003, this case was submitted for decision sans memorandum from respondent.

In their Joint Stipulation of Facts and Issues, the parties submitted the following issues for this court's resolution:

1. Whether or not petitioner has unutilized creditable withholding taxes in the amount of Eight Hundred Ninety One Thousand and Five Pesos (P891,005.00) for the calendar years ending December 31, 1998 and 1999.

2. Whether or not the income from which the taxes were withheld were included as part of the gross income in petitioner's 1998 and 1999 Income Tax Returns.

3. Whether or not the claim of petitioner for refund of alleged unutilized creditable withholding taxes for 1998 and 1999 is substantiated by documentary evidence.

Petitioner maintains that it is entitled to the claim for refund based on Section 76 of the 1997 Tax Code. According to petitioner, it has complied with all the requirements to be entitled to the refund. Both its administrative and judicial claims were filed within the two (2)-year reglementary period provided for by law. Moreso, it submitted to the court the copies of the Certificates of Creditable Tax Withheld at Source, which show that taxes were withheld from the rental payments made by the tenants of the petitioner. Petitioner further alleged that the rental income from which the taxes were withheld were included in the gross income reported in its 1998 and 1999 Annual Income Tax Returns and this was testified to by its witness, Ms. Valino. Petitioner claimed that it manifested its intention not to carry over its prior year's excess credit to the next taxable year.

The applicable law material to the resolution of this case is Section 76 of the 1997 Tax Code, as amended, which provides:

> **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.

As regards the claim for the taxable year 1998, the records reveal that in the 1998 original and amended Income Tax Returns *(Exhibits A, B, C and D)*, petitioner made no option as to how it will treat its excess creditable income tax. Petitioner's choice of the option whether to refund or carry-over was manifested only when it filed its 1999 Amended Income Tax Return *(Exhibit G)*. In such return, petitioner carried-over the amount of P1,072,987.00, which represents the total overpayment found in the 1998 amended final adjustment return *(Exhibit D)*.

Considering that for the taxable year 1998 petitioner opted to carry-over its prior year's excess credit, its claim for refund or issuance of tax credit certificate is unmeritorious. Petitioner is barred from claiming the refund thereof because the option is considered irrevocable pursuant to Section 76 of the Tax Code, hereinbefore quoted (***Sithe Philippines Holdings, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 6274, April 4, 2003; Banco Filipino vs. Commissioner of Internal Revenue, CTA Case No. 6374, April 3, 2003; and Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 6276, March 12, 2003***).

Similarly, for the taxable year 1999, petitioner made no option as to how it will treat its excess income tax payments *(Exhibits E, F and G)*. In the original income tax return for taxable year 2000 *(Exhibit BB, CTA Records, pp. 381 to 387)*, petitioner carried over the amount of P611,488.00 as "Prior Year's Excess Credits" and not the total excess payments found in the 1999 Income Tax Return in the amount of P1,502,493.00. Based on the 1998 Income Tax Return, the amount of P611,488.00 is reflected as the "Prior Year's Excess Credits" (meaning the excess income tax payment prior to 1998). Hence, it could be deduced that the intention of the petitioner for its 1999 excess tax payment in the amount of P429,506.00 is ***"to be refunded"*** because the said amount was not carried over to the year 2000 income tax return. Hence, as regards the said amount, petitioner may file a claim for refund, subject to its compliance with the substantiation requirements.

Fundamental is the rule that in order to be entitled to the refund of excess creditable withholding tax at source, petitioner must comply with the following basic requirements:

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, which amended Revenue Regulations No. 6-85; Citytrust Finance Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Tax 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; Citytrust Finance Corporation (formerly Investors 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 Investors Finance Corp./FNCB Finance) and the Court of Tax Appeals, CA G.R. SP No. 31104, April 18, 1994; Ayala Life Assurance, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5631, dated May 11, 2000; Stock Transfer Service Inc. vs. Commissioner of Internal Revenue, 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 Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957].*

On the first requirement, the claim for refund of petitioner was filed within the two-year prescriptive period as provided by law. The administrative claim was filed with the Bureau of Internal Revenue on April 10, 2001 *(Exhibit H-1)* and the petition for review with this court on April 10, 2001 *(CTA Records, p. 1)*. Both are within the two-year prescriptive period reckoned from April 17, 2000, the date of filing of the 1999 Annual Income Tax Return *(Exhibit E-1)*.

As regards the second requirement, to establish the fact of withholding of the reported creditable taxes in the amount of P429,506.00, petitioner presented the following certificates of creditable withholding tax, to wit:

EXHIBIT	**PAYOR**	**TYPE OF INCOME**	**INCOME PAYMENT**	**TAX WITHHELD**
J to J-6	Citibank N.A.	Rental of Real Property	P 3,330,175.00	P 166,508.75
O to O-7	Petronas Energy Phils., Inc.	Rental of Real Property	258,797.00	12,939.85
P to P-7	Petronas Energy Phils., Inc.	Rental of Real Property	405,469.80	20,273.49
Q to Q-7	Petronas Energy Phils., Inc.	Rental of Real Property	367,187.80	18,359.39
R to R-7	Petronas Energy Phils., Inc.	Rental of Real Property	245,012.00	12,250.60
W to W-7	Sun Hung Kai Securities Phil.	Rental of Real Property	673,437.60	33,671.88
X to X-7	Sun Hung Kai Securities Phil.	Rental of Real Property	673,437.60	33,671.88
Y to Y-7	Sun Hung Kai Securities Phil.	Rental of Real Property	627,199.20	31,359.96
Z to Z-7	Sun Hung Kai Securities Phil.	Rental of Real Property	604,080.00	30,204.00
EE to EE-7	PHILDICOM	Rental of Real Property	259,218.00	12,960.90
FF to FF-7	PHILDICOM	Rental of Real Property	259,218.00	12,960.90
TOTAL			**P 7,703,232.00**	**P 385,161.60**

It can be seen from the above table that out of the total 1999 claim for refund of P429,506.00, only the amount P385,161.60 has been duly supported by certificates of withholding. Petitioner having failed to fully substantiate its claim for the taxable year 1999, the court, therefore, cannot grant the full amount. The claim may only be granted to the extent substantiated.

Finally, we are convinced that petitioner's income upon which the taxes were withheld formed part of its gross income declared in its 1999 Income Tax Return. Petitioner declared in the said return, particularly in the item "non-operating and other income," the amount of P13,169,490 (*Exhibit G-5*), which comprises commissions earned of P4,850,751 and other income of P8,318,739 (*Exhibit G-9*). Considering so, it may be deduced that the rental income of P7,703,232 from which the amount of P385,161 was withheld formed part of the gross income stated in the return of the petitioner.

Moreover, petitioner's witness in the person of Ms. Milagros Valino *(TSN dated October 3, 2001, pp. 44- 45)* attested to the foregoing facts. The pertinent portion of the direct examination by Atty. Fernando regarding this matter is hereby quoted as follows:

ATTY. FERNANDO:

Q. Now, Madame Witness, do you know the items of income that formed part of the total gross income reported by the Petitioner for calendar year ended December 31, 1999?

MS. VALINO:

A. The gross income from insurance premium, **from rental income,** and income from interest on investments. (*Emphasis Supplied*).

IN THE LIGHT OF ALL THE FOREGOING, the instant petition for review is hereby *PARTIALLY GRANTED*. Accordingly, respondent is ordered to **REFUND**, or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the amount of P385,161.60 representing overpaid creditable withholding taxes for the taxable year 1999.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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